A.M. Allison

Vs

B. L. Sen (and connected appeal)

Civil Appeals Nos. 279 and 280 of 1955

(S. K. Das, N. H. Bhagwati, B. P. Sinha, T. L. Venkatarama Ayyar JJ)

21.12.1956

JUDGMENT

BHAGWATI J. -

These two appeals with certificates under Art. 133(1)(c) of the Constitution are directed against a judgment of the High Court of Judicature in Assam dismissing the appellants' application under Art. 226 challenging the orders of the first respondent Shri B. L. Sen, Deputy Commissioner, Sibsagar, whereby he allowed the applications filed on behalf of the labourers employed in the Teok Tea Estate and the Dalim Tea Estate under section 20 of the Minimum Wages Act, 1948 (Act XI of 1948), hereinafter referred to as the Act.

On March 11, 1952, the Government of Assam, in exercise of the powers conferred by s. 3 read with sub-s. (2) of s. 5 of the Act issued the following notification :

> "No. GLR. 325/51/56. - In exercise of the powers conferred by section 3 read with sub-section (2) of section 5 of the Minimum Wages Act, 1948 (XI of 1948), as amended, the Governor of Assam, having considered the advice of the committee appointed under clause (a) of sub-section (1) of section 5 of the said Act, is pleased to fix minimum wages, which will come into force with effect from the 30th March, 1952, consisting of basic wages and dearness allowance in terms of clause (1) of sub-section 1 of section 4 of the said Act, at the rates as specified in the schedule hereto annexed payable to employees employed in tea plantations in the different districts of Assam.
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> 2. These rates are exclusive of concessions enjoyed by the workers in respect of supplies of food-stuffs and other essential commodities and other amenities which will continue unaffected. The existing tasks and hours of work may continue until further orders.
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> # SCHEDULE 1. ORDINARY UNSKILLED LABOUR Adult male. Adult female. (16 years & above) (16 years & above) Basic D.A. Total. Basic D.A. Total. wage. wage. (p.d.) (p.d.) (p.d.) (p.d.) (p.d.) (p.d.) Rs. Rs.2. Restof Assam As.12/- As. 6/- 1/2/- As.11/- As. 5/- 1/-/-Valley.##

By notification No. GLR. 44/51, dated the 16th April, 1952, the said Government introduced the Minimum Wages Rules which, inter alia, provided :

"Rule 24. Number of hours of work which shall constitute a normal working day. -

(1) The number of hours which shall constitute a normal working day shall be -

(a) in the case of an adult, 9 hours; subject to a maximum of 48 hours in a week;

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By another notification No. GLR. 352/51 dated May 12, 1952, the said Government explained that the word "may" mentioned in the notification dated March 11, 1952, will have the force of "shall". The result was that in cl. (2) of the said notification, the last sentence ran as : "The existing tasks and hours of work shall continue until further orders."

Prior to the fixation of the minimum wages (consisting of basic wages and dearness allowance) as aforesaid, the labourers engaged in plucking tea leaves in these tea estates used to be paid basic wages for male labourers at as. 8/- per day for plucking 16 seers of green leaves and for female labourers at as. 6/- per day for plucking 12 seers of green leaves. This was the work-load or task in respect of which the basic wages of as. 8/- and as. 6/- respectively were paid to these labourers apart from the dearness allowance in addition to such basic wages. If the labourers plucked larger quantities of green leaves they used to be paid by way of ticca extra wages at the rate of 6 ps. per seer in excess of 16 seers and 12 seers respectively. It may be noted that the payment of basic wages on the above computation also worked out at the rate of 6 ps. per seer of green leaves plucked by the labourers.

Even after the fixation of the minimum wages by the said notification, the managers of these tea estates continued to pay to the labourers wages at the rate of 6 ps. per seer of green leaves plucked by them. They, however, in view of the fact that as. 12/- per day were fixed as the basic wages for the male labourers and as. 11/- per day as the basic wages for the female labourers, refused to make any extra payment to them on the basis of 6 ps. per seer unless the green leaves plucked by them exceeded 24 seers and 22 seers respectively, thus maintaining their old standard of payment on the basis of 6 ps. per seer. The labourers contended that the existing work-load or task at the date of the said notification was 16 seers for male labourers and 12 seers for female labourers and they were entitled to such extra payment at the rate of 6 ps. per seer for leaves plucked by them in excess of the 16 seers and 12 seers respectively. There was difference thus in payment, of as. 4/- per day in the case of male labourers and as. 5/- per day in the case of female labourers and they claimed that the managers of the tea estates should pay them the basic wages of as. 12/- per day and as. 11/- per day respectively for the work-load or task of 16 seers for male labourers and 12 seers for female labourers and extra wages at the rate of 6 ps. per seer of leaves plucked by them in excess of those quantities.

