

ANDHRA PRADESH HIGH COURT

Bansilal S. Patel

Vs.

State of A.P

Writ Petn. Nos. 735, 746 and 807 of 1962 and 337 of 1963

(Satyanarayana Raju and Anantanarayana Ayyar, JJ.)

31.01.1964

JUDGMENT

Antanarayana Ayyar, J.

1. The relief asked for in each of these writ petitions is to call for the records in G. O. Ms. No. 1199 (Home) Labour II dated 30-6-1962 and to quash the same by issuing a writ of certiorari or any other appropriate Writ, order or direction in the nature of a Writ. W.P. No. 735 of 1963 was filed by Bansilal S. Patel, Proprietor of Kamala Beedi Works, Donekonda as sole petitioner against three respondents. Of them the first respondent is the State of Andhra Pradesh; the second respondent is the Beedi Workers Karmika Sangham, Karim nagar represented by its General Secretary; and the third respondent is the Beedi Mazdur Sangh, Nizamabad represented by its President. In W. P., No. 746 of 1962 the respondents are the same, as in W.P. No. 735/1962. In each of the other; writ petitions the State of Andhra Pradesh is the sole respondent. In W.P. No. 746 of 1962 there are 29 petitioners including various concerns engaged in the manufacture of beedies including M/s. Thakur, Savedekar and Co., Private Ltd., Nizamabad whose general manager filed the affidavit on, behalf of all those petitioners. In W. P. No. 807, of 1962, there are eight petitioners who are all beedi factories at Warangal, each petitioner being, represented by proprietor or manager. In W. P. No. 337 of 1963, the petitioner is Narayana Velpur Beedi Manufacturing Factory, Velpur represented by its proprietor.

2. All the writ petitions are contested by the State of Andhra Pradesh represented by the Government Pleader, Shri P. Ramachandra Reddy, and they were heard together by common consent.

3. The relevant facts are as follows. On 11-2-1961, Government passed G. O. No. 319 (Home) Labor II dated 11-2-1961 revising the rates of Wages for employment in tobacco including beedi making manufactories in the State of Andhra Pradesh and fixing uniform rates for the whole State. Subsequently, on 20-5-1961, the Government passed G. O. No. 969 (Home) Labour II, substituting a new schedule in place of the schedule which, has been given in the earlier notification relating to G. O. No. 319. By this new G. O No. 969, the Government purported to make an amendment to the earlier G.O. The Government made a differentiation between Andhra

area and Telangana area and also fixed a flat rate of wages for all sizes of beedies in the Telangana area, which, was equal to the rate for the big size zadi beedies which had been given for the whole State in G. O. No. 319. The petitioner in W. P. No. 735 of 1962 filed, W. P. No. 714 of 1961 in this Court challenging the validity of G. O. Nos. 319 and 969. Many others filed thirty nine other similar writ petitions the batch of forty writ petitions were pending at the time when W.P. No. 735 of 1962 was presented on 30-7-1962 and when W.P. No. 746 of 1962 was presented on 2-8-1962. On 20-8-1962, the batch of forty writs including W.P. No. 714 of 1961 was dismissed. Meanwhile, on 27-2-1962 Government passed G. O. No. 362, Home Department (Labour. II) appointing a committee consisting of six members under Section 5(1)(a) of the Minimum Wages Act, 1948 to hold an enquiry and advise the Government in respect of matters relating to revision of minimum wages in tobacco manufactories (including beedi making). The six members of the Committee were as follows : (1) Chief Inspector of Factories, Hyderabad, Chairman (2) C.J. Reddy Deputy Chief Inspector of Factories, Hyderabad, (3) Shri Lakshmi Narayana Rudra, (4) Shri Ghulam Ahmed Tara Saheb, Poona, (5) Sri K. Anantha Reddy, President of Nizamabad Beedi Mazdoor Sangh; this Sangh is the third respondent in, W. P. No. 735 of 1962 and W. P. No. 746/62, (6) C. Prabhakar, General Secretary, Beedi Karmika, Sangham Karimnagar; this Sangham is the second respondent in W. P. No. 735 of 1962 and W.P. No. 746/62. The G.O. fixed the term of office of these members as one month i.e., till 26-3-1962. Of these, No. 4 Tara Saheb was already dead when the Government passed the G.O. on 27-2-1962. On 19-4-1962, Government issued Memo 1048/Labour 11/62/5 Home (Labour II) amending the G.O. No. 362/62 by substituting ,in place of committee members Nos. 3 and 4 i.e., employers' representatives, two other persons namely, Shri) Girajmal Ramachander and Shri Salim Ahmed Karim Ahmed. Proprietor, Messrs. Ghulam Ahmed, Tara Saheb Beedi Factory, Nizamabad. The Government also issued Memo No. 382 extending the time for the report of the Committee up to 18-5-1 1962. The committee held an enquiry and sent a, report. The Government considered the report of this committee and issued G. O. No. 1199/Home Labour II dated 30-6-1962 that the minimum rata of wages was revised as specified in Column 2 of the schedule to that G. O. in respect of each category of employees specified in that schedule. It is this G. O. whose validity is challenged in all the writ petitions.

