

KERALA HIGH COURT

P. Gangadharan Pillai

Vs

State of Kerala

O.P. Nos. 1678, 1871, 1882, 1883, 2150 and 2151 of 1967

(V.P. Gopalan Nambiyar, J.)

14.08.1967

JUDGMENT

V.P. Gopalan Nambiyar, J.

1. These writ petitions challenge the validity of a notification fixing of minimum wages for employment in the cashew industry in this State. A copy of the notification is Ext. P-4 in O. P. No. 1678 of 1967. Arguments were advanced in the said O. P. and it was agreed at the hearing that the remaining writ petitions must share the same fate.

2. The notification in question has been impugned on several grounds; that the Government's power of issuing a notification under the Act is quasi-judicial in nature and no reasons had been given in the instant case in the impugned notification for disregarding the advice of the Advisory Board and fixing the minimum wages at a level which was bound to have far-reaching effects and consequences; that the Constitution of the Advisory Board was itself illegal that the capacity of the employer and, in particular, of the industry to pay the minimum wages, had been ignored; and that the guarantee of minimum work to the workers assured by the impugned notification was beyond the purview of the provisions of the Minimum Wages Act.

3. Reading Preamble of the Minimum Wages Act along with Section 3 thereof which empowers the Government to fix the minimum wages in the manner prescribed it appears to me that the fixation of minimum wages by the Government is a matter of policy, rather than the discharge of any quasi-judicial function. It is nonetheless so, in spite of the procedure prescribed in Section 5 for consultation with an Advisory Board, or for an enquiry by a Committee, and for consideration of proposals and objections. The petitioner's counsel took the extreme stand that most, if not all, the decisions on the distinction between quasi-judicial and administrative functions would stand in need of review in so far as they proceeded on the basis of the now discarded "gloss" put by the Chief Justice Hewart in *Rex v. Legislative Committee of the Church Assembly; Ex parte, Haynes Smith*,¹ and by the Privy Council in *Nakuda Ali's case*, 1951 AC 66 : 66 TLR 214, that the duty to act judicially must be provided for before the function can be regarded as quasi-judicial. The decision of the *House of Lords in Ridge v. Baldwin*², and the decision of our Supreme Court in

¹(1928) 1 KB 411 (414)

²1964 AC 40

the *Associated Cement Co., Ltd. v. P.N. Sarma*³, were cited to show that the necessity to follow judicial procedure and observe the principles of natural justice flows from the nature of the power and need not necessarily depend on any provision to act judicially. The recent publication of the "Constitutional law of India", by R.M. Seervai (page 624) was relied on. An examination of this aspect of the question appears purely academic. Even posing the basic question as to whether the nature of the function in the instant case is quasi-judicial, I am satisfied that it is not. The contention to the contrary is overruled. The statutory provisions in the *Express Newspapers'* case, AIR 1958 SC 578, were different; and even there, no final opinion was expressed whether the function of the Wage Board was quasi-judicial.

4. The revision of minimum wages in the instant case was effected after following the procedure sanctioned by Section 5(1)(b) of the Act which authorizes the Government by notification in the Gazette to publish its proposals, to take into consideration the representations, received against the same and to consult the Advisory Board before fixing or revising wages. Consultation with the Advisory Board is therefore a necessary requirement under the provisions of the Act. The constitution of the Advisory Board is provided for by Section 9 thus :

"(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."

5. The Advisory Board constituted in the instant case consisted of seventeen representatives each, of employers and employees and four Government Officials. Among the representatives of the employers, the only one representing the cashew industry was one Sri P.G. Varghese who died before the Advisory Board formulated its recommendations to the Government, (vide Ext. P-5). It was admitted that none was nominated in his place, and that the Advisory Board proceeded with its business and sent up its recommendations (Ext. P-5) without the vacancy being filled up. These recommendations were not accepted by the Government, which, by its final notification (Ext. P-4) accepted its draft notification. It is the petitioner's case that Ext. P-4 notification discloses a percentage of increase over the Advisory Committee's recommendation varying from 16 to 43 percent in regard to various items of wages; and further, that the wages as ultimately revised by Ext. P-4 represented an over-all increase of about 35 per cent over the wages previously revised in 1960 by Ext. P-1. It was contended that the "independent persons" in the Advisory Board contemplated by Section 9 of the Act were persons independent not merely of the employers and employees but also of the Government which was an interested party in the fixation of minimum wages, charged as it was by the Directive Principles of State Policy to secure a living wage to all workers. Judicial opinion on this point is conflicting. The Punjab High Court in *Jaswant Raj Beri v. State of Punjab*⁴, held that a Government servant can well be one of the "independent persons" of the Advisory Board within

³ AIR 1965 SC 1595

⁴ AIR 1958 Pun 425

the meaning of Section 9 of the Act. A contrary view was taken by Sinha, J. of the Calcutta High Court in *Kohinoor Pictures Ltd. v. State of West Bengal*⁵, The learned Judge expressed himself

thus :

