M/s. Bhikusa Yamasa Kahatriya

Vs

Sangamner Akola Taluka Bidi Kamgar Union

Civil Appeal No. 546 of 1961

(CJI B. P. Sinha, P. B. Gajendragadkar, J. C. Shah, K. N. Wanchoo, K. C. Das Gupta JJ)

10.10.1962

JUDGMENT

SHAH, J. -

M/s. Bhikusa Yamasa Kahatriya and M/s. Bastiram Narayandas (owners of bidi factories at Sangamner in the District of Ahmednagar) hereinafter referred to collectively as 'the appellants', moved the High Court of Judicature at Bombay under Art. 226 of the Constitution praying for a writ or direction declaring s. 3(3)(iv) of the Minimum Wages Act, 1948, (XI of 1948) and a Notification dated April 19, 1955, issued by the Government of Bombay in exercise of the authority vested under the Act "ultra vires, void and illegal" because the said enactment and the Notification infringed the guarantee of equal protection of the laws, and affected the rights of the appellants to carry on their lawful business, and for an order declaring that the appellants were not bound by the said Notification and were not liable to pay wages to the Bidi workers at the rates prescribed by the Notification, and for consequential relief. The High Court dismissed the petition, for in their view, s. 3(3)(iv) of the Minimum Wages Act and the Notification dated April 19, 1955, fixing minimum rates of wages for bidi workers in the localities of Sangamner and Akola did not violate the fundamental rights guaranteed by the Constitution and that the State of Bombay had "in issuing the Notification revising the rates of minimum wages followed the procedure prescribed in that behalf by the Act." Against the order, with certificate of fitness granted by the High Court under Art. 133(1)(c) of the Constitution, this appeal is preferred by the appellants.

The Minimum Wages Act, 1948, was enacted by the Parliament to provide for fixing minimum rates of wages in certain employments. The validity of the Act as it stood in the year 1956 falls to be determined in his appeal. We will therefore refer to the Act as it stood in the year 1956, and will omit reference to amendments in the Act by enactments since that year. Sub-section (1) of s. 3 authorises the appropriate Government in the manner prescribed to fix minimum wages payable to employees employed in employments specified in parts I and II of the Schedule, for the whole State or for a part of the State or for any specified class or classes of such employment in the whole State or parts thereof and to review at such intervals as the State thinks fit the minimum rates of wages so fixed and to revise the rates. By sub-s. (3) the State is authorised in fixing or revising minimum rates of wages to fix - (a) different minimum rates of wages for (i) different scheduled employments; (ii) different classes of work in the same scheduled employment; (iii) adults, adolescents, children and apprentices; (iv) different localities. Section 5 sub-s. (1) prescribes the procedure for fixing and revising the rates of Minimum wages.

It is provided in so far as it is material that "in fixing minimum rates of wages in respect of any scheduled employment x x x x x x x x or in revising minimum rates of wages the appropriate

Government shall either - (a) appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision, as the case may be, or (b) by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected thereby and specify a date, x x x x x x x x on which the proposals will be taken into consideration." By sub-s. (2) the appropriate Government is authorised to fix the minimum rates of wages in respect of each scheduled employment after considering the advice of the committee or sub-committee or the representations received from persons interested. Section 6 empowers the appropriate Government to appoint Advisory Committees and sub-committees to enquire into the conditions prevailing in any scheduled employment and to advice the appropriate Government in making such revision in respect of such employment. Section 7 authorises the appropriate Government to appoint Advisory Boards for the purpose of co-ordinating the work of the committees and Advisory Committee and for advising the appropriate Government generally in the matter of fixing and revising the minimum rates of wages. Section 9 prescribes the composition of committees and Advisory Boards. Committees, Advisory Committees and the Advisory Boards are to be nominated by the appropriate Government and are to consist of persons representing employers and employees in the scheduled employments who are to be equal in number and independent persons not exceeding one-third of its total number of members. Section 10 prescribes the procedure to be followed in the revision of minimum rates of wages. By s. 20 power is conferred upon the appropriate Government to appoint regional authorities to here and decide claims arising out of payment of less than the minimum rates of wages to employees employed in the localities. Section 26 empowers the appropriate Government to direct that the provisions of the Act or any of them shall not apply to all or any class or employees employed in any scheduled employment or to any locality where there is carried on a scheduled employment. By s. 27 the appropriate Government is authorised to add to either Part of the Schedule any employment in respect of which the appropriate Government thinks that minimum rates of wages should be fixed under the Act. "Employment in any tobacco (including bidi-making) manufactory" is one of the items in Part I of the Schedule to the Act.