4. Sri B.V. Subrahmanyam, the learned Advocate for the petitioners, has urged before us a ground which is given in para 13 of the affidavit of the petitioner in W. P. No. 735 of 1962 as follows :

"The so-called independent Members of the Committee nominated by the Government, were officers of the Government and were, therefore, not in fact independent persons, as required by Section 9 of the Act. The object of the Act is. inconsistent with paid officers of the Government being appointed as independent members. The Chief Inspector and the Deputy Chief Inspector of Factories represent the employees before the authorities appointed under the Act. For that reason too, the appointment and the composition, of the Committee were illegal and void of force.", Section 9 of the Minimum Wages Act (Central Act XI of 1948) runs as follows :

"Section 9. Composition of committees, etc. each of the committees, advisory committees..... 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."

It is under this Section that the Government in G. O. No. 362 Labour II, dated 27-2-1962 appointed six members and chairman.

5. The word 'independent person' has not been defined in the Minimum Wages Act. In *Jaswant Rai v. State of Punjab*¹, a contention was raised that the Labour Commissioner, Punjab, who had been appointed by, the Punjab Government as Chairman and Secretary, of a Committee for fixing minimum rates of wages, in private presses in the Punjab, could not be considered to be an 'independent person' under Section 9 of the Minimum Wages Act. The Committee consisted of three employers' representatively three employees' representatives and two nominees of the Government of whom one was the Labour Commissioner. The other was Shri D.D. Puri, M.L.A. The learned Judge, Bishan Narain, J. held regarding that contention as follows : (at p. 427) :

"The Labour Commissioner is an official though not under this Act. It is, however, not laid down anywhere in the Act or elsewhere that an official of the Government cannot be nominated as a member of the Committee or that only a non-official can be considered to be an independent person."

To my mind, an 'independent' person in this context means a person who is neither an employer nor an employee in the employment for which, minimum wages are to be fixed. Presence of independent persons is necessary in these committees to safeguard the interests of those whose requirements are met by the trade concerned. In a welfare State, 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 any valid or convincing ground. I, therefore, hold that the appointment of the Labour Commissioner as representing independent interest was valid and therefore his appointment as Chairman was also valid."

6. In *Narottamdas v. P.B. Gowarikar*², the same question came up for consideration. The learned Judges observed as follows : (at p. 187).

"We are not prepared to accept the standi taken on behalf of the State that the expression 'independent persons' as used in Section 9 means persons who are independent only of employers, and employees in the scheduled employment

¹ AIR 1958 Puny 425

² AIR 1961 Mad Pra 182

and includes an official. The ordinary connotation of, the words 'independent person' is a person who is not dependent on any body, authority or organization and who is able to

form his own opinion without any control or guidance from any outside agency.

