U. Unichoyi and Others

Vs

The State of Kerala

Petition No. 102 of 1958

(P. B. Gajendragadkar, A. K. Sarkar, K. N. Wanchoo JJ )

14.04.1961

JUDGMENT

GAJENDRAGADKAR, J. –

The Government of Kerala appointed a Committee in exercise of its powers conferred by cl. (a) of sub-s. (1) of s. 5 of the Minimum Wages Act, 1948 (Act XI of 1948) (hereafter called the Act), to hold enquiries and advise the Government in fixing minimum rates of wages in respect of employment in the tile industry and nominated eight persons to constitute the said Committee under s. 9 of the Act. This notification was published on August 14, 1957. The Committee made its report on March 30, 1958. The Government of Kerala then considered the report and issued a notification on May 12, 1958, prescribing minimum rates of wages as specified in the schedule annexed thereto. This notification was ordered to come into effect on May 26, 1958. On that date the present petition was filed under Art. 32 by the nine petitioners who represent six tile factories in Feroke, Kozhikode District, challenging the validity of the Act as well as the validity of the notification issued by the Government of Kerala. The State of Kerala is impleaded as respondent to the petition.

The petitioners allege that the minimum wage rates fixed by the notification are very much above the level of what may be properly regarded as minimum wages and it was essential that before the impugned wage rates were prescribed the employers' capacity to pay should have been considered. Since this essential element had not been taken into account at all by the Committee as well as by the respondent the notification is ultra vires and inoperative. According to them the burden imposed by the notification is beyond the financial capacity of the industry in general and of their individual capacity in particular, and this is illustrated by the fact that nearly 62 tile factories in Trichur closed soon after the notification was published. The petitioners seek to challenge the validity of the Act on several grounds set out by them in clauses (a) to (g) of paragraph 21 of the petition. It is urged that the Act does not define what the minimum wage is to comprise or to comprehend and as such confers arbitrary authority on the appropriate Governments to impose unreasonable restrictions on the employers. The law conferring such arbitrary power is violative of Art. 19(1)(g) of the Constitution. Since the Act empowers the fixation of a wage which may disable or destroy the industry it cannot be said to be reasonable and as such is beyond the purview of Art. 19(1) and (6) of the Constitution. The Act does not lay down any reasonable procedure in the imposition of restrictions by fixation of minimum wage and so authorises any procedure to be adopted which may even violate the principles of natural justice. It is also alleged that the Act is discriminatory in effect inasmuch as it submits some industries to its arbitrary procedure in the matter of fixation of minimum wages and leaves other industries to the more orderly and regulated procedure of the Industrial Disputes Act. It is on these grounds that the validity of the Act is impugned.

The petitioners impugn the validity of the notification also for the same reasons. Besides, it is urged that the notification has in effect fixed not minimum wages but fair wages and so it was essential that the capacity of the employers to bear the burden proposed to be imposed ought to have been considered. Failure to consider this essential aspect of the matter has, it is urged, rendered the notification void. That in substance is the nature of the case set out by the petitioners in their present petition.

The respondent has traversed all these allegations. It is urged that the validity of the Act is no longer open to challenge since the question is concluded by the decisions of this Court; and it is alleged that what the notification purports to do is to fix the minimum wage and no more and as such the capacity of the employer to pay such a minimum wage is irrelevant. It is further alleged that decisions of this Court have firmly established the principle that in the matter of fixing minimum wages the capacity of the employer to pay need not be considered and that if any employer is unable to pay what can be regarded as minimum wages to his employees he has no right to carry on his industry. It is further pointed out that out of 18 factories in Feroke only six factories have come to this Court and it is suggested that the grievance made by the petitioners that the wage rates fixed are beyond their capacity is not genuine or honest. The respondent also points out that the Committee appointed by it was a representative Committee and its report showed that it had considered the matter very carefully. Alternatively it is urged that the report of the said Committee would show that the capacity to pay had not been ignored by the Committee. The impact of the minimum wage rate suggested by it had been considered by the Committee and so the Committee made its recommendations areawise. In regard to the closure of factories in Trichur the respondent's case was that the said closure was not the result of financial inability of the factories to bear the burden but was probably actuated by political motives. The respondent also put in a general plea that in fact all the factories in the Kerala State except some of the factories in the Trichur area and one of the petitioners had implemented the notification without any objection or protest; and so it was argued that there was no substance in the grievance made by the petitioners. That in brief is the nature of the contentions raised by the respondent in reply to the petitioner's case.

