

The State of Andhra Pradesh

Vs

Narayana Velur Beedi Manufacturing Factory and Others

Civil Appeals Nos. 1659 to 1662 of 1967

(A.N. Grover, K.K. Mathew, A.K. Mukherjea JJ)

26.03.1973

JUDGMENT

GROVER, J. -

1. The sole question which has to be decided in these appeals by certificate from a judgment of the Andhra Pradesh High Court is the meaning of the word "Independent" in Section 9 of the Minimum Wages Act, 1948, hereinafter called the "Act".

2. The Act was enacted to provide for fixing the minimum rates of wages in certain employments. Section 2 gives the definitions of various expressions. Clauses (e), (h) and (i) give the meaning of the words "employer", "wages" and "employee" respectively. Section 3 provides for fixing of the minimum rates of wages by the appropriate Government and their review at certain intervals. Section 5 gives the procedure for fixing and revising minimum wages. Section 5 reads :

"Section 5. - (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 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 notifications 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 committee 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, it shall come into force on the expiry of three months from the date of its issue :

#Provided....."##

3. Section 9 relates to composition of Committees etc. and is in these terms :

"Section 9. - Each of the committees, sub-committees and the Advisory Board shall consist of persons to be nominated by the appropriate Government representing employers and employees in the scheduled employments, who shall be equal in number, and independent persons not exceeding one-third of its total number of members; one of such independent persons shall be appointed the Chairman by the appropriate Government."

4. The Government Order which was challenged related to the revision of minimum wages in the Bidi industry. It was based on the recommendation of a committee consisting of six members, two of whom were Chief Inspector of Factories, Hyderabad, and Deputy Chief Inspector of Factories, Hyderabad, the former being the Chairman. These two officers were to be on the committee from among the category of independent persons mentioned in Section 9. The whole controversy has centered on the question whether the aforesaid two officers could be regarded as independent persons. There are a number of decisions of the High Courts. In majority of them, namely, *Jaswant Rai Beri and Others v. State of Punjab and Another* (AIR 1958 Punj 425); *D.M.S. Rao and Others v. State of Kerala and Another* (AIR 1963 Ker 115 : ILR (1962) 1 Ker 166 : 1962 Ker LJ 586 : (1963) 1 Lab LJ 176); *Bengal Motion Pictures Employees' Union, Calcutta v. Kohinoor Pictures (P) Ltd. and Others* (AIR 1964 Cal 519); *Ramkrishna Ramnath, Nagpur and Another v. The State of Maharashtra and Another* (AIR 1964 Bom 51 : 1963 Mah LJ 793 : 65 Bom LR 726 : (1963) 7 FLR 373 : 1963 (3) Lab LJ 548); *Chandra Bhavan Boarding and Lodging and Others v. State of Mysore* (AIR 1968 Mys 156 : (1968) 1 Mys LJ 24 : 1968 Lab IC 879 : 34 FJR 48); and *P. Gangadharan Pillai v. State of Kerala and Others*, (AIR 1968 Ker 218 : 1968 Ker LJ 11 : (1968) 1 Lab LJ 390 : 1968 Lab IC 934) it has been held that the mere fact that a person happens to be a Government servant or that he is an officer, he does not cease to be an independent person within the meaning of Section 9. The only two decisions in which contrary view has been taken are *Narottamdas Harjivandas v. P. V. Gowariker, Inspector, Minimum Wages* (AIR 1961 MP 182 : 1961 Jab LJ 177 : 1961 MP LJ 302 : (1961) 1 Lab LJ 442) and *Kohinoor Pictures (Private) Ltd. v. State of West Bengal and Others*. ((1961) 2 LLJ 741). The latter is a judgment of the learned single Judge of the Calcutta High Court. It may be mentioned that in the judgment under appeal the Andhra Pradesh High Court has also taken the same view as the Madhya Pradesh Court.

5. The reasoning of Bishan Narain, J., in the Punjab case is quite simple. The learned Judge considered that in the context of Section 9 an independent person means a person who is neither an employer nor an employee in the employment for which minimum wages are to be fixed. The presence of independent persons is necessary to safeguard the interests of those whose requirements are met by the trade concerned. In a welfare State, according to him, it is the business of the Government to create conditions wherein private employers can carry on their trade profitably as long as the workmen are not exploited. In such circumstances the appointment of a Labour Commissioner, who is conversant with the employment conditions, cannot be objected to on the ground that he was not an independent person. In the first Kerala case, *C. A. Vaidialingam, J.*, as he then was, gave some additional reasons for supporting the view of Bishan Narain, J. He referred to Section 2(i) of the Industrial Disputes Act, 1947 for illustrating that a person shall be deemed to be independent for the purpose of his appointment as Chairman or other member of a Board, Court or Tribunal if he was unconnected with the industrial dispute referred to such Board, Court or Tribunal or with any industry directly affected by such dispute. This is what the learned Judge observed with reference to the provisions of Section 9 :

"When it speaks of persons to be nominated by the Government to the committee representing employers and employees in the scheduled employments and also of

nominating an 'independent person', in my view, the object of the enactment is that the 'independent person' should be who has nothing to do with the employers or employees in the scheduled employment in question. It may that under particular circumstances, when an industry, in which the State Government as an employer may also be vitally interested and in which case it can be considered to be an employer, it may not be proper to nominate an official to the committee treating him as independent member".

