

# BOMBAY HIGH COURT

Ramkrishna Ramnath

Vs.

State of Maharashtra

Special Civil Appln. No. 317 of 1962

(Kotval and Wagle, JJ.)

10.04.1963

## JUDGMENT

**Kotval, J.**

1. In this petition there is challenged a notification No. M.W.A. 1557-J, dated the 11th June 1958 issued under Section 5 of the Minimum Wages Act, 1948 (No. 11 of 1948), by the then Government of Bombay. The notification is at annexure-'D' and it has had an unenviable record of litigation arising from it. The notification was as follows :

"No. M.W.A. 1557-J. In exercise of the powers conferred by Sub-Section (2) of Section 5 read with clause (b) of Sub-Section (1) of that section of the Minimum Wages Act, 1948 (11 of 1948), and after consulting the Advisory Board and in supersession of the former Government of Madhya Pradesh Labour Department Notification No. 564-451-XXIII, dated the 23rd February 1956, the Government of Bombay hereby revise the minimum rates of wages in respect of the employment in any tobacco (including bidi making) manufactory in the Vidarbha region of the State of Bombay as mentioned in the Schedule hereto annexed and directs that this notification shall come into force with effect from 1st July 1958.

Schedule

Subject to the other provisions of this Schedule, the revised minimum rates of wages payable to employees per thousand bidis (when leaves are supplied by the employer) shall be as follows :

Area	Revised rate in Rs
(i) Nagpur District	1.69
(ii) Bhandara District	1.62
(iii) Chanda, Akola, Buldhana, Yeotmal, Amraoti and Wardha District.	1.56

2. For all bidis in which 7 chataks or more of tobacco mixture is used and for those bidis which are known as 'Hatnakhum' bidis, there shall be an increase of 12 Naye Paise per 1000 bidis in the rates mentioned above in all the areas.

3. It shall be within the discretion of the employer to decide which are 'chhat' bidis or bad bidis, up to 5 per cent, of the bidis, prepared by the employee. If the employer decides that any bidis are 'chhat' or bad the 'chhat' or bad bidis up to 5 per cent, shall be destroyed forthwith by the employee and whatever tobacco is recovered from them shall be retained by the employer. If, however, the employer wants to retain these 'chhat' or bad bidis, he shall pay full wages for the same to the employee.

4. If 'chhat' or bad bidis are more than 5 per cent, but less than 10 per cent, and if there is any dispute between the employer and the employee as to whether the 'chhat' or bad bidis is done properly or not equal number of representatives of the employer and the employees shall inspect (sic.) the 'chhat' is done properly or not. If there is any difference of opinion among the representatives of the two sides, the majority opinion shall prevail. If the opinion is equally divided and the employer wants to retain the 'chhat' bidis, he shall pay wages for 'chhat' bidis between 5 per cent to 10 per cent at half the rates fixed above. If the employer does not want to retain these bidis, the employee shall destroy them forthwith.

5. The employer shall nominate his representatives and the employees shall elect their representatives.

6. In the case of 'chhat' above 10 per cent the employee shall be entitled to full wages. It shall however be open to the employer to take suitable action against the employee if the 'chhat' is more than 10 per cent for 6 continuous working days in a calendar month.

7. The 'chhat' shall be made once in a day only at any premises within a distance of not more than 2 miles from the premises where bidis are manufactured.

Explanation : For the purposes of this Schedule the expression 'employer' includes his thekedar, contractor or agent as the case may be."

(2) Before we deal with the present challenge to the notification it is necessary to state a few facts as to its past history in Courts of law. That will tend to show what part of the notification still survives and the nature of the present attack upon it.

(3) After the notification was issued, it first came to be challenged before this Court in *Bidi, Bidi Leaves arm Tobacco Merchants Association, Gondia v. State of Bombay*<sup>1</sup>, and a Full Bench of this Court by a majority declared a portion of clause 6 and clause 7 of the Schedule annexed to the notification as well as the explanation appended at the foot of the notification as 'ultra vires' of the powers of the State Government under the Minimum Wages Act. The remaining provisions of the notification were held 'intra vires' of the powers of the State Government. In that case the whole, notification was impugned and

all the Judges were agreed that clauses 1 and 2 thereof were 'intra vires' and valid but there was a difference of opinion as to clauses 3 to 7. One Judge held that clauses 3 to 7 were all 'ultra vires', and another that all the clauses were valid. The third Judge to whom the case was referred and upon whose opinion the final judgment was delivered held part of clause 6, clause 7 and the explanation at the foot of the notification alone as 'ultra vires'.

(4) From that decision, however, an appeal was taken to the Supreme Court of

<sup>1</sup>61 Bom LR 890

India and in *Bidi, Bidi Leaves and Tobacco Merchants' Association, Gondia v. State of Bombay*<sup>2</sup>, the Supreme Court declared clauses 3 to 7 of the notification as 'ultra vires' of the powers of the State Government under the Act. They further held that clauses 1 and 2 of the notification were severable from the clauses which they had declared 'ultra vires' and they upheld therefore the validity of clauses 1 and 2 of the notification. Thus, after the decision of their Lordships of the Supreme Court only clauses 1 and 2 of the Schedule to the notification remained in force. Therefore, the only valid portion of the notification remaining after the portions that were declared 'ultra vires' is the preamble to the notification and clauses 1 and 2 thereof.

(5) It is this attenuated notification which is now the subject of further challenge in the present petition and the points of challenge to be culled from the somewhat lengthy arguments are three, namely :

(1) That the notification was issued without compliance with the provisions of Section 5 read with Sections 7, 8 and 9 of the Minimum Wages Act as to consultation by the State Government with an Advisory Board to be set up. We will presently state the submission in detail.