At this stage it would be relevant to refer briefly to the Committee's report in the order to find out how the Committee proceeded to discharge its task and what is the nature of its recommendations. The Committee consisted of eight members three of whom were the employers' representatives and three the employees' representatives while the Chairman Mr. V. R. Pillai and Mr. G. S. Pillai, the District Labour Officer, were nominated on the Committee as independent members. The Chairman Mr. Pillai is a M.A., M.Sc. in Economics of the London University. He is a Professor of Economics in the University College at Trivandrum and has had considerable experience inasmuch as he has served on several such Committees in the past. The Committee issued a questionnaire to all the tile factories in the State and other persons interested, considered the replies received from them, personally visited certain factories, recorded evidence of various associations representing the tile factories as well as of individuals, and took into account various facts which the Committee thought were relevant. The report of the Committee shows that, subject to minor differences disclosed in the minute of dissent filed by Mr. K. Subramonia Iyer and the reply to it filed by Mr. A. Karunakaran, the recommendations of the Committee were unanimous and so prima facie we start with the fact that the recommendations of the Committee were approved not only by the two independent members but they secured the concurrence of the representatives of the employers as well as the employees.

The report of the Committee consists of five chapters. Chapter I deals with the development of the tile industry in Kerala, chapter II deals with the problem of standardisation in the tile industry,

chapter III considers the problem of wage-structure areawise, chapter IV discusses the problem of minimum wage fixation, its principles and procedure, and chapter V records the conclusions and recommendations of the Committee. In dealing with the problem of wage-structure the Committee has observed that the prevailing wage rates in the tile factories in the State show considerable difference from one centre to another, and that, according to the Committee, is partly due to historical factors and partly to the economic status of the workers in the areas concerned. The Committee formed the opinion that there being very little scope for alternative employment except is low paid agricultural occupations the bargaining position of the workers has all along been very weak and wages too have tended to remain at a relatively low level. It is in the light of this background that the Committee naturally proceeded to consider the problem of the fixation of minimum wage rates.

The Committee has accepted the observation of the Fair Wages Committee that the minimum wage "must provide not merely for the bare subsistence of life but for the preservation of the efficiency of the workers." Then it examined the food requirements of the employee on the basis of three consumption units recognised in Dr. Aykroyd's formula. It then adopted the assessment made by the Planning Commission in regard to the requirements of the employees in cotton textiles and placed the employee's requirement at a per capita consumption of 18 yards per unit, then it took into account the requirement of housing and it held that the additional requirements of workers for fuel, lighting and additional miscellaneous items of expenditure should generally be fixed at 20% of the total wage in cases where the actual percentage has not been found out by a family budget enquiry. The Committee was conscious that it had to approach the problem from the point of view of the minimum needs of workers in order to maintain a subsistence standard, and so it enumerated the requirements of workers in that behalf as food, clothing, fuel, lighting and other miscellaneous items in which are also included rent, education, medical aid and entertainment. On this basis the Committee formulated the weekly food budget of the employee, added to it the requirement of clothing and miscellaneous items. According to the Committee the total weekly expenditure on this basis would be food 13.03, clothing 1.15 and miscellaneous 2.84, the total being Rs. 17.02 nP. The Committee then observed "calculating on the basis of six days per week a worker should get a minimum of Rs. 2.67 nP. per day to maintain a 'subsistence plus' standard." Ultimately the Committee recommended that the minimum basic wage of an unskilled worker in the "A" region, viz., Quilon and Feroke, should be Re. 1. With a cost of living index for the tile Centres at an average figure of 400, and the minimum requirements of the workers at Rs. 2.67 nP. this basic wage corresponds to 150 in the cost of living index number. As to dearness allowance the Committee recommended that it should be related to the cost of living index and that the dearness allowance should be fixed at the rate of 1 nP. for every two points for all points above 200. Thus, when the cost of living index is 400 an unskilled worker will get Re. 1 as basic wage and Re. 1 as dearness allowance making a total of Rs. 2. The Committee added that if the rise in the cost of living had to be completely neutralised he should get Rs. 1.67 nP as dearness allowance, but he gets only Re. 1 that is to say 100/167 or 60% of the increase in the cost of living. Therefore, the extent of the neutralisation of the increase in the cost of living is 60%. The Committee recognised regional differences and so introduced five Grades classified as A, B, C, D and E for the purpose of fixing the wage structure. The Committee hoped that the regional differences recommended by it would enable the backward areas to come up by improving the efficiency of production and marketing so that eventually they will be in a position to pay the same wages as advanced areas.