6. A division bench of the Calcutta High Court consisting of Bose, C.J. and G. K. Mitter, J., as he then was, in *Bengal Motion Pictures Employees Union v. Kohinoor Pictures P. Ltd.*, (supra) referred to the legislative policy underlying the enactment of the Act. What is aimed at is the statutory fixation of minimum wages with a view to obviating chances of exploitation of labour. Such being the main object it was natural to expect that the Government would seek the assistance of persons who were well conversant with the conditions of labour, industrial competition, profits from the industry and various other relevant factors which are to be considered in fixing the minimum wages. It could hardly be doubted that persons like the Labour Commissioner or the Deputy Labour Commissioner are most suitable persons to be consulted for the purpose. The other reason given in the Calcutta case was similar to the one which prevailed with Bishan Narain, J., in the Punjab case. In the Bombay case the Division Bench referred to certain rules framed under Section 30 of the Act by the Government of Bombay. According to Rule 4 provision was made for terms of office of members of the Board and a distinction was made in sub-rules (2) and (3) between the non-official member and the official member of the Board. From the scheme of the rule it was inferred that even Government officials were contemplated to fall within the category of "independent persons". It is unnecessary to refer to the other decisions which favour the majority view.

7. In the Madhya Pradesh case *P. V. Dixit, C.J.*, delivering the judgment of the Bench said that the expression "independent persons" did not mean persons who were independent only of employers and employees in the scheduled employment and included officials. The ordinary connotation of the word "independent person", it was pointed out, is of a person who is not dependent on any body, authority or organisation and who is able to form his own opinion without any control or guidance of any outside agency. It appears that in this case the learned Judges were influenced by the consideration that the state is actively interested in the wage earners and in the matter of fixation of minimum wages. That precluded Government officials from falling within the class of independent persons provided for by Section 9. In *Kohinoor Pictures case* (supra) a learned single judge while appreciating that the advisory committees constituted under Section 5 read with Section 9 of the Act have a purely advisory function, took the view that the appropriate Government in fixing the minimum rates of wages was not at all a disinterested person. He also took into consideration the interest which the Government may have in fixing the minimum wages. According to him the fixation of minimum wages is an operation compelling the employer to make a payment whether he wishes it or not and in most cases contrary to his wishes. Three parties are involved in such compulsory fixation, namely, the Government, the employer and the employed. If the advisory committee is really to consist of independent persons they should be independent of all the three categories.

8. Mr. Chagla for the respondents has relied a great deal on the dictionary meanings of the word "independent" as given in *Shorter Oxford English Dictionary*. One of the principal meanings given is "not depending upon the authority of another; not in position of subordination; not subject to external control or rule." According to Mr. Chagla a Government official cannot be regarded as independent because he is to depend upon the authority of the Government and is in position of

subordination and is subject to external control. It has been strenuously urged that the whole object of having an advisory committee is to get an impartial opinion or advice in the matter of fixing of minimum wages. The committee has to consist of representative of employers and the employees in the scheduled employment who have to be equal in number. The presence of independent persons not exceeding one-third of the total number of members is necessary to ensure that a proper balance is maintained between the view of the representative of the employers and the employees respectively. If a Government official and, in particular, one associated either with labour or factories in his official capacity is brought into the committee he is likely to be biased in his views for various reasons. He may know the policy of the Government or he may himself have participated in the formulation of that policy. He may have certain predilection because of special knowledge obtained by him while serving in a department which is connected with labour or industry. All these matters would divest him of the character of an independent person.

9. In our judgment the view which has prevailed with the majority of the High Courts must be sustained. The committee or the advisory board can only tender advice which is not binding on the Government while fixing the minimum wages or revising the same as the case may be. Of course the Government expected, particularly in the present democratic set up, to take that advice seriously into consideration and act on it but it is not bound to do so. The language of Section 9 does not contain any indication whatsoever that persons in the employment of the Government would be excluded from the category of independent persons. These words have essentially been employed in contradistinction to representatives of employers and employees. In other words, apart from the representatives of employers and employees there should be persons who should be independent of them. It does not follow that persons in the service or employ of the Government were meant to be excluded and they cannot be regarded as independent persons vis-a-vis the representatives of the employers and employees. Apart from this the presence of high Government officials who may have actual working knowledge about the problems of employers and employees can afford a good deal of guidance and assistance in formulating the advice which is to be tendered under Section 9 to the appropriate Government. It may be that in certain circumstances such persons who are in the service of the Government may cease to have an independent character if the question arises of fixation of minimum wages in a scheduled employment in which the appropriate Government is directly interested. It would, therefore, depend upon the facts of each particular case whether the persons who have been appointed from out of the class of independent persons can be regarded as independent or not. But the mere fact that they happen to be Government officials or Government servants will not divest them of the character of independent persons. We are not impressed with the reasoning adopted that a Government official will have a bias or that he may favour the policy which the appropriate Government may be inclined to adopt because when he is a member of an advisory committee or board he is expected to give an impartial and independent advice and not merely carry out what the Government may be inclined to do. Government officials are responsible persons and it cannot be said that they are not capable of taking a detached and impartial view.

10. For the reasons given above the appeals are allowed and judgment of the High Court is hereby set aside. As other matters were left undecided in the writ petitions out of which these appeals have arisen the case shall go back to the High Court for disposal in accordance with law. Costs shall abide the event.

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