Chandra Bhavan Boarding and Lodging Bangalore

Vs

The State of Mysore and Another

Writ Petition No. 207 of 1967

(S. M. Sikri, G.K. Mitter, K.S. Hegde, A.N. Ray, P. Jagmohan Reddy JJ)

29.09.1969

JUDGMENT

HEGDE, J. –

1. The above mentioned appeal by certificate as well as the petitioner under Article 32 of the Constitution raise identical questions of law for decision. In both these proceedings the validity of the notification issued by the Government of Mysore in S. O. 1038, dated the 1st June, 1967, fixing the minimum wages of different classes of employees in residential hotels and eating houses in the State of Mysore, under the provisions of the Minimum Wages Act, 1948 (to be hereinafter referred to as the Act) is called into question. The Civil Appeal arises from the decision of the High Court of Mysore rejecting the various contentions advanced on behalf of some of the hotel owners questioning the validity of the impugned notification. The writ petition is filed by the All Mysore Hotels Association, Bangalore and the Madras Woodland Hotel raising those very contentions.

2. The impugned notification was challenged on several grounds before the High Court but in this Court only some of those grounds were pressed. The grounds urged in this Court are :

(1) Section 5 (1) of the Act is violative of Article 14 of the Constitution as it confers unguided and uncontrolled discretion on the Government to follow either of the alternative procedures prescribed in clauses (a) and (b) of that sub-section;

(2) The provisions of the Act are unconstitutional as they confer arbitrary power without guidance to the Central and the State Governments concerned to fix minimum rates of wages and thus interfere with the freedom of trade guaranteed under Article 19(1) (g) of our Constitution;

(3) It was incumbent on the Government to appoint a committed under Section 5 (1)(a) of the Act to inquire into and advise it in the matter of fixing minimum wages. Its failure to do so has resulted in fixing minimum wages arbitrarily;

(4) Fixing of minimum wages under the provisions of the Act being a quasi-judicial act, the Government's failure to observe the principles of natural justice has vitiated its decision;

(5) It was not permissible for the Government to fix different minimum wages in different industries;

(6) The division of the State into zones and fixing different rates of minimum wages for different zones was impermissible under the Act;

(7) The division of the State into zones was not done on any rational basis and;

(8) The valuation of the food to be provided to the employees is unreasonably low and the same was done without the authority of law.

3. The Act came to be enacted to give effect to the resolutions passed by the minimum wages fixing Machinery Convention held at Geneva in 1928. The relevant resolutions of the Convention are embodied in Articles 223 to 228 of the International Labour Code. The object of these resolutions as stated in Article 224 was to fix minimum wages in industries "in which no arrangements exist for the effective regulation of wages by collective agreements or otherwise and wages are exceptionally low". The Central Legislature enacted the Act in 1948 and it came into force on March 15, 1948. The long title to the Act says that it is an Act for fixing minimum rates of wages for certain employments. The preamble to the Act says that "it is expedient to provide for fixing minimum rates of wages in certain employments". Section 2 defines certain terms. Section 3 empowers the appropriate Government which expression is defined in Section 1(b) to fix the minimum rates of wages payable to the employees employed in an employment specified in Part I or in Part II of the Schedule and in any employment added to either part in exercise of the powers granted under Section 27 of the Act. Clause (b) of Section 3(2) empowers the appropriate Government to review at such intervals as it may think fit, such intervals not exceeding five years, minimum rates of wages so fixed and revise the minimum rates, if necessary. Sub-section (3) of that section stipulates that in fixing or revising minimum rates of wages under that section different minimum rates of wages may be fixed in different scheduled employments for different classes of work in the same scheduled employment for adults, adolescents, children and apprentices and for different localities. Section 4 prescribes the different methods in which the minimum rates of wages can be fixed. Section 5 is important for our present purpose. It reads thus :

"(1) In fixing minimum rates of wages in respect of any scheduled employment for the first time under this Act or in revising minimum rates of wages so fixed, the appropriate Government shall either -

(a) appoint as many committes 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, not less than two months from the date of the notification on which the proposals will be taken into consideration.