(2) That the notification in the Official Gazette publishing its proposals for the information of the persons likely to be affected by the revision of minimum rates of wages (annexure-A-1) does not comply with Section 5(b) of the Act but on the other hand states that the draft proposals will be taken into consideration by the Government of Bombay "on or after the 1st day of March, 1958", which does not afford adequate opportunity to make representations and is not in compliance with law.

(3) That the wage structure as revised by the impugned notification should have been for the entire State and not merely for the Vidarbha area of the State of Bombay as mentioned in the impugned notification. For this reason, the notification is bad under Section 3(1)(b).

(6) Before we deal with these contentions a preliminary objection should be disposed of. This very notification as we have stated above was the subject of challenge before the Supreme Court in AIR 1962 Supreme Court 486 (cit. sup.) and at the end of the judgment, their Lordships held :

"We are, therefore, inclined to take the view that clauses 3 to 7 which form an integral scheme are outside the purview of the powers conferred on the respondent by Section 5 of the Act and must therefore be declared to be 'ultra vires'. It is common ground that these clauses are severable from clauses 1 and 2 and that their invalidity does not affect the

validity of the said two clauses."

On behalf of the respondent No. 2 it was argued that here is a finding given by their Lordships that the two clauses which are impugned in the present petition were valid under the Act, and in view of that finding the present petition cannot lie albeit that the ground of attack against clauses 1 and 2 in this petition is new and one which was not before their Lordships in the Supreme Court case.

(7) We do not think that we can accept such a contention for the reason, among others, that it appears that the present petitioner was not a party in the case which went up to the Supreme Court. No doubt, in that case the entire Association of

<sup>2</sup> AIR 1962 SC 486

Bidi, Bidi Leaves and Tobacco Merchants in the Bhandara district at Gondia was a party and the petitioner is also doing business at Gondia as well as in other districts in Vidarbha, but there is no indication on the record that the present petitioner was a member of that Association or that that Association could represent him. Apart from that, we also think that the grounds upon which clauses 1 and 2 are being challenged before us in the present petition were not considered, nor even raised in the earlier case. Thus, not only are the parties not the same but even the matter in issue is not the same. Therefore, we cannot shut out the petitioner on a preliminary ground that in the previous decision clauses 1 and 2 were held to be 'intra vires' of the Act and cannot at all be challenged in this Court.

8. Turning to the points raised in the present petition, in order to appreciate the contention on the first point, it is necessary to refer to the plea raised in the petition and to some of the documents filed in that behalf and to the reply of the respondents. The point was partly adumbrated in the petition as originally presented and partly incorporated by way of an amendment in paragraph 10(a) which reads as follows :

"That the petitioners further submit that Shri P.S. Bakhale Chairman of the Advisory Board of the Minimum Wages, could not be termed as independent person, within the meaning of expression as used in Section 9 of the Minimum Wages Act, 1948. That Shri P.S. Bakhale was an official under the State Government and was in the employment of the State Government and consequently could not act as an independent person in the Minimum Wages Advisory Board. ...."

There was also another member to whose alleged membership of the Advisory Board objection was taken in the original petition in paragraphs 9 and 10. He was one Shri G.K. Dhutiya who at the material time was the Assistant Commissioner of Labour, Bombay. It was alleged that he was not an independent person within the meaning of Section 9 of the Act and that therefore the Advisory Board was not properly constituted.

9. Having challenged the qualifications of the two members to be classed as "independent" persons, the pleading further elaborated the contention as follows :

"That the Advisory Board not being validly constituted, the consultation or advice of such board could not be valid in pursuance of the proviso to Sub-Section (2) of Section 5 of the Act *ibid*, and in the absence of advice or consultation with a validly constituted Advisory Board the fixation of Minimum Wages by the Notification dated 11th June 1958 is bad in law and has to be struck down as invalid."

10. Another contention against the membership of Sri Dhutiya was that taken in paragraph 10 of the petition, namely, that he had originally been appointed by Government to make a certain preliminary inquiry and his proposals had been considered by Government before appointing the Advisory Board, it was therefore urged that he being the initiator of the move for fixation of minimum wages and one whose proposals were forwarded to the Advisory Board, he lost his qualification as an "independent member" and could not be appointed a member of the Advisory Board as an "independent" member.

11. In answer to these contentions, the respondent No. 1, the State of Maharashtra, filed two affidavits, one before, and the other after, the amendment. As regards Shri Dhutiya, they stated in their return :

"It is admitted that the Advisory Board constituted for the purpose of Section 7 of the Act consisted of 16 persons which included Shri G.K. Dhutiya then Assistant Commissioner Labour, Bombay. It is denied that merely because Sri Dhutiya happened to be employed in the Department of Labour of the Government of Bombay he could not be treated as an independent person."

It was also admitted by the State that Sri Dhutiya was deputed to hold a preliminary inquiry into the conditions of the industry respecting the payment of wages and minimum wages and other ancillary questions. He issued a questionnaire to all the registered bidi making factories and to unions of employees and workers. He received written statements from the employers and the employees and held a personal inquiry on the spot in the presence of employers and employees or their representatives at several places. It was on receipt of his report and recommendation that the then Government of Bombay issued a draft notification at annexure-'A-1', appointed an Advisory Board and issued the impugned notification (annexure-'D'). In a supplementary affidavit, paragraph 3, the State of Maharashtra added that –

"the appointment of Shri G.K. Dhutiya as a Secretary of the Advisory Board was purely on an administrative arrangement and not a statutory requirement. In his capacity as a Secretary of the Advisory Board, Shri Dhutiya was required to maintain the records of the Board, to maintain routine correspondence of the Board, but had no voice in the

deliberations of the Board nor any right to vote."