The notification issued is substantially on the lines of the recommendations made by the Committee. Employees engaged in the tile industry have been categorised and their minimum wage rates have been classified into clauses A to E. In regard to dearness allowance the notification provides that a

flat rate of dearness allowance for all workers irrespective of sex or grade shall be paid at the rate of one naya paisa for every two points in the cost of living index in each year in excess of Rs. 200. Thus the notification purports to prescribe the minimum rates of wages in regard to tile industry in the State; it is the validity of this notification that is impugned before us by the present petition.

Before dealing with the points raised by Mr. Nambiar on behalf of the petitioners it is necessary to refer very briefly to the material provisions of the Act. This Act was passed in 1948, because it was thought expedient to provide for fixing minimum rates of wages in certain employments. Under s. 3 the appropriate Government is empowered to fix minimum rates of wages in regard to employments as therein specified, and review the same at such intervals as specified by s. 3(1). Section 3(3) contemplates that in fixing or refixing minimum rates of wages different minimum rates of wages may be fixed for different scheduled employments, different classes of work in the same scheduled employments, adults, adolescents, children and apprentices, and different localities. Under s. 4 any minimum rate of wages fixed or revised may, inter alia, consist of a basic rate of wages and a special allowance at a rate to be adjusted, or a basic rate of wages with or without the cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concession rates where so authorised or an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions if any. Section 5 prescribes the procedure for fixing and revising minimum wages. It is under this section that a Committee was appointed by the respondent in the present case. Section 9 makes provision for the composition of the Committee. Such Committees have to consist of equal number of representatives of employers and employees and of independent persons not exceeding one-third of the total number of members. Section 12(1) imposes on the employer the obligation to pay the minimum rates of wages prescribed under the Act. Section 22 provides for penalties for offences and s. 22A makes a general provision for punishment of offences not otherwise expressly provided for. Under s. 25 any contract or agreement whether made before or after the commencement of this Act which affects an employee's right to a minimum rate of wages prescribed under the Act shall be null and void so far as it purports to reduce the said minimum rate of wages. Section 27 empowers the appropriate Government, after giving notification as prescribed, to add to either part of the schedule any employment in respect of which it is of opinion that minimum rates should be fixed, and thereupon the schedule shall be deemed to be amended accordingly in regard to that State.

In the case of The Edward Mills Co. Ltd., Beawar & Ors. v. The State of Ajmer [[1955] 1 S.C.R. 735.], the validity of s. 27 of the Act was challenged on the ground of excessive delegation. It was urged that the Act prescribed no principles and laid down no standard which could furnish an intelligent guidance to the administrative authority in making selection while acting under s. 27 and so the matter was left entirely to the discretion of the appropriate Government which can amend the schedule in any way it liked and such delegation virtually amounted to a surrender by the Legislature of its essential legislative function. This contention was rejected by Mukherjea, J., as he then was, who spoke for the Court. The learned Judge observed that the Legislature undoubtedly intended to apply the Act to those industries only where by reason of unorganised labour or want of proper arrangements for effective regulation of wages or for other causes the wages of labourers in a particular industry were very low. He also pointed out that conditions of labour vary under different circumstances and from State to State and the expediency of including a particular trade or industry within the schedule depends upon a variety of facts which are by no means uniform and which can best be ascertained by a person who is placed in charge of the administration of a particular State. That is why the Court concluded that in enacting s. 27 it could not be said that the Legislature had in any way stripped itself of its essential powers or assigned to the administrative authority anything but an accessory or subordinate power which was deemed necessary to carry out the purpose and the

policy of the Act.