(2) After considering the advice of the committed or committees appointed under clause (a) of sub-section (1) or as the case may be, all representations received by it before the date specified in the notification under clause (b) of that sub-section, the appropriate Government shall, by notification in the Official Gazette, fix or, as the case may be, revise the minimum rates of wages in respect of each scheduled employment and unless such notification otherwise provides, shall come into force on the expiry of three months from the date of its issue :

Provided that where the appropriate Government proposes to revise the minimum rates of wages by the mode specified in clause (b) of sub-section (1), the appropriate Government shall consult the Advisory Board also."

4. Section 7 says that for the purpose of co-ordinating the work of committes and sub-committees appointed under Section 5 and for advising it generally in the matter of fixing and revising the rates of wages, the appropriate Government should appoint an Advisory Board. Section 8 provides for the appointment of a Central Advisory Board. Section 9 prescribes the composition of the various committees and sub-committees under Section 5 and the Advisory Boards under Sections 7 and 8. Section 11 authourises the appropriate Government to fix wages in kind under certain circumstances and to fix its value in terms of money. Section 12 stipulates that the employer shall pay to every employee engaged in a scheduled employment the minimum rates of wages fixed by the notification. The other provisions of the Act except Section 27 are not relevant for our present purpose. Section 27 empowers the appropriate Government to add to either part of the Schedule any employment in respect of which it is of opinion that the minimum rates of wages should be fixed under the Act.

5. The Schedule to the Act as it originally stood did not include residential hotels and eating houses but they were brought into Part I of the schedule by the State Government on June 18, 1959, in exercise of its powers under section 27.

6. The State Government of Mysore fixed the minimum rates of wages to different categories of employees in residential hotels and eating houses situate with the municipal limits of Bangalore, Mysore, Hubli, Mangalore and Belgaum as well as in the area of the Kolar Gold Fields Sanitary Board as per its notification published on June 16, 1960. That notification was quashed by the High Court of Mysore on November 10, 1961, at the instance of some of the proprietors of residential hotels and eating houses in proceedings under Article 226 of the Constitution on the sole ground that as the notification in question applied only to certain parts of the State and not to the whole of it, it was invalid. A fresh notification under Section 5(1)(b) of the Act containing certain proposals was issued by the State Government for fixing minimum wages for different clauses of employees is residential hotels and eating houses on December 9, 1964, but no further action was taken on the basis of that notification. On October 28, 1966, the State Government after consulting the Mysore State Minimum Wages Advisory Board published in the Official Gazette fresh proposals under Section 5(1)(b) for fixing minimum wagers for different categories of employees in residential hotels and eating houses in the State. The parties affected were called upon to submit their representations regarding those proposals. Various representations from the interested parties were received. Thereafter the Minister for Labour summoned a meeting of the interested parties on April 27, 1967, for considering those proposals. That meeting was attended by the representatives of the employers as well as the employees. It was also attended by the representatives of various hotel owners' associations in the State. At the meeting the employers' representatives pleaded that the minimum wages proposed to be fixed are excessive but the representative of the employers' asserted that the proposed rates are low and that they should be enhanced. After considering the written as well as the oral representations made by the concerned parties, the impugned notification was issued. The minimum wages fixed under that notification is somewhat higher than that proposed.

7. We have earlier referred to the circumstances under which the Act came to be enacted as well as the objectives intended to be achieved by the Act. In that context were may also refer to a passage in the report of the Committee on Fair Wages appointed by the Central Government. In paragraph 8 of that report, it is observed :

> "The demand for the fixation of the minimum wage arose, in the first instance, out of the clamour for the eradication of the evils of "sweating". Thus in the early days, the operation of the minimum wage legislation was confined to employments which paid unduly low wages. There has since been increasing demand for the fixation of minimum wages so as to cover even non-sweated industries, particularly those in which labour in unorganised or is only weakly organised. The International Convention of 1928 prescribes the setting up of minimum wage-fixing machinery in industries in which "no arrangements exist for the effective regulation of wages by collective agreement or otherwise and wages are exceptionally low". The Minimum Wages Act passed by the Indian Legislature last year was found necessary on both these grounds.