12. In regard to the appointment of Sri P.S. Bakhale, the supplementary affidavit of the State admitted that he was and continues to be the Chairman of the Advisory Board but that "it is not a fact that he was in the service of the Government when he was appointed as Chairman of the Board." It was alleged that Sri Bakhale retired from the service of the then Government of Bombay as far back as 17-4-1952.

13. Unfortunately, as is not unusual in these cases, counsel have not cared to file the original notification appointing the Advisory Board and throughout an attempt has been made on the part of either party including Government to argue this point upon one or the other admission made by one or more of the parties when all the facts were available to both the parties and could have been placed on the record by a mere production of the notification appointing the members of the Advisory Board. Some attempt was also made in the arguments to refer to our decision in the previous case in 61 Bom LR 890, and the appellate decision in AIR 1962 Supreme Court 486, but even from those decisions it is not possible to gather the facts with sufficient clarity to have a decisive effect upon the point argued.

14. Now, the requirements of the law so far as the appointment of an Advisory Board and consultation with it are concerned, are those contained in Sections 5, 7, 8 and 9 of the Minimum Wages Act. Sub-Section (1) of Section 5 prescribes that in fixing or revising minimum rates of wages in respect of any scheduled employment, the State Government shall either (a) appoint a committee or 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 a 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. Sub-Section (2) of Section 5 says that 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 dates specified in the notification under clause (b) of that Sub-Section, the State 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. Then there is an important proviso as follows :

"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."

Sections 7, 8 and 9 deal with the appointment of the Advisory Board, the Central Advisory Board and the competition of committees etc. Section 7 lays down :

"For the purpose of coordinating the work of Committee and Sub-Committees appointed

under Section 5 advising the appropriate Government, generally in the matter of fixing and revising minimum rates of wages, the appropriate Government shall appoint an Advisory Board." Sub-Section (1) of Section 8 contemplates the appointment at a Central Advisory Board by the Central Government for advising the Central and State Governments in the, Matters of fixation and revision of minimum rates and other matters under the Act and for coordinating the work of the Advisory Boards. Sub-Section (2) of Section 8 deals with the composition of the Central Advisory Board with which we are not here concerned. But Section 9 is very material for the point we are here considering, and 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 employment, 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."

15. The argument attacking the impugned notification founded upon these provisions of law is as follows : The State Government under Section 5 was bound to consult the Advisory Board, but in this case the Advisory Board was not legally and validly constituted as required by law. Therefore, a consultation with such a Board would be no consultation at all and so the revision of rates by the impugned notification would be bad and ultra vires of the powers of Government. The reason why it is urged that the composition and constitution of the Advisory Board in the instant case was bad was that the two members Messrs. Dhutiya and Bakhale who were ostensibly appointed as Independent members were not "independent persons" as contemplated by Section 9 of the Act. They were not independent because they were servants of Government. It was argued that by "independent persons" is meant truly and genuinely independent within the ordinary acceptance of that word; whereas since they were servants of Government they were not independent at least so far as itself was concerned.

16. Reliance was also placed upon some decisions in this respect. They were two decisions, one of the Rajasthan High Court in *N.K. Jain v. Labour Commissioner*<sup>3</sup>, and the other of the Calcutta High Court reported in *Kohinoor Pictures Ltd. v. State of West Bengal*<sup>4</sup>,

17. Apart from authority, we would first consider the question in the light of the provisions of the statute itself and the purpose for which the statute was made. In *Edward Mills Co. v. State of Ajmer*<sup>5</sup>, the late Mr. Justice Mukherjea, as he then was, indicated the policy behind minimum wages legislation in the following words at page 32, column 2 :

"Legislative policy is apparent on the face of the present enactment What it aims at, is the statutory fixation of minimum wages with a view to obviate the chance of exploitation of labour.

The legislature undoubtedly intended to apply this Act not to all industries but to those industries only where by reason of unorganized labour or want of proper arrangements for effective regulation of wages or for other causes the wages of labourers in a particular Industry were very low. It is with an eye to these fact that the list of trades has been drawn up in the schedule attached to the Act hut the list is not an exhaustive: one and it is the policy of the legislature not to lay down at once and for all time, to which industries the Act should be applied. Conditions of labour vary under different circumstances and from State to State and the expediency of including a particular trade or industry within the schedule depends upon a variety of facts which are by no means uniform and which can best be ascertained by the person who is placed in charge of the administration of a particular 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 a particular trade or industry which It not already included in the list....." It is with that object therefore that the power has teen given to the State Government under Section 3 of the Act either to fix minimum rates of wages or to review and revise Idem, at such intervals as the State Government may think tit, not exceeding five years. Having regard to the proviso to Sub-Section (2) of Section 5 it is clear that the State Government is bound to consult the Advisory Board to be set up under Sections 7 and 9 before it revises the minimum rates of wages. That obligation is mandatory and has also been stressed in the two cases which were relied upon by Mr. Manohar on behalf of the petitioners. But the attack in the instant case is not that there was no consultation by Government with the Advisory Board. The attack is that the constitution and the composition of the Advisory Board was bad and not in accordance with law and the error is such that it must be held that there was no Board and no consultation at all under law and consequently the

<sup>3</sup> AIR 1957 Raj 35

<sup>5</sup> AIR 1955 SC 25

<sup>4</sup>1961-3 Fac. LR 511

notification issued is bad.