"The learned Advocate-General argued that all Government servants are not necessarily subservient. 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 Madhya Pradesh High Court in *Bhopal Sugar Industries Ltd. v. State of Madhya Pradesh*⁶, took the view that a Government Official cannot be said to be an independent person for the purpose of section 9 of the Act. The decision of Sinha, J. was reversed on appeal by a Division Bench (See AIR 1964 Calcutta 519) Bose, C.J. and Mitter, J. were not prepared to endorse the proposition that Government servants cannot be regarded as 'independent' members. The Chief Justice was of the view that the expression independent used in Section 9 of the Act, connoted only persons independent of employers and employees. The view of Sinha J. was accepted by a Division Bench of the Andhra Pradesh High Court, in *Bansilal Patel v. State of Andhra Pradesh*⁷, with an exception in favor of Government Officials engaged in judicial work and Department. The decision of the Division Bench of the Calcutta High Court reversing the judgment of Sinha J. does not appear to have been brought to the notice of the Andhra Judges, as it was not apparently reported at the time of the Andhra decision. The Bombay High Court, in *Ramkrishna Ramnath v. State of Maharashtra*⁸, following an earlier Division Bench ruling of its own, agreed with the Punjab High Court and dissented from the view of Sinha J. and of the Madhya Pradesh High Court. It was said that the word "independent" in the context was used in contra-distinction with persons representing employers and employees and that, any wider acceptance of the term would make the section unworkable in practice. Vaidialingam, J. of this High Court (as he then was) in *D.M.S. Rao v. State of Kerala*⁹, accepted the view of the Punjab High Court and dissented from AIR 1961 Madhya Pradesh 182. The learned Judge expressed himself thus :

"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 available from the provisions of Section 9 of the Minimum Wages Act. 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 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

⁵1961-2 Lab LJ 741 (Cal)

⁷ AIR 1965 And Prad 128

⁹ AIR 1963 Ker115

⁶ AIR 1961 Mad Pra 282

⁸ AIR 1964 Bom 51

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.

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."

6. Giving the matter my careful attention, I do not think that Section 9 was intended or meant to rule out Government servants from being members of the Advisory Board. I cannot subscribe to the view, that Government servants in general can be branded as lacking in independence of thought and outlook I respectfully agree with the observations of Vaidialingam J. in the Kerala case. As has been noticed in some of the decisions referred to, apart from the context and juxtaposition of the words the indications available from Rule 4(3) of the Central and the Kerala Rules are to the effect that Government Officials can be members of the Advisory Board. The vires of the Rule has not been challenged. I therefore hold that there was no infringement of Section 9 of the Act by the nomination of Government Officials to be "independent" members of the Advisory Board.

7. The contention that the constitution of the Board was defective for want of a representative of the Cashew Industry at the relevant time is opposed alike to the provisions of the statute and to the trend of judicial decisions. Section 9 only requires that the Board shall consist of representatives of the employers and employees in the scheduled employment and not of any particular scheduled industry. The position seems to have been accepted by the Supreme Court in *Bhikusa Yamasa v. Sangamner Akola Taluka Bidi Kamgar Union*¹⁰. (See paragraph 8) The contrary view taken in *A.S.D. Basha Proprietor Bashes Snuff Co. v State of Madras*¹¹, can hardly be sustained. In view of the Supreme Court's decision it is unnecessary to notice the further decisions on the point.

8. Was there any illegality consequent on the failure to nominate a member to the Advisory Board on the death of Sri. P.J. Varghese ? - is the next question. There is no doubt that the fixation or revision of minimum wages is to be done, in accordance with the provisions of the Act, and that consultation with the Advisory Board as contemplated by section 9 of the Act is a necessary requirement of such fixation or revision. The Advisory Board with which consultation is effected must have the

¹⁰ AIR 1963 SC 806

¹¹ AIR 1963 Mad 138

statutory personnel and composition enjoined by Section 9 of the Act. This, at the material time, it did not have in the instant case. But it appears to me that this does not vitiate the ultimate decision of the Government in the notification Ext. P-4 issued by it. The function of the Advisory Board was purely advisory; the Government was not bound by its advice, the ultimate decision had to be taken by the Government. In this view, I am inclined to think that notwithstanding the defect in the composition of the Advisory Board the notification Ext. P-4 is

not vitiated by any illegality. In *Edward Mills Co. Ltd., Beawar v. State of Ajmer*¹² the term of the Advisory Board expired on 16th July 1952. Its term was extended only on 21st August. It was argued that on and from 17th July all the members of the Committee had become functus officio and that the extension was illegal and ineffective. Adverting to this argument the Supreme Court observed :

"No report was submitted during this period and there was no extension of time granted after the submission of the report. Assuming that the order of the 21st August 1952 could not revive a committee which was already dead, it could certainly be held that a new committee was constituted on that date and even then the report submitted by it would be a perfectly good report. "Quite apart from this, it is to be noted that a committee appointed under section 5 of the Act is only an advisory body and that the Government is not bound to accept any of its recommendations. Consequently, procedural irregularities of this character could not vitiate the final report which fixed the minimum wages". In our opinion, neither of the contentions raised in support of these 'appeals can succeed and both the appeals therefore should fail and stand dismissed with costs" (Underlining (here in " ") mine).