In foreign countries, particularily Australia, Newzealand, the United States of Amercia and Canada, where the national wealth is high, the living wage forms the primary basis of the minimum wages. In these countries there is not much distinction between the two. The ILO monograph on the Minimum Wage-Fixing Machinery contains the following passage on the subject :

> "The bases specified in various laws included the living wage basis, and that of fixing minimum wages in any trade in relation to the wages paid to workers in the same trades in other districts or in relation to the wages paid to workers of similar grade in other trades. There is a third important basis, namely, the capacity of the individual industry or of industry in general, which, though sometimes not expressly mentioned in minimum wage laws, must always be taken into account in practice. ..... A close relation exists between them. As a basis for wage-fixing it would be valueless to make an estimate of a living wage beyond the capacity of industry to pay. Here capacity of industry as a whole, and not of each separate industry or branch is to be understood."

From this analysis of the bases of fixing of the minimum wage, it will be seen that, as a rule, though the living wage is the target, it has to be tempered, even in advanced countries, by other considerations, particularly the general level of wages in other industries and the capacity of industry to pay. This view has been accepted by the Bombay Textile Labour Inquiry Committee which says that "the living wage basis affords an absolute external standard for the determination of the minimum" and that "where a living wage criterion has been used in the giving of an award or the fixing of a wage, the decision has always been tempered by other considerations of a practical character".

In India, however, the level of the national income is so low at present that it is generally accepted that the country cannot afford to prescribe by law a minimum wage which would correspond to the concept of the living wage as described in the proceeding paragraphs. What then should be the level of minimum wages which can be sustained by the present stage of the country's economy ? Most employers and some Provincial Governments consider that the minimum wage can at present be only a bare subsistence wage. In fact, even one important all-India organization of employees has suggested that "a minimum wage is that wage which is sufficient to cover the bare physical needs of a worker and his family". Many others, however, who have replied to our questionnaire, consider that a minimum wage should also provide for some other essential requirements such as a minimum of education, medical facilities and other amenities. We consider that a minimum wage must provide not merely for the bare sustenance of life but for the preservation of the efficiency of worker. For this purpose, the minimum wage must also provide for some measure of education,

medical requirements and amenities."

8. It is now convenient to examine the various contentions advanced on behalf of the appellant and the petitioners. It was contended that section 5(1) of the Act is violative of Article 14 of the Constitution as it confers unguided and uncontrolled discretion to the Government to follow either of the two alternative procedures prescribed in that section in there matter of fixing minimum wages. It was urged that under clause (a) of Section 5(1) the appropriate Government is required to appoint a committee representing all interests to hold a detailed enquiry regarding the concerned employment before advising the Government in the matter of fixing minimum wages but under clause (b) of Section 5(1) all that the appropriate Government need to do is to publish by notification in the official Gazette its proposals for the information of the persons likely to be affected by those proposals and specify a date not less than two months from the date of the notification on which the proposals will be taken into consideration. It was urged that if the procedure prescribed in Section 5(1)(a) is adopted it would be advantageous to the employers its because in the committee to be appointed, there will be the representatives of the employers who know the difficulties of the employers and hence are in a position to acquiant their colleagues about the same but if the procedure prescribed in Section 5(1)(b) is followed, the affected parties can only submit their written representations followed by some nominal oral representation in a crowded meeting. While dealing with that topic, assistance was sought from the rule laid down by this Court in Suraj Mall Mohta and Co. v. A. V. Viswanatha Sastri and Another and the other decisions of this Court reiterating that rule. It is true that this Court has firmly ruled that the procedural inequality, if real and substantial is also within the vice of Article 14. But then, before a power can be held to be bad the same should be an unguarded and unregulated one. But if a power is given to an authority to have recourse to different procedures under different circumstances, that power cannot be considered as an arbitrary power. It must also be remembered that power under Section 5(1) is given to the State Government and not to any petty official. The State Government can be trusted to exercise that power to further the purposes of the Act. It is not the law that the guidance for the exercise of a power should be gatherable from one of the provisions in the Act. It can be gathered from the circumstances that led to the enactment of the law in question, i.e. the mischief that was intended to be remedied, the preamble to the Act or even from the scheme of the Act.

