

(1974) 02 AP CK 0004
In the Andhra Pradesh High Court

Tourist Hotel

APPELLANT

Vs

State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 21-02-1974

Acts Referred:

Minimum Wages Act, 1948 — Section 11, 3, 5, 7, 8

Citation : (1975) 1 LLJ 211

Hon'ble Judges : Gopal Rao Ekbote, C.J.; P. Chennakesav Reddy, J

Bench : Division Bench

Judgement

Gopal Rao Ekbote, C.J.—This complex of 8 writ appeals arises out of a judgment of our learned brother A. Sambasiva Rao. J., given on November 13, 1972. Although in the memoranda of appeals several grounds have been raised, in the prevailing state of law, the learned advocates for the appellants chose to argue only one point, The contention was that the procedure followed in consulting the Commissioner of Labour and the Andhra Pradesh State Minimum Wages Advisory Board was contrary to Section 5 of the Minimum Wages Act, hereinafter called "the Act", and as a result the minimum wages fixed by the impugned G.O. are vitiated.

2. The facts relevant for the purpose of appreciating this contention are that the Government by G.O. Ms, No. 382, dated March 22, 1969, constituted a committee for the purpose of advising the Government in fixing minimum rates of wages in respect of the employees in hotel business. The committee submitted its report on February 23, 1970, suggesting the fixation of minimum wages for different classes of employees. The committee, however, left the issue pertaining to the deductions to be made towards food, etc., to the Government.

3. The Government thereupon asked the Commissioner of Labour on 7th May, 1970, to offer his views on the recommendations of the committee and also to suggest the amount of deductions towards food, etc. The Labour Commissioner seems to have submitted his views to the Government on 19th June, 1970. He suggested that deduction for food value may be fixed at Rs. 35 for Zone 1 and

Rs. 30 for Zone 2. Accepting this view, the Government prepared G.O. Ms. No. 1202, dated 3rd August, 1970, revising the minimum rates of wages in hotel employment. Even before the said notification could be issued and published in the Gazette, the Andhra Pradesh Hotels Association and other employers associations from Districts made representations to the Government that the minimum rates of wages as proposed to be revised are on the high side. The resultant burden therefrom on the trade would be unbearable by the hotel industry. It was also represented that the deductions proposed towards supply of food to the employees is not in conformity with the rise in the prices of foodstuffs.

4. In view of these representations, the Minister for Labour held a joint meeting of the employers and the employees' representatives on 16th November, 1970. No decision, however, could be taken at that meeting. The managements were, therefore, asked to communicate their views on or before 24th December, 1970, to the Deputy Commissioner of Labour who was asked to hold a joint meeting on 24th December, 1970. Some representations seem to have been received-No meeting, however, could be held on 24th December, 1970, It was held on 28th December, 1970, but it proved abortive as no decision could be taken.

5. The Government, therefore, decided to request the Commissioner of Labour to place the report of the committee before the State Minimum Wages Advisory Board on 27th January, 1971. Accordingly it was so placed before the advisory Board on 9th March, 1971.

6. The Chairman of the Advisory Board constituted a study group from amongst its members for preliminary discussions on the report, of the committee. The study group after going into the details put up its views for consideration to the Advisory Board.

7. The meeting of the Advisory Board was thereafter held on 6th July, 1971. The meeting had to be adjourned because the representatives of the employers and employees did not attend the same. Another meeting was held on 17th August, 1971. After taking into consideration the views expressed by the representatives of the employers and the employees, the Advisory Board recommended to divide the State into three zones and also recommended the minimum rates of wages separately for the workers employed in three zones. The Advisory Board also recommended the deduction for food supply and accommodation at the rate of Rs. 40, Rs. 50 and Rs. 30 to Zones 1, 2 and 3 respectively. The recommendations of the Advisory Board was on a majority vote.

8. The Government accepted in toto the views of the majority of the Advisory Board and issued a final notification in G.O. Ms. No. 1599, Home dated 3rd November, 1971, revising the minimum rates of wages in the employment of hotel industry. The notification was published in the official Gazette of 16th December, 1971

9. Is this procedure followed by the Government obnoxious to the provisions of the Act?

10. Section 3 empowers the State Government in the manner provided in the Act to fix the minimum rates of wages payable to employees employed in the hotel industry, being the scheduled industry. The State Government is empowered to fix such rates for a part of any specified class or classes of such employment in the whole or part of the State.