The claim of theirs was the subject-matter of the applications filed on their behalf before the Deputy Commissioner, Sibsagar, under s. 20(2) of the Act. The applicants asked for directions under s. 20(3) to the mangers of the tea estates for payment of the difference between the minimum wages fixed by the Government and the wages actually paid to them from March 30, 1952, which was the date from which the notification came into force. The managers of the estates contested these applications mainly on two grounds, viz., (1) that the applications were not maintainable under s. 20 of the Act, and (2) that there was no fixed workload or task in respect of plucking for earning daily basic wages before the introduction of minimum wages. The Deputy Commissioner, Sibsagar, who was the authority appointed under the Act to hear the claims arising out of the payment of less then

the minimum rates of wages to these labourers, entertained the applications, recorded evidence and heard arguments addressed to him by both the parties.

As regards the first objection, he held that, if the applicants' version was true there was a clear case of payment of less than the minimum wages fixed by the Government and the applications were maintainable under s. 20 of the Act. As regards the second objection, he came to the conclusion on the evidence recorded before him that there was a work-lad or task of 16 seers for male labourers and 12 seers for female labourers in respect of the daily basic wages of as. 8/- and as. 6/- respectively earned by them before the fixation of the minimum wages by the said notification, that such work-load or task was the basis of the fixation of the minimum wages consisting, inter alia, of the basic wages of as. 12/- per day for male labourers and as. 11/- per day for female labourers and that the labourers were, therefore, entitled to extra payment for green leaves plucked by them in excess of 16 seers and 12 seers respectively at the rate of 6 ps. per seer. He accordingly ordered that the mangers must pay the labourers engaged in plucking tea leaves the minimum basic wages at the rate of as. 12/- per day to the male labourers for 16 seers of green leaves and as. 11/- per day to the female labourers for 12 seers of green leaves and extra wages at the rate of 6 ps. per seer for green leaves plucked in excess of those quantities.

The managers of the estates thereupon filed applications under Art. 226 of the Constitution before the High Court of Judicature in Assam raising the same contentions which had been negatived by the Deputy Commissioner, Sibsagar. The High Court dismissed these applications and granted the certificate under Art. 133(1)(c) and that is how these appeals come before us.

It is urged in the first instance that the notification dated March 11, 1952, fixed only 'a minimum time rate' and no more. Under s. 3(2) of the Act it was competent to the Government to fix (a) a minimum rate of wages for time work (called "a minimum time rate"), (b) a minimum rate of wages for piece work (called "a minimum piece rate") or (c) a minimum rate to be applied in the case of employees employed on piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis (called "a guaranteed time rate") and what was done by the Government was to fix "a minimum time rate" within the meaning of s. 3(2)(a) so that the labourers were to be paid the basic wages mentioned in the Schedule regardless of their out-turn of work. If this contention is correct, the labourers would not be entitled to any extra wages for the quantities of green leaves plucked by them in excess of the 16 seers or 12 seers per day which was alleged to be the existing work-load or task at the date of the notification. It is, therefore, urged that prior to such fixation of minimum wages there was no work-load or task for the labourers engaged in plucking tea leaves. This contention is obviously unsound. Both the Deputy Commissioner, Sibsagar, and the High Court found as a fact that before the fixation of the minimum wages as above, there was a basic work-load or task of 16 seers of leaves for the male labourers and 12 seers of leaves for the female labourers. This was proved by the evidence of the Hazira Moharers of these estates and this was recognized by the Government itself when is stated in the notification that "the existing tasks and hours of work shall continue until further orders." If the minimum basic wages were fixed irrespective of existing work-load or task and what was fixed was "a minimum time rate" as contended by the appellants there was no need whatever to mention this in the notification. The direction that the existing work-load or task was to continue until further orders on the contrary goes to show that the basic wages mentioned in the Schedule were correlated to the existing work-load or task and as. 12/- for the male labourers and as. 11/- for the female labourers were fixed in regard to the existing work-load or task of 16 seers of tea leaves to be plucked by the male labourers and 12 seers of tea leaves to be plucked by the female labourers.