9. We have earlier noticed the circumstances under which the Act came to be enacted. Its main object is to prevent sweated labour as well as exploitation of unorganised labour. It proceeds on the basis that it is the duty of the State to see that at least minimum wages are paid to the employees irrespective of the capacity of the industry or unit to pay the same. The mandate of Article 43 of the Constitution is that the State should endeavour to secure by suitable legislation our economic organisation or in any other way, to all workers, agricultural, industrial or otherwise work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural apportunities. The fixing of minimum wages is just the first step in that direction. In course of time the State has to taken many more steps to implement that mandate. As seen earlier that resolutions of the Geneva Convention of 1928, which had been accepted by this country called upon the covenanting States to fix minimum wages for the employees in employments where the labour is unorganized or where the wages paid are low. Minimum wages does not mean wage just sufficient for bare sustenance. At present the conception of a minimum wage is a wage which is somewhat intermediate to a wage which is just sufficient for bare sustenance and a fair wage. That concept includes not only the wage sufficient to meet the bare sustenance of an employee and his family, it also includes expenses necessary for his other primary needs such as medical expenses, expenses to meet some education for his children and in some cases transport charges, etc., see Unnicheyi and Others v. State of Kerala. The concept of minimum wage is likely to undergo a

change with the growth of our economy and with the change in the standard of living. It is not a static concept. Its concomitents must necessarily increase with the progress of the society. It is likely to differ from place to place and from industry to industry. That is clear from the provisions of the Act itself and is inherent in the very concept. That being the case it is absolutely impossible for the legislature to undertake the task of fixing minimum wages in respect of any industry much less in respect of an employment. That process must necessarily be left to the Government. Before minimum wages in any employment can be fixed it will be necessary to collect considerable date. That cannot be done by the legislature. It can be best done by the Government. The legislature has determined the legislative policy and formulated the same as a binding rule of conduct. The legislative policy is enumerated with sufficient clearness. The Government is merely charged with the duty of implementing that policy. There is no basis for saying that the legislature had abdicated any of its legislative functions. The legislature has prescribed two different procedures for collecting the necessary data, one contained in Section 5(1)(a) and the other in Section 5(1)(b). In either case it is merely a procedure for gathering the necessary information. The Government is not bound by the advice given by the committee appointed under Section 5(1) (a). Discretion to select one of the two procedures prescribed for collecting the data is advisedly left to the Government. In the case of a particular employment, the Government may have sufficient data in its possession to enable it to formulate proposals under Section (5)(1)(b). Therefore it may not be necessary for it to constitute a committee to tender advice to it but in the case of another employment it may not be in possession of sufficient data. Therefore it might be necessary for it to constitute a committee to collect the data and tender its advice. If the Government is satisfied that it has enough material before it to enable it to proceed under Section 5(1)(b) it can very well do so. Which procedure should be adopted in any particular employment depends on the nature of the employment and the information the Government has in its possession about that employment. Hence the powers conferred on the Government cannot be considered as either unguided or arbitrary. In the instant case as seen earlier the question of fixing wages for the various categories of employees in residential hotels and eating houses was before the Government from 1960 and the Government had taken various steps in that regard. It is reasonable to assume that by the time the Government published the proposals in pursuance of which the impugned notification was issued it had before it adequate material on the basis of which it could formulate its proposals. Before publishing those proposals, the Government had consulted the advisory committee constituted under Section 7. Under those circumstances we are unable to accede to the contention that either the power conferred under Section 5(1) is an arbitrary power or that the same had been arbitrarily exercised.