11. Section 5 then states that in fixing such minimum rates of wages for the first time or in revising them earlier fixed, it shall either appoint as many committees and sub-committees as it deems fit to hold enquiries and advise it in respect of such fixation or revision or publish its proposals in the Gazette for the information of persons likely to be affected and specify a date on which the proposals will be taken into consideration.

12. The State Government in the instant case adopted the first device and appointed a committee to advise in respect of revision of the minimum rates of wages.

13. Sub-section (2) of Section 5 then enjoins that after considering the advice of the committee, the Government shall, by notification in the Gazette, fix or revise the minimum rates of wages in respect of scheduled industry.

14. Section 7 states that for the purposes of co-ordinating the work of committees and sub-committees appointed u/s 5 and for advising the Government generally in the matter of fixing and revising minimum rates of wages, the Government shall appoint an Advisory Board.

15. Section 8 then concerns itself with the Central Advisory Board. It enacts that for the purpose of advising the Government in the matters of fixation and revision of minimum rates of wages and other matters under the Act and for co-ordinating the work of the Advisory Boards, the Central Government shall appoint a Central Advisory Board.

16. It is in the background of these provisions that we have to first consider the submission that the consultation with the Advisory Board was improper. Even a casual reading of Sections 5, 7 and 8 would indicate that the State Advisory Board constituted u/s 7 and a Central Advisory Board constituted u/s 8 are appointed not only for the purpose of co-ordinating the work of different committees formed u/s 5, and Advisory Board constituted u/s 7 but they are also constituted for the purpose of advising the Government "generally in the matter of fixing and revising minimum rates of wages". It will not, therefore, be correct to argue that apart from securing the advice of a committee constituted u/s 5, the State Government was not entitled to seek advice from the State Advisory Board formed u/s 7. Sections 5 and 7 can leave no one in doubt that the State Government can obtain advice from both the committee as well as the Advisory Board. One does not exclude the other. There are no words in Section 5 which prohibits the Government from approaching the Advisory Board for advice or receiving the advice of a committee constituted u/s 5 of the Act.

17. It is seen that the committee, although it tendered its advice on all matters except one, asked the Government to finally decide itself as to what deductions could be made in regard to supply of food and provision for accommodation. It was, therefore, open to the Government to take advice from the Advisory Board regarding the recommendations made by the Advisory Committee in general, and regarding the deduction on account of supply of food and accommodation in particular. This became more necessary not only because the committee had left some questions un-recommended but because of the conflicting representations loudly made to the Government both by the employers and the employees of the hotel industry. There was, therefore, nothing wrong in getting advice from the State Advisory Board and accepting the same.

18. It was then contended that the committee had omitted to give advice in regard to the deductions on account of food supply and accommodation. The Government in such a case ought to have insisted on the, committee to necessarily tender advice on that aspect also or ought to have constituted another committee u/s 5 for seeking the advice thereon

19. Now, Section 5 obliges the Government to appoint a committee in a case where the Government chooses to act u/s 5(1)(a) to advise it on the fixation or revision of the rates of minimum wages. It further obliges the Government to consider the advice of the committee before it fixes or revises the minimum rates of wages. On the wording of the section, it was contended that it is imperative before fixing or revising the wages that the committee should be consulted on all matters. Since on an important question of determining the quantum of deduction on account of food supply and accommodation the committee did not tender any advice, we should hold that there was in truth and reality no consultation with the committee and with- out such full advice the fixation of wages by the impugned G.O. is null and void. This is a submission well deserving of most careful consideration and it is the duty of this Court. to see that there is a full and fair compliance with the statutory requirements. It is true that Section 5 lays down the manner in which the advice from the committee should be received. It lays down procedure for taking their advice before fixation or revision of the minimum rates of wages. But it is procedure that often spells much of the difference between rule by law and rule by whim or caprice. Steadfast adherence to strict procedural safeguards, it is evident, is our main assurance that there will be equal justice under law.

20. The duty cast on the Government to take counsel from the committee is unquestionably an important one. The fixation of minimum rates of wages has tremendous potentialities of helping the employee in the economic salvation on the one hand but at the same time of affecting the economy of the scheduled industries on the other. The provisions of the Act, however, provide adequate safeguards against any hasty or capricious decision by the appropriate Government: See *Bijay Cotton Mills Ltd. v. State of Ajmer* (1954)7 FJ.R. 350.