In the same year another attempt was made to challenge the validity of the Act in Bijay Cotton Mills, Ltd. v. The State of Ajmer [[1955] 1 S.C.R. 752.]. This time the crucial sections of the Act, namely, ss. 3, 4 and 5 were attacked, and the challenge was based on the ground that the restrictions imposed by them upon the freedom of contract violated the fundamental right guaranteed under Art. 19(1)(g) of the Constitution. This challenge was repelled by Mukherjea, J., as he then was, who again spoke for the Court. The learned Judge held that the restrictions were imposed in the interest of the general public and with a view to carry out one of the directive principles of State policy as embodied in Art. 43 and so the impugned sections were protected by the terms of cl. (6) of Art. 19. In repelling the argument of the employers' inability to meet the burden of the minimum wage rates it was observed that "the employers cannot be heard to complain if they are compelled to pay minimum wages to their labourers even though the labourers on account of their property and helplessness are willing to work on lesser wages, and that if individual employers might find it difficult to carry on business on the basis of minimum wages fixed under the Act that cannot be the reason for striking down the law itself as unreasonable. The inability of the employers may in many cases be due entirely to the economic conditions of those employers." It would thus be seen that these two decisions have firmly established the validity of the Act, and there can no longer be any doubt that in fixing the minimum wage rates as contemplated by the Act the hardship caused to individual employers or their inability to meet the burden has no relevance. Incidentally, it may be pointed out that in dealing with the minimum wage rates intended to be prescribed by the Act Mukherjea, J., has in one place observed that the labourers should be secured adequate living wages. In the context it is clear that the learned Judge was not referring to living wages properly so-called but to the minimum wages with which alone the Act is concerned. In view of these two decisions we have not allowed Mr. Nambiar to raise any contentions against the validity of the Act. It is true that Mr. Nambiar attempted to argue that certain aspects of the matter on which he wished to rely had not been duly considered by the Court in Bijay Cotton Mills Ltd.'s case [[1955] 1 S.C.R. 752.]. In our opinion it is futile to attempt to reopen an issue which is clearly concluded by the decisions of this Court. Therefore, we will proceed to deal with the present petition, as we must, on the basis that the Act under which the Committee was appointed and the notification was ultimately issued is valid.

We have already seen what the Act purports to achieve is to prevent exploitation of labour and for that purpose authorises the appropriate Government to take steps to prescribe minimum rates of wages in the scheduled industries. In an under-developed country which faces the problem of unemployment on a very large scale it is not unlikely that labour may offer to work even on starvation wages. The policy of the Act is to prevent the employment of such sweated labour in the interest of general public and so in prescribing the minimum wage rates the capacity of the employer need not be considered. What is being prescribed is minimum wage rates which a welfare state assumes every employer must pay before he employs labour. This principle is not disputed (Vide : Messrs. Crown Aluminiun Works v. Their Workmen [[1958] S.C.R. 651.]).

It is, therefore, necessary to consider what are the components of a minimum wage in the context of the Act. The evidence led before the Committee on Fair Wages showed that some witnesses were inclined to take the view that the minimum wage is that wage which is essential to cover the bare physical needs of a worker and his family, whereas the overwhelming majority of witnesses agreed that a minimum wage should also provide for some other essential requirements such as a minimum of education, medical facilities and other amenities. The Committee came to the conclusion that a minimum wage must provide not merely for the bare subsistence of life but for the preservation of

the efficiency of the worker, and so it must also provide for some measure of education, medical requirements and amenities. The concept about the components of the minimum wage thus enunciated by the Committee have been generally accepted by industrial adjudication in this country. Sometimes the minimum wage is described as a bare minimum wage in order to distinguish it from the wage structure which is 'subsistence plus' or fair wage, but too much emphasis on the adjective "bare" in relation to the minimum wage is apt to lead to the erroneous assumption that the maintenance wage is a wage which enables the worker to cover his bare physical needs and keep himself just above starvation. That clearly is not intended by the concept of minimum wage. On the other hand, since the capacity of the employer to pay is treated as irrelevant, it is but right that no addition should be made to the components of the minimum wage which would take the minimum wage near the lower level of the fair wage, but the contents of this concept must ensure for the employee not only his sustenance and that of his family but must also preserve his efficiency as a worker. The Act contemplates that minimum wage rates should be fixed in the scheduled industries with the dual object of providing sustenance and maintenance of the worker and his family and preserving his efficiency as a worker.