In exercise of the powers conferred by s. 5 the Government of Bombay by Resolution dated February 27, 1951, appointed a Committee to hold enquiry and to advise the Government in fixing minimum rates of wages in respect of employment "in any tobacco (including Bidi-making) manufactory". The Committee consisted of three employers' representatives, an equal number of employees' representatives and an independent chairman. On July 3, 1952, the Government of Bombay appointed, in exercise of powers conferred under s. 6 a Committee to assist it in considering the question of "revision of zoning" (and rates of wages, if necessary) made under orders regarding minimum wages for employment in any tobacco manufactory. An Advisory Board was also constituted by Resolution dated October 3, 1953. The Committee invited suggestions from the Labour Unions of employees in the tobacco industry and also of the employers and submitted their report to the Government of Bombay. A notification operative from March 31, 1952, was thereafter issued in exercise of the powers conferred by s. 3(1)(a) of the Minimum Wages Act by the Government of Bombay after considering the advice of the Committee, fixing minimum rates of wages payable to workers employed in different industries in Zones I to IV specified in the Schedule appended thereto. Districts of Thana, Ahmednagar, East Khandesh, West Khandesh, Nasik, Poona, Satara North, Kolaba and Dangs in the State of Bombay were included in Zone III. In Zone III in the Bidi making industry for making 1000 bidis a minimum rate "of Rs. 2/- (without leaves)" was prescribed. By Notification dated June 30, 1955, issued under s. 26(2) the Government of Bombay directed that for a period of three months with effect from July 1, 1955, the provisions of the Act shall not apply to bidi makers employed in the bidi-making industry in the localities of

Sangamner and Akola and places within seven miles of their respective Municipal limits. This exemption was extended for time to time, till the end of December 1956, but by Notification dated August 22, 1956, the Government of Bombay cancelled the exemption with effect from September 1, 1956, in respect of Sangamner and Akola and places within seven miles of their respective Municipal limits. In the mean time by Notification dated April 19, 1955, the Government of Bombay after considering the report of the Advisory Committee and after consultation with the Advisory Board, revised the minimum rates of wages of workers employed in the Bidi manufactories and fixed for the localities of Sangamner and Akola and places within seven miles of their respective Municipal limits, a minimum rate of Rs. 2/2/- for making 1000 bidis. After the exemption granted under s. 26(2) was cancelled workers employed in the Bidi industry in Sangamner and Akola and places within seven miles of their respective Municipal limits demanded wages at the revised rates. The employers having failed to satisfy their demands, applications were preferred by the workers under s. 20 of the Minimum Wages Act to the Regional authority appointed in that behalf. By order dated November 6, 1957, the authority under the Minimum Wages Act rejected the contentions raised by the employers and held that the workers were entitled to wages at the rates fixed by the Government under the notification date April 19, 1955, as from January 1, 1957, but not before that date. Aggrieved by that decision the appellants applied to the High Court under Art. 226 of the Constitution for writs declaring that the provisions of s. 3(3)(iv) of the Minimum Wages Act which authorised fixation of varying rates of minimum wages for different localities, and the Notification dated April 19, 1955, were discriminatory and void, for they infringed the equal protection clause of the Constitution. The High Court dismissed the petition. In this appeal counsel for the appellants contends :-

> (1) that s. 3(3)(iv) of the Minimum Wages Act, 1948 confers arbitrary and uncontrolled power upon the State Government to fix rates of minimum wages in respect of certain localities, and thereby enables the Government to discriminate contrary to the equal protection clause of the Constitution against the employers carrying on their business in those localities, and on that account the exercise of the power so conferred also amounts to imposing unreasonable restrictions upon their right to carry on their business under Art. 19(1)(f) of the Constitution;
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> (2) that the Notification dated April 19, 1955, is discriminatory and violates the fundamental right of equality before law guaranteed by the Constitution; and
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> (3) that ss. 5, 6, 7 and 9 were contravened because the Committees were not validly constituted there being in the Advisory Board no representative of employers in the Bidi industry, and therefore there was no lawful revision of minimum wages under the Notification dated April 19, 1955.

Section 3 of the Minimum Wages Act was impugned in this Court on the plea that it infringed Art. 19(1)(f) of the Constitution in Bijay Cotton Mills Ltd. v. The State of Ajmer [[1955] 1 S.C.R. 752.]. Mukherjea, J., speaking for the Court in that case observed that having regard to the scheme of the Act and the purpose for which it was enacted, namely to secure to workmen in the enjoyment of minimum wages and to protect against exploitation it was necessary to put restraints upon their freedom of contract and such restraints could not be regarded in any sense as unreasonable. In a recent judgment of this Court in U. Unichoyi v. The State of Kerala [[1962] 1 S.C.R. 946.] it was observed that "what the Minimum Wages 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".