21. The word "advise" appearing in Section 5 like the word "consultation" is quite

often used and is well understood. These words, in circumstances such as here, are inter-changeable words. Although no purpose will be served in attempting to define the word "advise", it is useful to keep in mind its popular meaning. 20th Century Chamber's Dictionary gives amongst others, the meaning as "to counsel" or "to consult". Likewise, the Shorter Oxford Dictionary gives as one definition of the verb to consult "to ask advice of", "seek counsel from". The term "advise", however, like "consult", is not synonymous with "direct" or "instruct". When Section 5 authorises the committee to advise, it has no power to director instruct the Government. The committee can only counsel and the Government is not bound by the advice.

22. Section 5 does not prescribe any form of advice. What all it says is that the Government shall seek advice of the committee and consider it before it takes a decision to fix or revise wages. The essence of consultation is the communication of genuine invitation, extended with a receptive mind, to give advice. If in any given case complaint is made of failure of advice, it will be for the Courts to examine the facts and circumstances of the particular case and to decide whether consultation was in fact held. In deciding whether consultation has taken place, in our judgment, regard must always be had to the substance of the matter rather than its form. It is to be borne in mind that the advice of the committee is a step or an element in the process of taking a final decision of fixation or revision of the minimum rates of wages. That being the object of seeking the advice the Government should give full and fair opportunity to the committee to advise. The Government must also supply necessary information to the committee to enable it to tender advice. This is so held in *V. Ramayya v. State of A.P.* (1973) 1 AWR.241.

23. It must, however, be observed that u/s 5, the ultimate judge of what should be the minimum rates of wages of the employees is the Government. It is not the committee. It is not even this Court. It is the Government which is responsible to the Legislature if it administers the Act badly and comes to conclusions which are open to criticisms as not being in the interests of the employers or the employees. This Court is only concerned to enquire whether a proper consultation did take place.

24. It is also important to bear in mind that the invitation to tender advice if extended genuinely and if such bona fide invitation is once received by the committee formed u/s 5, it matters not that it is not accepted and no advice is preferred. "Were it otherwise organisations with a right to be consulted could, in effect, veto the making of any order by simply failing to respond to the invitation." See *Agricultural Training Board v. Aylesbury Mushrooms* [1972] 1 All E.R. 280 to 284.

25. In *Port Louis Corporation v. Attorney General of Mauritius* [1965] A.C. 1111, Lord Morris, who spoke for the Court, said:

The local authority cannot be forced or compelled to advance any views but it

would be unreasonable if the Governor in Council could be prevented from making a decision because a local authority had no views or did not wish to express or declined to express any views.

26. In that case, by Section 73(1) of the Local Government Ordinance, 1962, it was provided that the Governor in Council may by proclamation alter the boundaries of any town, district or village, after consultation with the local authority concerned.

27. The learned Lord further observed at page 1133:

They could not be compelled to express views but they cannot complain if, having had both time and opportunity they limited the extent to which they availed themselves of the opportunity and the extent to which they gave expression to their views. The requirement of consultation with the local authority concerned must be subject to a condition or assumption that the local authority will be ready and willing to avail itself of a reasonable opportunity to state the views. The recital of the dates and events show that there was time and that there was opportunity.

28. What all is thus essential is the genuine communication and invitation to the committee properly constituted to give advice and the consequent opportunity of responding to such invitation. More than that it is not necessary u/s 5 to do. As the Government is not bound to accept the advice, the committee also is free to tender or refuse to tender any advice. Section 5 does not oblige the committee to necessarily tender the advice. If no advice is tendered or inadequate advice is given, Section 5 does not deprive the Government of its power and duty to fix or revise the minimum rates of wages. The contention that since the committee omitted to tender advice on an important aspect, the Government ought to have referred the matter to another committee u/s 5 is not justified. The words of Section 5 do not compel the Government to do that. It may superficially look that the direct control effected by this device of consultation with the committee is worthless, but in practice few Ministers will be so regardless of public opinion as to ignore serious views carefully advanced in the course of statutory consultations of this kind. The same thing will apply to the Advisory Committee and ordinarily the members of the committee would act in the interest of those whom they claim to represent.

29. Taking all these principles into consideration and looking at the question straight in the face, we are of the view that the consultation was proper.

30. The committee was to look at the question referred to it for advice from all points of view and they had been asked to express their views thereon. If the committee thought that they have no advice to offer in regard to the quantum of deduction or they found it somewhat difficult to tender any advice on that question and left it to the Government to decide it, we do not think on that account it can be validly contended that there was no consultation at all or that it was improper. The fixation or revision of the minimum rates of wages, therefore,

cannot be said to be bad. On a consideration of all the facts, particularly bearing in mind the advice tendered by the State Advisory Board in this behalf, it is, in our judgment, satisfactorily shown that the obligation imposed on the Government by Section 5 to have consultation with the committee was amply fulfilled.