Mr. Nambiar contends that when the statute purports to prescribe a minimum wage in effect it directs the fixation of a statutory minimum wage and as such, capacity to pay must be considered before such minimum wage is fixed. His argument is that in any event the impugned notification statutorily prescribes such minimum wage rates for the tile industry in the State of Kerala and as such the rates so recommended do not constitute merely the industrial and economic minimum as understood by industrial adjudication but it constitutes a statutory minimum which can be fixed only after taking into account the employers' capacity to pay the same. In support of this argument Mr. Nambiar has strongly relied on some observations made by this Court in the case of Express Newspapers (Private) Ltd. v. The Union of India [[1959] S.C.R. 12.]. We will presently refer to the said observations but in appreciating the nature and effect of the said observations it is necessary to recall that in that case the Court was dealing with the problem of fixation of wages in regard to Working Journalists as prescribed by s. 9 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955). Section 9 of the said Act required that in fixing rates of wages in respect of working journalists the Board had to have regard to the cost of living, the prevalent rates of wages for comparable employments, the circumstances relating to newspaper industry in different regions of the country and to any other circumstance which to the Board may deem relevant. It was held that the wage structure contemplated by s. 9 was not the structure of minimum wage rates, it was a wage structure permitted to be prescribed by that statute after taking into account several relevant facts and the scheme of that Act showed that the wage structure thus contemplated was very much beyond the minimum wage rates and was nearer the concept of a fair wage. That is why the Court took the view that the expression "any other circumstance" specified by s. 9 definitely included the circumstance, namely, the capacity of the industry to bear the burden and so the Board was bound to take that factor into account in fixing the wage structure. It appeared to the Court that this important element had not been considered by the Board at all and that introduced a fatal infirmity in the decisions of the Board. Thus, the wage structure with which the Court was concerned in that case was not the minimum wage structure at all. It is essential to remember this aspect of the matter in appreciating the argument urged by Mr. Nambiar on the strength of certain observations made by this Court in the course of its judgment.

In the course of his judgment Bhagwati, J., who spoke for the Court, has elaborately considered several aspects of the concept of wage structure including the concept of minimum wage. The conclusion of the Fair Wage Committee as to the content of the minimum wage has been cited with approval (p. 83). Then a distinction has been drawn between a bare subsistence or minimum wage