18. Section 9 deals with the composition of the Advisory Board and it says that it shall consist of an equal number of representatives of employers and employees in the scheduled employments. In each case all the representatives have to be nominated by the appropriate Government. Then there is a third category contemplated by the words "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". The attack is upon this third category of persons composing the Advisory Board in the instant case. It is said that both Sri Bakhale and Sri Dhutiya were not independent persons and therefore the entire constitution of the Advisory Board was bad.

19. Now, in the first place, we may say that even upon the facts the contention is not justified. So far is Shri Bakhale is concerned, the facts are in dispute. We have already referred to the return made by the Stats Government and in paragraph 3 of the supplementary affidavit the State Government categorically alleged that on the date on which the present Advisory Board was

constitute in August 1956 by the former Government of Bombay (Government Resolution No. MWA. 1255-J, dated 24-8-1956 in Labour and Social Welfare Department), Shri Bakhale who was made the Chairman of the Advisory Board had retired front service. He had retired as far back as 17-4-1952. To this return on behalf of Government there was no further reply or affidavit filed. Thus, we must hold that the facts upon which the contention is based so far as Shri Bakhale is concerned are in dispute. If the return of Government were to be accepted, then Shri Bakhale was not a Government servant at all and the contention in the form in which it is advanced would fail.

20. So far as Shri Dhutiya is concerned, the position is somewhat different. He was undoubtedly at the material time the Assistant Commissioner of Labour, Bombay, and therefore in the employ of the State Government. But what has been disputed on the part of Government is well as the other respondent is that he was a "member" of the Advisory Board. It is the case of Government that he was merely the Secretary of the Advisory Board and the arrangement was purely an administrative arrangement. He had no voice in the deliberations of the Board nor any right to vote. This position which Government have taken up is also supported by a consideration of the rules under which the Secretary of the Advisory Board is to be appointed. The relevant rule is R. 6 of the Bombay Minimum Wages Rules, 1951. The rule deals with the staff of the Advisory Board and the other Committees. Rules 3 and 4 in contradistinction deal with the terms of office of the members of the Committees and the Board. There is therefore a clear distinction drawn between the staff of the Board and the members of the Board.

21. Further Rule 6(1) prescribes that the State Government may appoint a Secretary to the Board and such other staff as it may think necessary and may fix the salaries and allowances payable to them and specify their conditions of service. Rule 6(2) then states :

"(2) (i) The Secretary shall be the Chief Executive Officer of the Committee, the Advisory Committee or the Board, as the case may be. He may attend the meetings' of such Committee, Advisory Committee or Board 'but shall not be entitled to vote at such meetings.'

(ii) The Secretary shall 'assist the chairman' in convening meetings and shall 'keep a record' of the minutes of such meeting and shall 'take necessary measures to carry out the decisions' of the Committee, the Advisory Committee or the Board, as the case may be."

(the underlining (here into ' ') is ours). Apart from the distinction drawn in the rules between the members of the Board and the staff assisting the Board of whom the Secretary is the principal officer, the duties and functions of the two classes are radically different. The Secretary is the Chief Executive Officer of the Board. He may attend meetings but unlike the members he cannot vote. He merely assists the Chairman in (i) convening meetings, (ii) keeping a record of the minutes, and (iii) carrying out the decisions of the Board. He is virtually a ministerial officer of the Board. The members on the other hand constitute the Board; they take part in the

deliberations of the Board and they alone can vote. There are specific rules framed as to their term of office or travelling allowances, the cessation and restoration of membership and their disqualifications; but no such rules are prescribed so far as the Secretary and the staff are concerned. The appointment of the Secretary is left to the State Government and since he would normally be a servant of Government his normal conditions of service in Government will prevail.

22. The crucial difference is that under Rules 15 and 16 it is only the members who have the voting right and it is accog of Section 9.

24. On this question, the two cases which we have referred to above were relied upon on behalf of the petitioners. Before we consider the authorities we might once again advert to the provisions of Sdvisory Board. The intention behind these provisions is very clear. Government has the duty to consult the Advisory Board. That duty is enjoined upon it in the exercise of its privilege to fix, review or revise minimum wages. Obviously Government cannot fix, review and revise minimum wages without consulting the representatives of employees and employers but it is not always that representatives of employees and employers can see eye to eye. In fact, experience tells us that in our country the occasions when they do agree are the exception. Therefore, it was essential to have a third body of members who hold the balance and that is the body which is categorized as "independent persons". The expression "independent persons" therefore is, in our opinion, used in contradistinction with persons representing employers and persons representing employees and it is in that context therefore that we must understand the expression "independent persons" in the context in which it is used the expression "independent persons" is used in contradistinction with "persons representing employers and persons representing employees". The true meaning therefore of the words "Independent persons" in Section 9 of the Act is that those persons must be independent of the other two classes, namely, persons representing employers, and persons, representing employees. In other words, it seems to us that the plain meaning of the section is that the third category of persons must be persons who are not representing employers or employees. The word "independent" in that context cannot mean independent in the ordinary and wider acceptance of that term as meaning "not belonging to any party or group whatsoever; not being under obligation to anybody". If that shade of meaning were to be given to the word "independent", it seems to us that it will be practically impossible to find independent persons" where a major industry is concerned, for it will always be possible to find or at least to allege some connection or other with the industry against most persons.