31. In any case it is important to note that a committee appointed u/s 5 of the Act is only an advisory body and that the Government is not bound to accept any of its recommendations. Consequently, procedural irregularities, if any, could not vitiate the final report of the committee or the decision of the Government fixing the minimum wages. See *Edward Mills Co. Ltd. v. State of Ajmer* (1954) 7 F.J.R. 340 at p. 350. The contention must fail even on this ground.

32. It has already been noticed that the meetings of the joint committees of the representatives of the employers and the employees called by the Minister proved abortive. Those meetings, therefore, did not in any manner affect the conclusions of the Government. The Commissioner's views were not accepted. It was the Advisory Board's opinion that was in toto accepted. Moreover, it is always open to the Government to obtain the views of any of its departments. True, it is not admissible to do a great right by doing a little wrong. It is also not sufficient to do Justice by obtaining a proper result by irregular or improper means. We do not, however, think that the procedure so followed was in any manner wrong or irregular and, therefore, it cannot vitiate the impugned notification.

33. There was some argument regarding the question as to whether the impugned G.O. fixing the minimum wages u/s 5 is an administrative act or a quasi-judicial act of the Government. It is, however, now well settled that the distinction between the exercise of an administrative power or doing a judicial or quasi-judicial act is no longer valid. See *Schmidt v. Secretary of State for Home Affairs* (1969) 2 Cha 149 and *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, .

34. Looking to Section 5 in the background of the scheme of the Act, we are, however, of the view that the exercise of power u/s 5 by the Government is neither administrative act nor is it a quasi-judicial act. It is a legislative function delegated to the Government by the Parliament u/s 5 of the Act. It is every common nowadays for statutes to empower Government to determine minimum rates of wages by a subordinate legislation,

35. We do not think that anything worth, while terms upon the question whether the exercise of the power u/s 5 is administrative or legislative in character. There is only a hazy borderline between legislation and administration, and the assumption that they are two fundamentally different forms of power is misleading. There are of course some obvious general differences between the two. The distinction between legislative and administrative acts is usually expressed as being a distinction between the general and the particular. It is

easy to see that legislative power is the power to lay down the law for the people in general whereas administrative power is the power to lay down the law for them individually, or in some particular case. The idea, however, that a clear (division can be made it a legacy from an older era of political theory.

36. For legal purposes, judicial control, statutory interpretation and the doctrine of ultra vires, there is common ground through-out both the exercise of administrative as well as legislative power. Much of the administration today consists of legislation. The reason sometimes why they are distinguished is that it is a general principle that the legislative Acts should be public, so that all may know the law. Another is that legal right may in some cases depend on the distinction.

37. If this analysis is kept in view, it will not be difficult to reach the conclusion that the impugned G.O. is legislative in character. It applies to all those employees and employers, who come within the sphere of its influence. It, moreover, creates certain rights in the employees and certain obligations on the employers.

38. As stated earlier, however, nothing particular turns upon the tag attached to the exercise of power u/s 5. In any case the power as to be exercised in the manner prescribed therein. Since we have held that there has been no violation of Section 5, the exercise of the power in fixing the wages is not improper.

39. It was finally contended that u/s 11(4) of Act, the cash value of the wages in kind and of concession in respect of supplies of food and accommodation has to be estimated in the prescribed manner. Instead of rules such an estimation cannot be made by the impugned G.O. We are not impressed with this argument.

40. We have seen that the G.O. fixes the minimum wages and permits the deductions wherever necessary on account of supply of food and accommodation from the wages. It is ignored that if the value of supply of food and accommodation is increased, it is bound to effect a proportionate increase in the minimum rates of wages. Further, the impugned notification does not authorise u/s 11(2) the payment of any portion of wages in kind. It merely says that if the employer supplies free meals to any employee, he may deduct the sum mentioned in the notification. It is only an option given and not a duty imposed. Section 11(4), therefore, is inapplicable to the present case. Consequently, the procedure prescribed in Rule 21 of the Rules framed under the Act is also inapplicable to the instant case. The valuation of an amenity is shown and it cannot be doubted that supply of food and accommodation is an amenity within the meaning of Rule 22(2)(v). We are fortified in this view by a decision of the Supreme Court in Chandra Bhavan Boarding and Lodging v. State of Mysore (1969) 38 F.J.R. 1 at pp. 11-12.

41. Since no other contention was raised by any of the appellants, the appeals fail and are dismissed with costs. Advocate's fee Rs. 100 in each case.