and a statutory minimum wage, and it is observed that the statutory minimum wage is the minimum which is prescribed by the statute and it may be higher than the bare subsistence or minimum wage providing for some measure of education, medical requirements and amenities (p. 84). This observation is followed by a discussion about the concept of fair wage; and in dealing with the said topic the Minimum Wages Act has also been referred to and it is stated that the Act was intended to provide for fixing minimum rates of wages in certain employments and the appropriate Government was thereby empowered to fix different minimum rates of wages as contemplated by s. 3(3). Then it is stated that whereas the bare minimum or subsistence wage would have to be fixed irrespective of the capacity of the industry to pay the minimum wage thus contemplated postulates the capacity of the industry to pay and no fixation of wages which ignores this essential factor of the capacity of the industry to pay could ever be supported. Mr. Nambiar contends that the last part of the observation refers to the minimum wage prescribed by the Act and it requires that before prescribing the said wage the capacity of the industry must be considered. We do not think that this argument is well founded. It would be noticed that in considering the distinction drawn between the minimum wage fixed by industrial adjudication and the minimum wage prescribed by a statute which is called statutory minimum it has been made clear that the latter can be higher than the bare subsistence or minimum wage and as such is different in kind from the industrial minimum wage. We do not think that the observation in question was intended to lay down the principle that whereas a minimum wage can be laid down by an industrial adjudication without reference to an employer's capacity to pay the same it cannot be fixed by a statute without considering the employer's capacity to pay. Such a conclusion would be plainly illogical and unreasonable. The observations on which Mr. Nambiar relies do not support the assumption made by him and were not intended to lay down any such rule. Cases are not unknown where statutes prescribe a minimum and it is plain from the relevant statutory provisions themselves that the minimum thus prescribed is not the economic or industrial minimum but contains several components which take the statutorily prescribed minimum near the level of the fair wage, and when that is the effect of the statutory provision capacity to pay may no doubt have to be considered. It was a statutory wage structure of this kind with which the Court was dealing in the case of Express Newspapers (Private) Ltd. [[1959] S.C.R. 12.], because s. 9 authorised the imposition of a wage structure very much above the level of the minimum wage and it is obvious that the observations made in the judgment cannot, and should not, be divorced from the context of the provisions with respect to which it was pronounced. Therefore, we feel no hesitation in rejecting the argument that because the Act prescribes minimum wage rates it is necessary that the capacity of the employer to bear the burden of the said wage structure must be considered. The attack against the validity of the notification made on this ground must therefore fail.

It still remains to consider whether in fact the notification has prescribed a wage structure which is above the level of the minimum wage properly so-called. If the notification has in fact prescribed a wage structure which is nearer the fair wage level and is above the minimum wage structure that no doubt would introduce an infirmity in the notification since it does appear that the capacity of the employer to bear the burden has not been considered either by the Committee or by the Government. This part of the attack against the notification is based on two grounds. Mr. Nambiar contends that in making its calculations about the minimum wage rates the Committee has taken into account an item of entertainment, and that, says Mr. Nambiar, is clearly inadmissible. He also points out that the Committee has described the daily minimum of Rs. 2.67 nP. ultimately deduced by it as intended to maintain the employee's 'subsistence plus' standard and that again shows that the wage structure is above the minimum standard and goes towards the lower level of the fair wage. We are not impressed by this argument. It would be recalled that amongst the miscellaneous items in

respect of which Rs. 2.84 nP. are added by the Committee in its calculations are rent, education, medical aid and entertainment. The first three are not inadmissible, and so the attack is against the inclusion of the last item alone. Even assuming that the last item is inadmissible it is not difficult to imagine that the addition of this last item could not have meant much in the calculations of the Committee, and so the grievance made on account of the inclusion of the said item cannot be exaggerated. There are, however, two other factors which are relevant in this connection. What the Committee has described as the 'subsistence plus' standard should on its own calculations represent the daily minimum of Rs. 2.84 nP., not Rs. 2.67 nP. Rs. 2.67 nP. is plainly the result of miscalculation so that it can be safely assumed that the said sum which is taken to represent the daily minimum to maintain a 'subsistence plus' standard in fact does not include an amount which may be attributed to entertainment. Besides, it is necessary to remember that what the Committee has ultimately recommended is not the award of Rs. 2.67 nP. which according to it represents 'subsistence plus' standard but only Rs. 2 and that itself shows that what is recommended is below the 'subsistence plus' standard. There is yet another point which leads to the same conclusion. Even if the whole of the miscellaneous item is excluded and calculations are made on the basis that the total permissible items amount to Rs. 14.18 nP. we would still reach the figure for the daily minimum which is more than Rs. 2. Therefore, look at it how we may, it is impossible to accept the argument that the wage structure ultimately recommended by the Committee is anything higher than what the Committee thought to be the minimum wage-structure. Therefore, we are not prepared to hold that the notification which is in conformity with the recommendations of the Committee has prescribed wage rates which are higher than the minimum wage structure. If that be so, failure to take into account the capacity of the industry to bear the burden can introduce no infirmity either in the recommendations of the Committee or in the notification following upon them.