25. We may also point out that under the rules framed under Section 30 of the Minimum Wages Act by the Government of Bombay, particularly R. 4, provision is made for terms of office of members of the Board and a distinction is made in sub-rules (2) and (3) between a non-official member of the Board and the official members of the Board. It seems that the rules certainly contemplate that the independent members could be members of Government or official members so far as Section 9 is concerned even in Rule 10 which deals with the disqualification

of members to be on the Advisory Board, it is not mentioned that being a Government servant is a disqualification. Of course, we are aware that the rules' cannot be relied upon to interpret the provisions of the Act; but there has been no challenge to any of these rules in the present petition and we merely refer to these rules to show that they support the view which we have taken purely upon the provisions of law itself.

26. Apart from that, so far as this Court is concerned, the question has already been decided by 3 Division Bench of this Court in *President, Nagpur Mudrak Sangh v. State of Bombay*<sup>6</sup>, In that case also, a notification under the Minimum Wages Act in regard to the printing press industry was challenged. In that case the Chairman of the Consultative committee was the Presiding Officer of the State Industrial Court and was receiving a salary from Government. An objection was taken that he was not an independent person and the objection was answered at page 481, paragraph 9, as follows :

"Finally it is contended that Sri Mujumdar was not an independent person inasmuch as at the relevant date he was in the service of the Madhya Pradesh Government. We do not think that there is any substance in this argument. What is meant by an independent person is that he should not be a person belonging to the party or group of either of the two contestants in the matter, that is, the employers and the employees. Sri Mujumdar was certainly a Government servant then and is still so. But he was independent in the sense that he did not belong to the category of the employer or the employees. Further it is not suggested that Shri Mujumdar was in any way amenable to be influenced either by the employers or the employees."

This decision is not only ordinarily binding upon us but has our most respectful concurrence.

27. The decision relied upon us behalf of the petitioners is AIR 1957 Rajasthan 35. It is no doubt an authority for holding that if the Consultative Committee is not reconstituted as required by Section 9 of the Act, the subsequent fixation of minimum wages by the appropriate Government would not be in accordance with the Act and would be illegal. The decision in that case however turned upon its own peculiar facts. In that case what the State of Rajasthan did before issuing the notification fixing the minimum rate of wages was to appoint a Committee to advise it which consisted only of six of its own officers. There was no representation whatsoever in that case of employers or employees in the schedule employments on the Committee and it was on the advice of such a

<sup>6</sup>1957 Nag LJ 479

Committee that the notification impugned in that case was issued by the State Government. Chief Justice Wanchoo in delivering the judgment of the Division Bench held :

"Let us look at the nature of the irregularity in this case. Section 9 says that the committee will consist of an equal number of the representatives of employers and employees in the

scheduled employment and independent persons not exceeding one-third of the total membership. In this case, there was no representation of the employer or the employees. We may assume that all the-six members appointed were independent persons.

There was thus no Committee constituted under the Act, and the State Government has fixed minimum wages without the advice of the Committee, and without taking the alternative procedure mentioned in Section 5(1)(b). Can it be said in such circumstances that the final order fixing the minimum rate of wages is valid, though it has been made after completely ignoring the provision at Section 5(1) ?

We are of opinion that where the provision of Section 5(1) has not been followed at all, it is not open to the State Government to fix minimum wages, and any order fixing minimum rates of wages without following the provisions of Section 5(1) is of no force and effect."

A little later the learned Chief Justice observed :

"In this case, the State Government did appoint a committee, but it was no committee within the meaning of Section 9 of the Act."

At the same time the learned Chief Justice also pointed out at page 37 :

"We are, however, of opinion that there are irregularities and irregularities, and sometimes are irregularity' may be such as not to vitiate the final notification fixing the minimum rate of wages. At other times, however, the irregularity may be of a fundamental character, and may vitiate the final order."

The facts in that case were different from the facts in the present case. The circumstances there were that of the three categories of members contemplated by Section 9 two categories were wholly absent from the composition of the Committee. In other words, there were no representatives of employers and employees at all and only the representatives of Government or independent persons were present it was assumed in that case that the six Government Servants appointed on the Committee were "independent persons". That is the very point that arises here. It was in those circumstances that the Rajasthan High Court held that there was no Committee and therefore no consultation at all which was mandatory upon the State Government. In the present case, the objection is not that one of the categories was not represented at all. All that is objected to is the qualification of two persons in the category of independent persons.

28. Moreover the objection in the present case does, not go to the root of the requirements regarding the composition of the Board. Even assuming that Shri Bakhale or Shri Dhutiya do not fall within the category of independent persons, still we do not think that the composition of the entire Board would be vitiated, nor can we for that reason hold, as was held in the Rajasthan case, that there was no Advisory Board at all. It is in this context that we may again stress that the

notification appointing the Advisory Board has not been produced and we are at a loss to know what was the category or capacity in which the other members of the Board were nominated. If there was one other independent member, then whether Sri Dhutiya and Sri Bakhale were or were not independent members would not be a fatal or fundamental irregularity as Chief Justice Wanchoo put it but merely an irregularity of a minor sort. For these reasons we do not think that the principle of the Rajasthan decision would apply in the present case.