10. The validity of some of the provisions in the Act including Section 5 came up for consideration by this Court in The Edward Mills Co. Ltd. Beawar and Others v. The State of Ajmer and Another and in Bijay Cotton Mills Ltd. v. The State of Ajmer. In the former case, it was observed that the legislative policy is apparent on the fact of the enactment. What it aims at is the statutory fixation of the minimum wages with a view to obviate the chances of exploitation of labour. It is to carry out the purpose of the enactment that power has been given to the appropriate Government to decide with reference to local conditions whether it is desirable that minimum wage should be fixed in regard to a particular trade or industry. In the latter case, the validity of Section 5 was assailed on the ground that it is violative of Article 19(1)(g). That challenge was negatived by this Court. Dealing with Section 5(1) this is what the Court observed therein :

> "As regards the procedure for the fixing of minimum wages, the "appropriate Government" has undoubtedly been given very large powers. But it has to take into consideration, before fixing wages, the advice of the committee if one is appointed, or the representations on his proposals made by persons who are likely to be affected

thereby. Consultation with advisory bodies has been made obligatory on all occasions of revision of minimum wages, and Section 8 of the Act provides for the appointment of a Central Advisory Board for the purpose of advising the Central as well as the State Government both in the matter of fixing and revision of minimum wages. Such Central Advisory body is to act also as a co-ordinating agent for co-ordinating the work of the different advisory bodies. In the committees or the advisory bodies the employers and the employees have an equal number of representatives and there are certain independent members besides them who are expected to taken a fair and impartial view of the matter. These provisions, in our opinion, constitute an adequate safeguard against any hasty or capricious decision by the "appropriate Government". In suitable cases the "appropriate Government" has also been given the power of granting exemptions from the operation of the provisions of this Act."

11. It is true that in those cases the validity of Section 5 was not challenged as being ultra vires Article 14 of the Constitution. But the observations quoted above afford an answer to the plea that the power granted to the Government is an arbitrary power.

12. It was complained that an examination of the various proposals made by the Government ever since 1960 would clearly show that the Government was out to fix fair wages and not minimum wages. From stage to stage it has gone on proposing higher and higher wages and under the impugned notification the wages fixed are higher than those proposed. We were told that if the prescribed rates are sustained, the hotel, industry would be crippled and the smaller units in that industry will be driven out of the trade.

13. Our attention was not drawn to any material on record to show that the minimum wages fixed are basically wrong. Prima facie they appear to be reasonable. We are not convinced that the rates prescribed would adversely affect the industry or even a small unit therein. If they do, then the industry or the unit as the case may be has no right to exist. Freedom of trade does not mean freedom to exploit. The provisions of the Constitution are not erected as the barriers to progress. They provide a plan for orderly progress towards the social order contemplated by the preamble to the Constitution. They do not permit any kind of slavery, social, economic or political. It is a fallacy to think that under our Constitution there are only rights and no duties. While rights conferred under Part III are fundamental, the directives given under Part IV are fundamental in the governance of the country. We see no conflict on the whole between the provisions contained in Part III and Part IV. They are complimentary and supplementary to each other. The provisions of Part IV enable the legislatures and the Government to impose various duties on the citizens. The provisions therein are deliberately made elastic because the duties to be imposed on the citizens depend on the extent to which the directive principles are implemented. The mandate of the Constitution is to build a welfare society in which justice social, economical and political shall inform all institutions of our national life. The hopes and aspirations aroused by the Constitution will be belied if the minimum needs of the lowest of our citizens are the met.