9. In view of the above observation of the Supreme Court and of the fact that the Advisory Board's opinion was not binding on the Government, which had to take the ultimate decision regarding the revision of minimum wages. I am of the view that notwithstanding the defect in the composition of the Advisory Board, the notification issued by the Government (Ext. P-4) is not illegal. It may be that if the Constitution of the Advisory Board was in total disregard of the provisions of Section 9, and its advice was accepted and acted upon by the Government, the proceedings might become illegal (vide AIR 1957 Rajasthan 35). But such was not the position here; and as to this I need not express any opinion.

10. I cannot accept the petitioner's contention that what is fixed in the instant case, is not a minimum wage but something higher than the same, and therefore the capacity of the employer to pay the wages was material. The argument was based on the ruling in the Express News Paper's case, AIR 1958 SC 578, but the said ruling was considered and explained by the Supreme Court in *U. Unichoyi v. State of Kerala*¹³, as being one. where, what was sanctioned and fixed was very much beyond the minimum wage and was nearer to the concept of a fair wage. There is no warrant to hold that in the instant case the fixation was of anything other than the minimum wage. The capacity of the employer to pay the minimum wage is therefore wholly immaterial. The position is now beyond controversy (See AIR 1955 SC 33, AIR 1958

¹² AIR 1955 SC 25

¹³ AIR 1962 SC 12

SC 30, and AIR 1962 SC 12). It was contended by the petitioner's counsel that even in the concept of a minimum wage, though the capacity of the employer may not be a material consideration, the capacity of the industry as such to bear the minimum wage fixed and to pay the same was a relevant consideration. This aspect was elaborated at great length before me. It is unnecessary to dwell on this aspect, of the matter at any length, as, it has been ruled recently by a Division Bench of this Court in *West Coast Employer's Federation v. State of Kerala*¹⁴, that the only relevant consideration for the fixing of minimum wages is the minimal requirements of the

workers concerned, and that no other consideration such as capacity of the industry to pay the minimum wage would arise for consideration. Besides, these are matters to be taken into account by the authority fixing the minimum wage, and are hardly justiciable. (See the Judgment of Raman Nayar J. in *Madhavan v. State of Kerala*¹⁵).

11. An argument based on discrimination was sought to be developed. It was contended that Section 5(1) authorizes two different modes of fixing or revising the minimum wages sanctioned respectively by clauses (a) and (b), leaving it to the uncontrolled discretion of the Government, as to when each of these modes is to be resorted to. I am unable to appreciate the argument. The two modes appear to be substantially similar. In one, the committees hold enquiries and advise in respect of the fixation or revision and the Government in the light of the advice ultimately decides. In the other, the Government formulates its proposal, invites representations and after consulting the Advisory Board arrives at its decision. Apart from the absence of any substantial difference between the two modes, the right and the obligation to follow one course or the other is, after all, vested in the Government. I am unable to spell out any case of discrimination.

12. It was finally argued that the guarantee of minimum work under Ext. P-4 notification, was illegal and beyond the power of the statute. To appreciate the contention paragraph iv of Ext. P-4 notification may conveniently be extracted :-

"IV Guaranteed Minimum Daily Wages Piece rated workers in the shelling peeling sections shall be given a guaranteed minimum daily wage. A worker shall be entitled to receive this guaranteed minimum wage prescribed below (Plus the dearness allowance to which he or she is eligible) only if the minimum quantum of work stipulated below is done with the normal and customary proportion of wholes and broken.

Operation	Minimum output to qualify for receiving the guaranteed minimum wage.	the Guaranteed minimum wages
1. Shelling	4.5 Kilograms shelled whole kernels.	1.60
2. Peeling	3.6 Kilograms peeled whole kernels.	1.60
3. Peeling Shelling pieces	5.4 Kilograms peeled kernels.	1.56
4. Peeling Kattals	2.7 Kilogram of peeled whole kernels.	1.56

N.B. It is the employers' obligation to provide all workers who are employed on a day

¹⁴1967 Ker LT 614 AIR 1968 Ker18

¹⁵1967 Ker LT 644

the minimum quantum of work to enable them to give the output stipulated above maintaining the normal and customary proportion of wholes and broken and the workers shall not be denied the guaranteed minimum if his/her failure to give the minimum output is due to the failure of the employer to supply the requisite materials.

The Employers shall provide sufficient materials to the workers for work from 8 a.m. to 5 p.m. during working days failing which the guaranteed minimum wages at the rates specified shall be paid".

13. Reading the above paragraph as a whole, it seems to make it clear that the worker would be entitled to the minimum wage only after he puts in a minimum outturn of work. The obligation to enable the worker to satisfy the minimum out-turn of work, is laid on the employer who is to provide the worker with the minimum quantum of work and who cannot escape liability to pay minimum wage by failure to provide work. I see nothing in the above provision which travels beyond the purview of the provisions of the Minimum Wages Act or the concept of fair wage, as known to it.

14. All the contentions advanced by the counsel for the petitioner fail. These writ petitions are dismissed I make no order as to costs. The Bank guarantees furnished by the petitioners in pursuance of orders on their applications for stay, will now stand released.
Petitions dismissed.