29. The other case relied upon is the decision of a single Judge of the Calcutta High Court in (1961) 3 Fac LR 511. In that case the appointment of the Advisory Committee was challenged on the ground that two members thereof under the category of independent persons were the Labour Commissioner and the Deputy Labour Commissioner of the Government of West Bengal. The learned single Judge referred to two decisions : one a decision of the Punjab High Court in *Jaswant Rai Beri v. State of Punjab*<sup>7</sup>, and another of the Madhya Pradesh High Court in *Narottamdas Harjiwandas v. P.B. Gowarikar*<sup>8</sup>. The Calcutta case also took the view that it is obligatory upon the State Government to consult the Advisory Committee and take its advice. But the learned single Judge reasoned from that premise that it follows that the Committee must be brought into existence validly in accordance with the provisions of the Act. To that extent also the view with all respect is unexceptionable. But then the learned judge pointed out that in his view the Labour Commissioner and the Deputy Labour Commissioner of the Government of West Bengal were not independent persons, and he dissented from the following remark of Biswanath Narain J. in AIR 1958 Punjab 425 (cit. sup.) :

"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 the minimum wages are to be fixed."

That view is the same as the view we have taken in this case and we are in respectful agreement with the remark-quoted. But the learned single Judge in the Calcutta case did not accept that view for the reason that a contrary view according to him had been taken in AIR 1961 Madhya Pradesh 182 (Cit. Sup.)

29-a. In the Madhya Pradesh case the reasoning of Chief Justice Dixit on this question is contained in paragraph 11 at page 187, column 1 :

"We are not prepared to accept the stand 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 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.

<sup>7</sup> AIR 1958 Pun 425

<sup>8</sup> AIR 1961 Mad Pra 182

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. That is so especially when the Government itself controls or runs a scheduled employment. It is not disputed that the opponent State controls employment in public motor transport as also in a tannery at Gwalior. If the State runs stage carnages and owns a tannery, then it is clearly an employer within the definition given in Section 2(e)(ii) of the Act. 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 onlooker in the determination of wage structure or of minimum wages.

\* \* \* \* \*

The State is, therefore, actively interested in wage earners and in the matter of fixation of minimum wages in any scheduled 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."

30. The learned Chief Justice then made a reference to the Punjab case and merely observed that they were not in agreement with the view taken in that case. As to the decision of this Court in 1957 Nag LJ 479 no reference is to be found either in the decision of the learned single Judge of the Calcutta High Court or of the Division Bench of the Madhya Pradesh High Court. That decision is binding upon us. We have already said that we are ourselves in respectful agreement with the view taken therein. We may only add that so far as the reasoning of Chief Justice Dixit is concerned, undoubtedly in a welfare State Government does undertake commercial or industrial activity and itself runs severe industrial enterprises. Those are functions which are non-political which a welfare State in modern times performs and is expected to undertake. But even assuming that the reasoning applies to the present case, it is clear that in the present case the State is not interested in that sense in the bidi industry. The State does not run any bidi industry at all, nor is there anything on the record to prove it, and it seems to us that if at all the reasoning is to prevail, it can only prevail if the State is running an industry engaging the same type of labour as the one in which it was fixing the minimum wages. With all respect we cannot understand what connection the running of a tannery has with; or what interest it can give to the State Government when, fixing wages in the bidi industry.

31. But apart from this, we think that the argument fails when we consider that the State Government is under the Act the absolute and complete master of the situation and there is absolutely no obligation on the part of the State Government even after taking the advice of the

Advisory Committee or the Advisory Board to fix any particular rate of wages, nor, part from any constitutional objection is there any objection in the State to make a distinction between the rate of wages in Government owned factories and other factories Of in a Government run scheduled employment and a privately run scheduled employment or to fix any rate of wage at all. Therefore, we are unable to see how an interest arises in the State Government because it runs some industrial enterprise.

32. We do not find ourselves in agreement with the view taken on this point in Narottamdas Harjiwandas case, AIR 1961 Madhya Pradesh 182. It seems to us further that the reasoning there is in conduct mm the remarks of their Lordships or the Supreme Court in AIR 1955 Supreme Court 25 at p. 33. In that case the question was as to the legality of the appointment of the Central Advisory Committee. The Committee was appointed for a period of six months which ended an 16-7-1952. Thereafter several meetings of the Committee were held which were after the expiry of the term of office. Some members had resigned and their vacancies were filled up and the term of office of the Committee was extended by a notification issued on 21-8-1952 till 20-9-1952. A point was raised that the continuance of the Committee after the expiry of its term of office was illegal and the life of the Committee could not be extended by the subsequent notification which was issued after the Committee's term of office had expired. These contentions were negatived on the merits, but at the end of the judgment the late Mr. Justice B.K. Kukherjea, as he then was, observed :

"No report was submitted during this period and mere 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, procedure irregularities of this characterr could not vitiate the final report which fixed the minimum wages!."

(the underlining (here into ' ') is ours)

These remarks are absolutely binding upon us and it seems to us that upon these remarks the view taken In the Madhya Pradesh and Calcutta High Courts tint if there is such an irregularity in the composition of the Advisory Committee, (tie issuance of a notification on the basis of the advice of that committee must be held illegal, cannot be sustained, nor can we hold that irregularities in the constitution and composition of advisory Hoards can never vitiate the subsequent notification. We are with respect, inclined to accept the view in between these two extreme views viz., the view expressed by Chief Justice Wanchoo in the Rajasthan case that there are irregularities and irregularities and sometimes an irregular to may be of a fundamental character and may vitiate the final notification and at other times it may be minor and so

fundamental and may not have the same result. It would all depend upon the circumstances of each case and the nature of the irregularity in that case.

33. In the present case, the irregularity, even assuming that there is any, is of an extremely minor sort in that the qualification of one or the other member thereof is being questioned. Moreover it has not been shown that there was no other independent person included in that Board.