The plea that fixation of minimum rates by Notification under s. 3 violates the fundamental freedom under Art. 19(1)(f) is in view of the decision of this Court not open to be canvassed by the appellants. But it is urged that in enacting s. 3(3)(iv) which conferred upon the State authority to fix varying minimum rates of wages for different localities, the Legislature gave no indication of the matters to be taken into account for that purpose, and entrusted the State with arbitrary and uncontrolled power, exercise whereof was likely to result in discriminatory treatment between different employers carrying on the same business in contiguous localities. The Act undoubtedly confers authority upon the appropriate Government to issue notifications fixing and revising rates of minimum wages in respect of diverse industries for the whole or part of the State. Having regard to the diversity of conditions prevailing and the number of industries covered by the Act the Legislature could obviously not fix uniform minimum rates of wages for all scheduled industries, or for all localities in respect of individual industries. Working out of detailed provisions relating to the minimum rates, the advisability of fixing rates for different industries, ascertainment of localities in which they were to be applied, and the time when they were to be effective, and fixation of time rate, piece rate, or guaranteed time rate had from the very nature of the legislation to be delegated to some authority. In considering the minimum rates of wages for a locality diverse factors such as, basic rates of wage, special allowance, economic climate of the locality, necessity to prevent exploitation having regard to the absence of organisation amongst the workers, general economic condition of the industrial development in the area, adequacy of wages paid, and earnings in other comparable employments and similar other matters would have to be taken into account. Manifestly the Legislature could not ascertain whether it was expedient to fix minimum wages in respect of each scheduled industry for the entire territory or for a part thereof and whether uniform of varying rates should be fixed having regard to the conditions prevailing in different localities. Again of necessity different rates had to be fixed in respect of the work performed by adults, adolescents, children and apprentices.

The object and policy of the Legislature appear on the face of the Act. The object of the Act is to prevent exploitation of the workers, and for that purpose it aims at fixation of minimum wages which he employers must pay. The Legislature undoubtedly intended to apply the Act to those industries or localities in which by reason of causes such as unorganized labour or absence of machinery for regulation of wages, the wages paid to workers were, in the light of the general level of wages, and subsistence level, inadequate. Conditions of labour vary in different industries and from locality to locality, and the expediency of fixing minimum wages, and the rates thereof depends largely upon diverse factors which in their very nature are variable and can properly be ascertained by the Government which is in charge of the administration of the State. It is to carry out effectively the purpose of this enactment that power has been given to the appropriate Government to decide, with reference to local conditions, whether it is desirable that minimum wages should be fixed in regard to any scheduled trade or industry, in any locality, and if it be deemed expedient to do so, the rates at which the wages should be fixed in respect of that industry in the locality. By entrusting authority to the appropriate Government to determined the minimum wages for any industry in any locality or generally, the legislature has not divested itself of its authority, nor has it conferred uncontrolled power upon the State Government. The power conferred is subordinate and accessory for carrying out the purpose and the policy of the Act. By entrusting to

the State Government power to fix minimum wage for any particular locality or localities the Legislature has not stripped itself of its essential legislative power but has merely entrusted what is merely an incidental function of making a distinction having regard to the special circumstances prevailing in different localities in the matter of fixation of rates of minimum wages. Power to fix minimum rates of wages does not by itself invest the appropriate Government with authority to make unlawful discrimination between employers in different industries. Selective application of a law according to the exigencies where it is sanctioned, ordinarily results in permissible classification. Article 14 forbids class legislation but does not prohibit reasonable classification for the purpose of legislation. If the basis of classification is indicated expressly or by implication, by delegating the function of working out the details of a scheme, according to the objects of the statute and principles inherent therein, to a body which has the means to do so at its command the legislation will not be exposed to the attack of unconstitutionality. In other words, even if the statute itself does not make a classification for the purpose of applying its provisions, and leaves it to a responsible body to select and classify persons, objects, transactions, localities or things for special treatment, and sets out the policy or principles for its guidance in the exercise of its authority in the matter of selection, the statute will not be struck does as infringing Art. 14 of the Constitution. This principle is well recognised : see Kathi Raning Rawat v. The State of Saurashtra [[1952] S.C.R. 435.].