It is argued that the continuance of the existing work-load or task which was thus provided for had no relation to the basic wages which were fixed for the male and female labourers respectively but was only intended to prevent the employers from increasing the existing work-load or task with a view to make up for the increase in basic wages. This argument, however, does not take count of the fact that there was existing at the date of the notification a work-load or task which was the basis of the payments used to be made to the labourers, the basic wages paid to them being calculated at the rate of 6 ps. per seer of tea leaves plucked by them. The labourers were thus being paid the basic wages of as. 8/- for male labourers and as. 6/- for female labourers for the work-load or task of plucking 16 seers and 12 seers of tea leaves respectively and the sole intention of the Government in issuing the notification was to increase these basic wages of as. 8/- and as. 6/- to as. 12/- and as. 11/- respectively while maintaining the same basic work-load or task assigned to the male and female labourers. If the intention was not to correlate these basic wages to the basic work-load or task which already existed and if the same state of affairs was to continue, viz., that the labourers would continue to be paid the basic wages on the computation of 6 ps. per seer of green leaves plucked by them, there was no sense whatever in increasing the basic wages from as. 8/- to as. 12/- for male labourers and from as. 6/- to as. 11/- for female labourers as was sought to be done by issuing the notification in question. The acceptance of the contention of the appellants would mean that no advantage whatever was sought to be conferred by the Government on the labourers engaged in plucking leaves in these tea estates which intention can scarcely be attributed to the Government. We are, therefore, of opinion that what was fixed by the notification was not merely "a minimum time rate" irrespective of the existing work-load or task which used to be performed by the labourers but was a minimum wage which, though fixed for time work, was necessarily correlated to the work-load or task then being performed by these labourers so that whatever extra work was done by the labourers in excess of the existing work-load or task of plucking 16 seers of tea leaves in the case of male labourers and 12 seers of tea leaves in the case of female labourers had to be paid for in accordance with the practice then prevailing, whether it was based on agreement or ticca or custom, at the rate of 6 ps. per seer. The conclusions reached in this behalf both by the Deputy Commissioner, Sibsagar, and the High Court are, therefore, correct and cannot be challenged.

The appellants, however, contend that this is not a case of payment of less than the minimum rates of wages and the claims, if any, of the labourers do not fall within s. 20 of the Act. The tea estates in question have never refused to pay and are in fact paying to the labourers the basic wages of as. 12/- per day for male labourers and as. 11/- per day for female labourers and the grievance, if any, of the labourers is that they have not been paid the extra wages calculated on the basis of 6 ps. per seer for tea leaves plucked by them in excess of the basic work-load or task of 16 seers for male labourers and 12 seers for female labourers. This claim of the labourers, therefore, amounts to a claim for extra wages over and above the basic wages of as. 12/- and as. 11/- per day respectively which are being paid to them and, therefore, is not a claim arising out of the payment of less than the minimum rates of wages within the meaning of s. 20(1) of the Act and the Deputy Commissioner, Sibsagar, had no jurisdiction to entertain such claim.

Section 20 so far as is material for our purposes provides :

> "20. Claims. -
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> (1) The appropriate Government may, by notification in the official Gazette, appoint any Commissioner for Workmen's Compensation or other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the Authority to hear and decide for any specified area all claims arising out of payment of less than the

minimum rates of wages to employees employed or paid in that area.

(2) Where an employee is paid less than the minimum rates of wages fixed for his class of work under this Act, the employee himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector, or any person acting with the permission of the Authority appointed under sub-section (1), may apply to such Authority for a direction under sub-section (3) : ....

(3) When any application under sub-section (2) is entertained, the Authority shall hear the applicant and the employer or give them an opportunity of being heard, and after such further enquiry if any as it may consider necessary, may, without prejudice to any other penalty to which the employer may be liable under this Act, direct the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid, together with the payment of such compensation as the Authority may think fit, not exceeding ten times the amount of such excess and the Authority may direct payment of such compensation in cases where the excess is paid by the employer to the employee before the disposal of the application.

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(6) Every direction of the Authority under this section shall be final."