34. The provisions of the Minimum Wages Act, particularly Sections 3, 4 and 5 have been challenged several times as unconstitutional and two such decisions of the Supreme Court are to be found, one in the Edward Mills' case, AIR 1955 Supreme Court 25, cited above and the other in *Bijay Cotton Mills Ltd. v. State of Ajmer*<sup>9</sup>, where the challenge was to Sections 3 and 4 under Article 19(1)(g) of the Constitution. One of the reasons why that challenge on the ground of unconstitutionally failed was that the Act contains provisions like these for consultation and fact finding and gives opportunity of representation to the parties concerned. These cases clearly establish that consultation with the Advisory Bodies has been made obligatory on the part of the Government concerned on all occasions of revision of minimum wages. But it does not necessarily follow that or consultation takes place any flaw in the constitution or composition of the Advisory Body must necessarily result in vitiating We notification issued under Section 3 of the Act fixing the rates of wages. On the other hand, we think that it would all depend upon the facts and circumstances of each individual case and the nature of the flaw or error pointed out in we composition and constitution of the Advisory Board or Committee. The first contention therefore must be negated.

35. Then we turn to the second point argued as to the date mentioned in the notification dated 26-12-1957 (annexure-A-1) as the date on which the proposals were to be taken into consideration. The notification which the State Government issued was in pursuance of the provisions of Section 5(1)(b). Under Section 5(1) it is provided that the State Government may before fixing or revising the minimum rates of wages either appoint a committee or committees and take their advice or by a notification in the Official Gazette publish its own 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". It is upon the words which we have just quoted from Section 5(1)(b) that the contention is based. The notification at annexure A-1 was as follows :

"..... and notice is hereby given that the said draft will be taken into consideration by the Government of Bombay on or after the 1st day of March, 1958".

Mr. Manohar says that this does not amount to specifying a date because Government has stated that it will take into consideration the proposals in the draft on or after the 1st day of March, 1958". The argument in the first place strikes us as technical in the extreme, and having regard to the fact that we are construing a piece of legislation for the benefit of the working class, we

would avoid a technicality if possible. But it seems to us that it is not necessary to fall back upon that view of the interpretation at all because, in our opinion, the notification issued directly falls within the terms of Section 5(1)(b) and strictly complies with it. To say that Government will take the draft proposals into consideration on or after the 1st day of March 1958 certainly amounts to specifying a date, namely, the 1st March 1958. That Government added that it would consider them further after that date should, in our opinion, make no difference to the fact that both the parties got an adequate opportunity to know and to "represent their cases on the proposals. The whole idea behind specifying a date as required by Section 5(1)(b) is that the persons likely to be affected by the draft proposals should be in a position to make a

<sup>9</sup> AIR 1955 SC 33

representation against the draft proposals and know till what date they have to make it, so that Government is precluded from taking a decision upon the draft proposals until the expiry of the date specified. There is however nothing in the statute which requires that Government should consider it on that very date and not thereafter. In fact, it seems to us that it will be impossible for Government to consider all the representations received on one and the same date, namely, the date specified.

36. On this point reference was also made to the remarks of the Division Bench in AIR 1961 Madhya Pradesh 182 at p. 185, column 2 :

"In order to preserve the right (given by clause (b) of Sub-Section 11) of Section 5, read with Sub-Section (2)) the provision must be strictly followed. The notification that was issued in this case on 18th August 1958 under Section 5(1) (b) omitted altogether to specify a date, it went further, and contrary to the express provision of clause (b) prescribed that all representations should be submitted within a period of two months from the date of the publication of the notification." (the words in brackets are ours)

The passage referred to itself indicates the circumstances under which the remarks were made. In that case, the notification failed to fix any date whatsoever. That was one reason why the notification was held bad. The second reason was that instead of fixing a date it said that representations should be submitted "within a period of two months from the date of the publication of the notification". Now, the section says that not less than two months' time should be given prior to the date of the notification, whereas the notification in the Madhya Pradesh case was published within the period of two months. Therefore, time of not less than two months was not given. That was the second reason why the notification was held to be bad. None of the two reasons operates in the instant case. Here a date has been specified and that date clearly gives much more than two months to the persons likely to be affected to make their representations, nor is there any period of time specified within which the representations can be made as in the Madhya Pradesh case. The Madhya Pradesh case therefore is distinguishable upon its own facts.

37. Reliance was next placed upon a decision of the Kerala High Court in *Vasudevan v. State of*

*Kerala*<sup>10</sup>, There the notification stated that the proposal would be taken into consideration "after two months from the date of publication of this notification" and that any representation that may be received before the expiry of the said period will be considered by Government. Here again the representations had to come in before two months had fully expired and therefore Section 5(1)(b) was infringed. Section 5(1)(b) requires that the Government notification should "specify a date, not less than two months from the date of the notification", it was in these circumstances that the Kerala High Court held :

"It has to be noted that under Sub-Section (2) of Section 5 the right to make representations extends to the date specified in the notification under Section 5(1)(b) and that that right cannot be confined to a date anterior to it."

<sup>10</sup> AIR 1960 Kerala 67

Here again the period of time was short by a day and therefore the notification was struck down. No doubt at the end of paragraph 6 there is a further remark by the Division Bench upon which great reliance was placed by Mr. Manohar :

"In other words, it is not possible for the Government to say that they will receive representations upto a particular date and that the proposals will be taken into consideration not on that date but on some other date thereafter."

It is upon this remark that all the argument on this point seems to have been really founded. That remark however appears to us an obiter remark because the earlier discussion in paragraph 6 was more than sufficient to decide the point raised before the Kerala High Court and the remark we have quoted with all respect, seems to have been inadvertently made.