In the matter of fixation of minimum wages, the contesting parties are no doubt the employers and the employees. But the Government who fixes the rates of wages is not absolutely disinterested in the matter. This is so especially when, the Government itself controls or runs a scheduled employment..... Then again, in a welfare state as envisaged by the Directive Principles of State, Policy embodied in Part IV of the Constitution, the State cannot be regarded as a mere passive on-looker in the determination of wage structure of minimum wages. Articles 42 and 43 expressly enjoin that the State shall make provision for securing just and humane conditions of work and for maternity, relief, and that it shall endeavour to secure, by suitable legislation or economic organization or in any other way a living wage ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. The State is, therefore, actively interested in wage-earners and in the matter of fixation of minimum wages in any schedule employment. If the State is thus an interested party, then a Government Official cannot by any stretch of reasoning be regarded as an independent person for the purpose of Section 9. The expression 'independent person' must be construed to mean as one who is independent of the employers and the employees as well as the Government. A Government servant's freedom of action and thought is limited by the fact that he is required to act for carrying out Government's policy." The learned Judges of the Division Bench accordingly held that Shri Oak, Labour Commissioner and Shri Mehta, Director of Economics and, Statistics being officials, could not be regarded as 'independent persons' within the meaning of Section 9. They referred to the decision in AIR 1958 Punjab 423 (Supra), and disagreed with that decision, for reasons indicated above.

7. In *Kohinoor Pictures (Private) Ltd. v. State of West Bengal*³, the question arose before Justice Sri Sinha as to whether the Labour Commissioner and the Deputy, Commissioner could be said to be 'independent, persons', within the meaning of Section 9 of the Act. The learned Judge referred to the decision in 1961 Madh Pra 182 (supra) and the decision in AIR 1958 Punjab 425 (supra) agreed with the former and disagreed with the view of the Punjab High, Court in the latter decision. The learned Judge-observed as follows (at p. 747) :

"The learned Judge of the Punjab High Courts seems to think that it would be sufficient if the person is independent of the two immediate disputants namely, the employer and the employee, But, as pointed out by Dixit, C.J., the Government in such matters is not at all a disinterested person. The fixation of minimum, wages, it must be remembered, is an operation compelling that employer to make a payment, whether he wishes it or not, and in most cases contrary to his wishes. In the process of this compulsory fixation of the rates, three parties are involved, the employer, the employee and Government. If the advisory committee is really to consist of 'independent persons', they should be independent of all the three categories. In other words, they should not be

³1961-2 Lab LJ 741, (Cal)

amendable to control by any of them..... To say that all Government servants are subservient would be fatuous. It is however common experience that this class of executives can seldom be made to swim against the tide. It is not that they do-not possess the strength, but because they seldom possess the necessary amount of initiative or

inspiration which leads people to champion lost causes.

The matter may be looked at from another point of view. Let us assume that there are but two parties concerned in the fixation of minimum wage namely, the employer and the employee Government, in such a case, almost has the position of an impartial arbitrator because it must hold the scales even between the two groups, saving the worker from exploitation and the entrepreneur from extinction. In carrying out this delicate operation, it is obliged to take advice from a committee, which not only consists of the representatives of the actual disputants but of some independent persons. It is obvious, that in is a case, justice should not only be done but to be done, and Government should not have officials amenable to its control in the advisory committee. It is not that such control will necessarily be exercised. But, neither labour nor capital, should have the remotest ground for thinking that Government could in such a case, shape the advice which it was seeking to get. I am aware that the advice when tendered to Government may not be taken at all. That however means nothing. The fact that in an exceptional case, the advices of the Committee may be ignored, is not a reason for detracting from the quality of that advice. It may be true that the Labor Commissioner and the Deputy Labour Commissioner are persons who have personal knowledge of the facts that are necessary to be dealt with by the advisory committee. That however, is no compelling reason, for putting them there. There are other considerations which outweigh the advantages to be gained by their presence."