Mr. Nambiar no doubt wanted to attack the merits of the notification on the ground that the wage rates fixed by it are unduly high. In that connection he relied on the fact that the minimum wage rates prescribed by the Madras Government by its notification published on February 25, 1952, as well as the wage rates prevailing in other industries in Kerala were slightly lower. He also pointed out that the wage rates awarded by industrial adjudication and even the claims made by the employees themselves would tend to show that what has been awarded by the notification is higher than the prescribed minimum wages. It is not possible for us to entertain this contention. The determination of minimum wages must inevitably take into account several relevant factors and the decision of this question has been left by the Legislature to the Committee which has to be appointed under the Act. We have already referred to the composition of the Committee and have reviewed very briefly its report. When a Committee consisting of the representatives of the industry and the employees considers the problem and makes its recommendations and when the said recommendations are accepted by the Government it would ordinarily not be possible for us to examine the merits of the recommendations as well as the merits of the wage structure finally notified by the Government. The notification has accepted the recommendations of the Committee to categorise the workers and that obviously was overdue. The fact that wages paid in other industries in Kerala, or in other States in comparable concerns, are lower would have been relevant for the Committee to consider when it made its recommendations. In appreciating the effect of the prevalence of lower rates it may also be relevant to bear in mind that in some places and in some industries labour is still employed on wages much below the standard of minimum rates. In fact, in its report the Committee has pointed out that in Kerala the bargaining position of the workers has all along been very weak and wages have tended to remain in a deplorably low level. Therefore, the fact that lower wages are paid in other industries or in some other places may not necessarily show that the rates prescribed by the notification are unduly high. In any event these are considerations

which ordinarily cannot be entertained by us because obviously we are not sitting in appeal over the recommendations of the Committee or the notification following upon them. That is why the grievance made by Mr. Nambiar on the merits of the wage structure prescribed by the notification cannot succeed.

There is, however, one aspect of this problem to which we must refer before we part with this case. It appears that soon after the notification was issued as many as 62 tile factories in Trichur closed their works and that led to unemployment of nearly 6,000 employees. In order to resolve the deadlock thus created the respondent referred the industrial dispute arising between the Trichur factories and their employees for industrial adjudication (I.D. 45 of 1958). On this reference an interim award was made and it was followed by a final award on September 26, 1960. Both the interim and the final awards were the result of settlement between the parties and the order passed by the tribunal shows that the respondent, acting through its Labour Minister, "left aside the prestige of the Government, came to the scene and effected a settlement." Mr. Nambiar has strongly criticised the conduct of the respondent in permitting a departure from the notification in respect of 62 tile factories at Trichur contrary to the provisions of the Act, and in insisting upon its implementation in respect of the other parts of the State. His argument is two-fold. He suggests that the settlement reached between the parties in Trichur shows that the minimum prescribed by the notification was above the legally permissible minimum and beyond the capacity of the Trichur factories, and that would support his grievance that the rates prescribed are not the minimum but they are such above that level. We are not impressed by this argument. As we have already observed we would ordinarily refuse to consider the merits of the wage structure prescribed by the notification. Besides, the closure of the factories in Trichur may either be because the factories there found it difficult to pay the wage structure or may be for reasons other than industrial. We propose to express no opinion on that point because that is not a point in issue before us, and so the settlement can have no bearing on the fate of the present petition; but the other argument urged by Mr. Nambiar raises a serious question. Under the Act notification has to apply to all the tile factories in the State and breach of the provisions of the notification is rendered penal under s. 22 of the Act. An agreement or contract contrary to the notification would be void under s. 25 of the Act. It is to be regretted that the respondent, acting through its Labour Minister, appears to have assisted in bringing about a settlement contrary to the terms of the Act. If the respondent thought that such a settlement was necessary in respect of Trichur factories it may consider the question of withdrawing the notification in respect of that area and in fairness may also reconsider the problem in respect of all the other areas and decide whether any modification in the notification is required. It is not appropriate that the respondent should be associated, though indirectly, with the settlement which is in breach of the provisions of the Act. We would, therefore, suggest that the respondent should seriously consider this aspect of the matter and should not hesitate to do what may appear to be just, reasonable and fair on an objective consideration of the whole problem.

In the result, the petition fails and is dismissed. There would be no order as to costs.

Petition dismissed.

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