38. We hold that the notification impugned in the present case is not bad Wider the provisions of Section 5(1)(b) or any other provision relating to the issuance of that notification.

39. Then we turn to the third and last point made on behalf of the petitioners. It will be noticed that the impugned notification is made to apply only to the Vidarbha region of the then State of Bombay (now Maharashtra State). Mr. Manohar's contention has been that having regard to the provisions of Section 3(1) of the Act, the notification could not be limited to the Vidarbha region which was only part of the then State of Bombay but could only be made in respect of the entire State. Section 3(1) of the Act was as follows :

"3 (1). The appropriate Government shall, in the manner hereinafter provided -

(a) fix the minimum rates of wages payable to employees employed -

(i) in an employment specified in Part 1 of the Schedule at the commencement of this Act, before the 31st day of December, 1959;

(ii) in an employment specified in Part 11 of the Schedule at the commencement of this Act, before the 31st day of December 1959; Provided that the appropriate Government

may instead of fixing minimum rates of wages under this sub-clause for the whole State, fix such rates for a part of the State or for any specified class or classes of such employment in the whole State or part thereof; and

(iii) in an employment added to Part 1 or Part 11 of the Schedule by notification under Section 27, before the expiry of one year from the date of the notification;

(b) review at such intervals as it may think fit, such intervals not exceeding five years, the minimum rates of wages so fixed and revise the minimum rates, if necessary.

\* \* \* \* \*

This was the section as it stood before the amending Act of 1961. After 1961 clause (a) of Sub-Section (1) of Section 3 has been amended and reads as follows :

"3 (1). The appropriate Government shall, in the manner hereinafter provided -

(a) fix the minimum rates of wages payable to employees employed in an employment specified in Part 1 or Part 11 of the Schedule and in an employment added to either Part by notification under Section 27 :

Provided that the appropriate Government may in respect of employees employed in an employment specified in Part 11 of the Schedule, Instead of fixing minimum rates of wages under this clause for the whole State, fix such rates for a part of the State, or for any specified class or classes of such employment in the whole State or part thereof."

In the present case we are concerned with the section as it stood before amendment; but we point to the amendment because it has a certain bearing upon the argument advanced.

40. Now, the contention is that acting under its powers under Sub-Section (1) of Section 5 the state Government could not fix minimum rates of wages only for one area of the State i.e. the Vidarbha area, but they should have been fixed for the entire State. The provision pointed out is the provision to clause (a) of Sub-Section (1) of Section 3. In that clause there are two sub-clauses and in Sub-clause (ii) where employments specified in Part 11 of the Schedule are referred to, the proviso shows that the appropriate Government may instead of fixing minimum rates of wages under this sub-clause for the whole State, fix such rates for a part of the State or for any specified class or classes of such employment in the whole State or part thereof. Mr. Manohar says that the very fact that the Legislature thought it necessary to enact this proviso to sub-clause (ii) shows that sub-clause (ii) could not justify the fixation of minimum rates of wages for a part of the State; otherwise the proviso was unnecessary. Of course, we are not directly concerned with sub-clause (ii). But the further argument is that in sharp contrast to sub-clause (ii), in sub-clause (i) there is no such proviso. Therefore, under sub-clause (i) with which we are concerned, the rates must be fixed for the entire State.

41. We do not think that the inclusion of the proviso at the end of sub-clause (ii) necessarily gives an indication that but for the proviso sub-clause (ii) would not justify the fixation of minimum

rates of wages for a part of the State. On the other hand, it seems to us that the proviso was incorporated by way of abundant caution and we say so upon a consideration of the Schedule to the Act and Parts 1 and 11 thereof. If one turns to the schedule and sees the nature of the industries mentioned in Parts 1 and 11, it will be clear that in Part 1 are mentioned employments which are not necessarily employments to be found in every part of the State. But part 11 deals with employments in agriculture, farming, horticulture, and raising of livestock, bees or poultry and so forth - all employments which may be found to be carried on in practically every part of the State. Now, it is to Part 11 that sub-clause (ii) applies and having regard to the nature of the employments in Part 11, the Legislature may well have thought that it could be argued that the notification must govern the entire State because agriculture is carried on in the entire State. Therefore, by way of abundant caution, the Legislature enacted the proviso permitting the State Government to fix minimum rates of wages for a part of the State only. It would not then follow that the absence of any proviso to sub-clause (i) indicates that under that sub-clause minimum rates of wages must be fixed for the entire State only.

42. Reference was next made to clause (a) of Sub-Section (1) of Section 3. In our opinion, all reference to, clause (a) of Sub-Section (1) of Section 3 is in the present case irrelevant. Clause (a) refers only to the fixation of wages, whereas clause (b) refers to reviewing minimum rates of wages so fixed and revising them. In the instant case the impugned notification reviewed and revised the minimum rates of wages and did not fix them for the first time. Therefore, any reference to clause (a) of Sub-Section (1) of Section 3 is out of place. The relevant clause is clause (b) of Sub-Section (1) of Section 3. Now, it is pertinent to notice that in clause (b) there is no limitation indicated; upon the power of the State Government to issue any notification when it is reviewing and revising the mini any notification when it is reviewing and revising the minimum rates of wages are once fixed for the first time and are only being reviewed and revised, it seems to us that the State Government would have the power to apply the revised rates of wages only to a part of the State. It need not apply them to the whole State, even assuming I that the view we have taken upon clause (a) is not correct.

43. The various points of challenge to the notification dated 14-6-1958 and to clauses 1 and 2 of the Schedule thereof fail. The petition is dismissed with costs.

Petition dismissed.