In *D.M.S. Rao v. State of Kerala*⁴, the question arose as to whether Shri W. Krishnan Kutti Menon, Professor of Economics, Maharajah's College, Ernakulam who had been nominated to a Committee (for fixing of minimum wages for the timber) was an independent person' for the purpose of Section 9. Vaidialingam, J. referred to the decisions in AIR 1958 Punjab 425 (supra) and AIR 1981 Madhya Pradesh 182 (supra) but not to the decision of Calcutta High Court in 1961-2 Lab LJ 741 (Cal) (supra). The learned Judge observed as follows (at p. 122) :

"With great respect to the learned Judges of the Madhya Pradesh High Court, I am not inclined to adopt their construction of the expression 'independent person' as one who is independent of the employers and the employees as well as the Government. In my view, if I may say, so with respect, there is no such indication avail able from the provisions of Section 9 of the Minimum Wages Actthe object of the enactment is that the 'independent person' should be one who has nothing to do with the employers or employees in the scheduled employment in question. It may be 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 an independent member.

⁴ AIR 1963; Ker 115

But I am not certainly inclined to hold that excepting in circumstances mentioned above, it is not open to the State Government to nominate officials, who are totally unconnected with employers or employees regarding the scheduled employment in question. If such officials can be nominated, there is no impediment to such officials being appointed also as chairman of the committee. The fact that the Government, in a larger sense, is interested in fixing a minimum rate of wages, by itself, will not mean that an official of the State Government, who is nominated on

such committee, cannot be considered to be an "independent person." Though no doubt, it may not be strictly proper to adopt the test laid down, - in respect of an 'independent person' in clause (i) of Section 2 of the Industrial Disputes Act, nevertheless, that interpretation can also be reasonably placed upon the expression 'independent person' occurring in Section 9 of the Minimum Wages Act."

8. Section 2(1) of the Industrial Disputes Act runs as follows :

"a person shall be deemed to be 'independent' for the purpose of his appointment as the chairman or other member of a Board, Court or Tribunal, if he is unconnected with the industrial dispute referred to such Board, Court or Tribunal or with an industry directly affected by such dispute."

The decision of the Punjab High Court in AIR 1958 Punjab 425 (supra) has taken the most liberal, view that a Government Official like Labour Commissioner was an independent person as he was neither an employer nor an employee in the employment in question. It relies on the fact that it was not laid down anywhere in the Act or elsewhere that the official of the Government could not be nominated as a member of the Committee. In that case, the Chairman was Labour Commissioner and the minimum wages were for employees in printing presses. The question as to whether Labour Commissioner was directly concerned with the work in the presses was not raised or considered. In AIR 1963 Kerala 115 (supra), it was held that, in general, officials who are entirely, unconnected with employers or employees in the scheduled employment in question were 'independent persons' and that, as an exception when that State Government, as an employer, was vitally interested in the matter of wages, it may not be proper to nominate an official of that Government.

In AIR 1961 Madhya Pradesh 182 (supra), it was held that, in general, a Government official was not an independent person for the purpose of Section 9 of the Minimum Wages Act and that this is so specially when the Government itself controls or runs a scheduled employment." In that case, the Committee concerned had to fix the minimum wages in tobacco (including beedi making manufactory) and not for any manufactory of which Government was the employer. It is not disputed that the opponent-State controls employment in public motor transport as also in a tannery at Gwalior. But the Madhya Pradesh Government held that even in the matter of fixation of wages in a manufactory in which the Government was not the employer, the Government could not be said to be disinterested for the following reasons :

(a) Government was an employer; (b) Government was not a passive onlooker and, therefore, was not entirely disinterested in the matter of, determination of minimum wages because of the fact that, in view of Articles 42 and 43 of the Constitution, State was actively interested in the wage earners and fixation of minimum wages in any scheduled employment.