Let us now examine whether the Legislature has conferred an uncontrolled or arbitrary power upon the Government without laying down any principles for its guidance in selecting different rates for different localities in the fixation or revision of the minimum rates of wages. The Legislature has by s. 4 laid down what the minimum rated of wages is to consist of, and by s. 5 it has prescribed the procedure for fixing minimum wages. An alternative procedure is provided for making enquiry for fixing and revising the minimum wages. The State Government may either appoint a Committee or sub-committee to hold enquiry and advise it in respect of such fixation or revision, as the case may be, or by Notification in the Official Gazette publish its proposals for the information of persons likely to be affected thereby. After receiving the report of the Committee or the representations made in respect of the proposals from persons affected thereby the State Government may fix the minimum rates of wages. Advisory Committees to enquire into conditions prevailing in any scheduled employment and to advise the Government in making the revision, and an Advisory Board for the purpose of co-ordinating the work of committees appointed under ss. 5 and 6 and for advising the Government generally in the matter of fixing and revising minimum rates of wages have also to be constituted. Sections 5, 6 and 7 set up an elaborate machinery for collecting and sifting materials, for the purpose of ascertaining conditions prevailing in an industry for fixing minimum wages and for revising the same. By setting up this machinery the statute contemplated a full investigation in the presence of interested persons by the Committee and the Advisory Board presided over by independent persons before it resolved upon either the fixation of rates or revision of rates. The charge that the Legislature had entrusted to the Government an arbitrary and uncontrolled power cannot reasonably be sustained. It is true that power is conferred upon the Government to determine the appropriate rates of minimum wages for industries generally or in any locality. But the policy and principles for the guidance in the exercise of this power are inherent in the purpose and object of the Act, and in the machinery erected of assisting the Government in making an equitable adjustment of the conflicting claims of labour and the employers. There is therefore no delegation of any arbitrary and uncontrolled power to the Government.

The impugned Notification was promulgated after making a full enquiry under the Act. It was after due consideration of the report of the Committee that the rates were revised. It appears that representations were made by the Nasik Bidi manufacturers who were bracketed with the Bidi

manufacturers of Sangamner and Akola in Zone III in fixing rates, requesting the Government to cancel the revised minimum wage rate fixed under Notification dated April 19, 1955, and to restore the old rate. Pending consideration of these representations the Government which had originally directed that the revised minimum rates of wages were to come into operation from July 1, 1955, postponed implementation of the revised rates, and directed that exemption from the application of the Act may continue for a further period of three months. Their representations dated June 17, 1955, and September 9, 1955, referred to the general economic depression, reduced buying capacity of consumers, fall in the cost of living index, competition in the market and the organised condition of labour, inability of the industry to pay higher wages and the additional economic burden such as increased trends of taxation. The economic advantages sanctioned under the Factories Act and bonus, compensation, facilities under the Industrial Disputes Act were also pressed into service to induce the Government not to bring into force the revised rates of minimum wages. Fixation of rates of wages and the revision thereof were manifestly preceded by a detailed survey and enquiry and the rates were brought into force after full consideration of the representations which were made by a section of the employers concerned. It would be difficult in the circumstances to hold that the Notification dated April 19, 1955, which fixed different rates of minimum wages for different localities, was not based on intelligent differential having a rational nexus with the object of the Act, and thereby violate Art. 14. It is obvious that no uncontrolled or arbitrary power was exercised by the Government : it exercised power to fix the rates of minimum wages after considering the reports of the Committees and sub-committees appointed in that behalf and of the Advisory Committees and Advisory Board formed for co-ordinating the work of the Committees, and revised them after giving full consideration to the representations made by the employers likely to be affected thereby.

In regard to the contention that the Notification dated April 19, 1955, was invalid because in the formation of the committees under s. 5 and the Advisory Committees under s. 6 and the Advisory Board under s. 7, provisions of the Act were contravened, no arguments were advanced and none could be advanced. It appears that the Committees were formed consistently with the provisions of s. 9 under the chairmanship of a retired officer with considerable judicial experience and the Advisory Committee appointed under s. 6 also consisted of three representatives of employers and three representatives of employers and three representatives of employees presided over by a chairman having experience of industrial disputes. It was urged, however, that in the Advisory Board there was no representative of the employers in the Bidi industry. But the function of the Advisory Board under s. 7 is to co-ordinate the work of the Committees and sub-committees under ss. 5 and 6 and to advise the Government generally in the matter of fixing and revising the minimum rates. The function of the Board is not to make any detailed investigation in any particular industry. That investigation is contemplated to be made by the Committee and the Advisory Committee. The Act does not require that the Board should consist of representatives of any particular scheduled industry. The Board is to consist of representatives of employers and employees in the scheduled employments, and such a Board was constituted. The Board examined the reports of the Committee and the Advisory Committee and even called upon the employers in the Bidi industry to submit their representations. The Advisory Board considered the representations and made its unanimous recommendation on which the Notification dated April 19, 1955, was issued.

On a careful examination of the various provisions of the Act and the machinery set up thereby we hold that s. 3(3)(iv) does not contravene Art. 19(1)(f) of the Constitution nor does it infringe the equal protection clause of the Constitution; we also hold that the Notification dated April 19, 1955 did not violate Art. 14 of the Constitution. We are further of the view that the constitution of the Committees and the Advisory Board did not contravene the statuary provisions in that behalf

prescribed by the Legislature.

The appeal therefore fails and is dismissed with costs.

Appeal dismissed.

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