14. It was urged on behalf of the hotel owners that the power conferred to fix the minimum wages on the appropriate Government under Section 5(1) is a quasi-judicial power and in exercising that power, it was incumbent on the appropriate Government to observe the principles of natural justice. The Government having failed to observe those principles, the fixation of wages made is liable to be struck down. It is unnecessary for our present purpose to go into the question whether the power given under the Act to fix minimum wages is a quasi-judicial power or an administrative power. As

observed by this Court in A. K. Kraipak v. Union of India, the dividing line between an administrative power and quasi-judicial power is quite thin and is being gradually obliterated. It is further observed therein that principles of natural justice apply to the exercise of the administrative powers as well. But those principles are not embodied rules. What particular rule of natural justice, if any, should apply to a given case, the framework of the law under which the enquiry is held and the constitution of the tribunal or body of persons appointed for the purpose.

15. Taking into consideration the provisions of the Act, the objective behind the Act, the purposes intended to be achieved and the high authority on whom the power is conferred, we have no doubt that the procedure adopted was adequate and effective. We have equally no doubt that reasonable opportunity had been given to all the concerned parties to represent their case. We are unable to agree that the impugned order is vitiated because of the Government's failure to constitute a committee under Section 5(1)(a). We see no substance in the contention that the Government is not competent to enhance the rate of wages mentioned in the proposals published. If it has power to reduce those rates, as desired by the employers, it necessarily follows that it has power to enhance them. There is no merit in the contention that the Government must go on publishing proposals after proposals until a stage is reached where no change whatsoever is necessary to be made in the last proposal made.

16. The contention that the Government has no power to fix different minimum wages for different industries or in different localities is no more available in view of the decision of this Court in M/s. Bhaikusa Yamasa Kahatriya v. Sangamner Akola Taluka Bidi Kamgar Union. The fixation of minimum wages depend on the prevailing economic conditions, the cost of living in a place, the nature of the work to be performed and the conditions in which the work is performed. The contention that it was impermissible for the Government to divide the State into several zones is opposed to Section 3(3) as well as to the scheme of the Act.

17. On the basis of the material before us we are unable to say that the various zones had not been made on any rational basis. The Government has given good reasons in support of the steps taken by it. Bangalore is the capital of the State and Mangalore is a major port. Therefore they may stand on a different footing. In matter like the preparation of zones we have to trust the State Government unless it is shown that collateral considerations have influenced its decision. No such plea was taken. The argument based on cost of living index showing that cost of living index was higher in several other towns in the State than Bangalore or Mangalore is not a well founded argument. The cost of living is one thing, cost of living index is another. What is relevant is the former and not the latter. The latter depends on the base year, which is not the same in all the towns and the prices of certain selected goods in each of the towns concerned in the base year and thereafter which again is likely to differ from town to town.

18. The contention relating to the value of the food that may be supplied to the employee is not merely petty, it is misconceived as well. For example the employers contend that a minimum wage of Rs. 80/- per moth in Bangalore and Mangalore for a clearer is excessive at the same time they asset that the computation of the value of the food to be supplied to him at Rs. 40/- per month is not adequate. They fail to see the obvious contradictions in those pleas. In fixing minimum wages, a family of three members has to be taken into consideration. Further the food is not the only item taken into consideration. We have earlier referred to the other components of a minimum wage. Therefore, if the value of the food supplied has to be increased, minimum wages also will have to be increased. Further the impugned notification does not authorise under Section 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. Therefore the procedure prescribed in Rule 21 of the rules framed under the Act is inapplicable to the facts of the case before us. The relevant rule is Rule 22(2) (v), i.e., the valuation of an amenity. We fail to see why the supplying of food is not an amenity.

19. In the result the appeal and the writ petition fail. They are dismissed with costs. Hearing fee one set. The owners of residential hotels and eating houses are permitted to pay the arrears of minimum wages accrued uptil now within six months from this date subject to the condition they pay interest on those arrears from the due dates till payment at 6% per annum.

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