In 1961-2 Lab LJ 741 (Cal) (supra), the following grounds were relied upon : (1) Government was not disinterested. In the process of compulsory fixation of rates of wages, there were not merely two parties namely, employer and employee) but there was a third party also namely, the Government : (2) Though all Government servants were not subservient, common experience

was that this class of executives can seldom be made to swim against the tide : (3) From another point) of view, if it be assumed that Government was disinterested, even then Government being almost in the position of an impartial arbitrator had to(. see that justice was not only done but seemed to be done. (4) The fact that Government was not bound to accept the advice of the Committee was no ground for detracting from the quality of that advise. (5) The fact that the officials concerned - Labour Commissioner and Deputy Commissioner in that case - had personal knowledge of the relevant facts necessary to be dealt with by the Advisory Committee was not compelling reason for putting them on the Committee. Though that decision has dealt with Government officials in general, there is an indication, that the observations apply only to the class of executives who can seldom be made to swim, against the tide and do not apply to officials who were obliged by oath of office or nature of their regular work and conditions of service, to act in a judicial manner or capacity to do justice whether it involved sailing with the current or swimming against the tide.

9. We hold that the view of the Madhya Pradesh High Court in AIR 1961 Madhya Pradesh 182, (supra) and of the Calcutta High Court in 1961-2, Lab LJ 741 (Cal) (supra), is more acceptable and, that Government Officials of the executive department, as distinct from officials engaged in judicial work or department, cannot be considered to be 'independent persons' for the purpose of Section 9 of the Act, even though they are not directly connected with the manufactory in which the wages; are to be enquired and reported on by the Committee concerned. We are also in agreement with the view of the Madhya Pradesh and Calcutta High Courts expressed in the above decisions that Government cannot be considered to be absolutely, disinterested party in the matter of fixation of minimum wages.

10. The learned Government Pleader contends that the Committee was appointed only to make a report and that the Government was not bound to accept the report but was free to fix minimum wages different from what was indicated in the report. This point has been dealt with by the learned Judge of the Calcutta High Court in 1961-2 Lab LJ 741 (Cal) (supra) and we agree with his view.

11. The learned Government Pleader relies, on the decision of the Supreme Court in *U. Unichoyi v. State of Kerala*⁵, The relevant facts in that case were as follows : Government of Kerala appointed a Committee, under Section 5 of the Minimum Wages Act to hold enquiries and advise the Government in fixing minimum rates of wages in the tile industry. After considering the report, Government issued-notification prescribing minimum rates of wages. Nine petitioners, representing six tile factories, challenged the validity of the Minimum Wages, Act as also of the notification. They raised various, contentions but there was no contention that the members nominated by the Government as 'independent persons' were really not independent persons. Their Lordships considered the committee's, report with a view to find out how the committee, proceeded to discharge its work and what was the nature of its recommendations. In that connection, they observed as follows (at p. 14) :

"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 of Trivandrum and has had considerable experience inasmuch as he has served on several such Committees in the past...."

Their Lordships rejected the contentions raised by the petitioners and dismissed the writ petition. The learned Government Pleader points out that their Lordships upheld the notification which was based on consideration of a report of a committee in which District Labour Officer, an official of the Kerala Government, sat after being nominated as independent member. But the question as to whether the District Labour Officer was an independent member was not raised before their Lordships or considered by them. So, that decision cannot be treated as positively holding that an official of the State Government of the status of, Labour Officer was an 'independent person' for, the purpose of Section 9 of the Act. We agree with the contention of the learned Advocate for the, petitioner that the Chief Inspector of Factories, and the Deputy Chief Inspector of Factories, who were officials of the executive side of the Government, cannot be said to be disinterested persons and that, therefore, the Committee was not properly constituted and that the G.O. Ms. No. 1199 Home (Labour II), dated 30-6-1962 is not valid. The aforesaid G.O. is accordingly quashed.

12. In view of our finding on the above point no other ground has been urged by the learned, Advocate for the petitioner, Shri B.V. Subrahmanyam.

13. In the result, we allow these writ petitions with costs. Advocates fee Rs. 50/- in each. Petitions allowed.