It is argued that the authority appointed under s. 20(1) of the Act is invested with the powers of hearing and deciding claims arising out of the payment of less than the minimum rates of wages and is authorised to hear the applicant and the employer or give them an opportunity of being heard, and after such further enquiry, as it may consider necessary, to give directions under s. 20(3) of the Act which directions are final and not subject to any appeal or revision by any higher authority. Such drastic powers could not have been meant to be exercised when there are complicated questions of law or fact but could be exercised only in cases where the quantum of minimum wages fixed by the notification in question could be determined by the authority on a plain reading of the terms thereof. Then and then only would the authority have jurisdiction to entertain such claims and give the necessary directions having the attribute of finality. In the instant cases before us, not only did the matters involve complicated questions of fact which required recording of evidence by the authority but they also involved the construction of the notification which was by no means felicitously worded. The existing tasks which were to continue until further orders were not at all patent and if the determination thereof had to be made by the authority appointed under s. 20(1) of the Act, it would involve, in cases of dispute, recording of considerable evidence and an adjudication of the same after a consideration of the arguments advanced before the authority by both the parties.

There is in the instant cases moreover a further difficulty and it is that there are two rival contentions which can, with equal force, be urged by the respective parties. The appellants contend that they have all throughout been paying to the labourers, after the date of the notification in question, basic wages at the rate of as. 12/- per day for male labourers and as 11/- per day for the female labourers and there is no instance which has been cited on behalf of the respondents where anything less than the minimum basic wages thus fixed by the Government has ever been paid. The claim of the labourers comes to this that they have not been paid the extra wages for plucking green leaves in excess of the basic work-load or task of 16 seers and 12 seers respectively. Such claim for

extra wages certainly does not amount to a claim arising out of the payment of less than the minimum rates of wages. It is, on the other hand, contended on behalf of the respondents that the basic wages of as. 12/- per day for male labourers and as. 11/- per day for female labourers fixed under the notification are correlated to the existing work-load or task of plucking green leaves weighing 16 seers and 12 seers respectively and if they are entitled to the payment of these basic wages on their putting forward that much quantity of work, the non-payment by the managers of these tea estates to them of any extra wages on the computation of 6 ps. per extra seer unless they plucked 24 seers and 22 seers of green leaves respectively is tantamount to non-payment of the minimum basic wages of as. 12/- and as. 11/- respectively as fixed in the notification.

We do not propose to decide this question of jurisdiction as in the instant cases we have, in addition to the determination of the Deputy Commissioner, Sibsagar, the adjudication of the main disputes between the parties by the High Court itself. Whatever infirmities might possibly have attached to the orders passed by the Deputy Commissioner, Sibsagar, on the score of want of jurisdiction, we feel that having regard to the circumstance that the matters have been pending since September, 1952, right up to the end of the year 1956, no useful purpose will be served by our interfering at this stage, as the Deputy Commissioner, Sibsagar, and the High Court both came to the same conclusion, a conclusion which we also have endorsed above, that the labourers are entitled to be paid the basic wages of as. 12/- per day for male labourers and as. 11/- per day for female labourers for the work-load or task of plucking 16 seers and 12 seers of green leaves respectively and they are entitled to extra wages for every seer of green leaves plucked by them over and above these quantities of 16 seers and 12 seers respectively, at the computation of 6 ps. per seer.

There are moreover special reasons why we should not interfere with the orders of the Deputy Commissioner, Sibsagar, in these appeals. The matters do not come to us by way of appeal directly from the orders of the Deputy Commissioner, Sibsagar. They were the subject, in the first instance, of proceedings under Art. 226 of the Constitution in the High Court of Assam. Proceedings by way of certiorari are "not of course". (Vide Halsbury's 'Laws of England', Hailsham Edition, Vol. 9, para. 1480 and 1481, pp. 877-878). The High Court of Assam had the power to refuse the writs if it was satisfied that there was no failure of justice, and in these appeals which are directed against the orders of the High Court in applications under Art. 226, we could refuse to interfere unless we are satisfied that the justice of the case requires it. But we are not so satisfied. We are of opinion that, having regard to the merits which have been concurrently found in favour of the respondents both by the Deputy Commissioner, Sibsagar, and the High Court, we should decline to interfere.

This being the point of substance which has been decided in favour of the respondents, we are of the opinion that the appeals are liable to be dismissed. We accordingly dismiss them but having regard to the particular circumstances which we have adverted to before, we order that each party will bear and pay its own costs of these appeals.

Appeals dismissed.

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