PATNA HIGH COURT

Sakhi Ram

Vs

Presiding Officer

Misc Judl. Cases Nos. 306 and 361 of 1962

(Kamla Sahai and Tarkeshwar Nath, JJ.)

08.09.1965

JUDGMENT

Kamla Sahai, J.

1. Miscellaneous Judicial Case No. 306 of 1962 arises out of Minimum Wages Act Case No. 6 of 1961 before the Labour Court, and Miscellaneous Judicial Case No. 361 of 1962 arises out of Minimum Wages Act Case No. 22 of 1961 before the same Court. Both these cases have been taken up together because the Labour Court has disposed of both the cases by one judgment and also because the points involved in both are the same. The applications, which were filed before the Labour Court, were both under Section 20 of the Minimum Wages Act, 1948 (hereinafter to be referred to as the Act unless the context shows otherwise). The Labour Court has upheld a preliminary objection taken by the opposite party, i.e., the management of the Motipur Zamindari Co. Private Ltd. (hereinafter to be referred to as the company), and has dismissed the applications.

2. It is necessary to mention some facts in order to appreciate the points which arise for consideration. There was a dispute between the management and the employees of the company. By notification No. III/DI-1000/57-13354, dated the 29th July, 1957, the Governor of Bihar referred the dispute between the management and the workmen to the Industrial Tribunal for adjudication. One of the matters in dispute was as follows :

> "What should be the wage of each of the categories of workmen ? Whether a time-scale of wages with provision for annual increment be provided for workmen ? What should be the rate of payment to the loading mazdoors for loading cane and such other purposes ?"

It is admitted on both sides that the adjudication was pending at the time when the applications under Section 20 of the Act were taken up for consideration by the Labour Court.

3. By notification No. VI/W3-1088/59, 1-4068. dated the 4th March, 1959, the Governor of Bihar fixed, within the meaning of Clause (iii) of Sub-Section (1) of Section 4 of the Act, the minimum rates of wages for the whole of Muzaffarpur District in respect of employees doing different classes of work in agriculture and in operations ancillary to agriculture. This notification

came into force with effect from the 1st April, 1959, which was the date of its publication in the Bihar Gazette. It is admitted by Mr. J. Krishna, the learned advocate for the petitioners, that this notification was issued during the pendency of the adjudication proceeding referred to under the notification of the 29th July 1957.

4. The Minimum Wages (Amendment) Act (XXXI of 1961) received the assent of the President of India on the 28th August, 1961. It was published in the Central Gazette on the 29th August. This Act inserted Sub-Section (2-A) in Section 3 of the main Act.

5. The petitioners filed the two applications under Section 20 of the Act on the 26th April, 1961. On the 28th November, 1961, the management of the company filed a petition before the Labour Court taking a preliminary objection that the applications did not lie, in view of the amending Act. On the 29th January, 1962, the petitioner filed a reply to the management's petition. After hearing the parties, the Labour Court upheld the preliminary objection, as I have already mentioned. The provisions of Sub-Section (2-A) of Section 3 of the Act may now be quoted :

> "(2-A) Where in respect of an industrial dispute relating to the rates of wages payable to any of the employees employed in a scheduled employment, any proceeding is pending before a Tribunal or National Tribunal under the Industrial Disputes Act, 1947 or before any like authority under any other law for the time being in force, or an award made by any Tribunal. National Tribunal or such authority is in operation, and a notification fixing or revising the minimum rates of wages in respect of the scheduled employment is issued during the pendency of such proceeding or the operation of the award, then, notwithstanding anything contained in this Act, the minimum rates of wages so fixed or so revised shall not apply to those employees during the period in which the proceeding is pending and the award made therein is in operation or, as the case may be, where the notification is issued during the period of operation of an award, during that period; and where such proceeding or award relates to the rates of wages payable to all the employees in the scheduled employment, no minimum rates of wages shall be fixed or revised in respect of that employment during the said period."

6. The Labour Court has held that, in view of this provision, the petitioners' applications under Section 20, claiming wages in accordance with the minimum wages fixed by the Government of Bihar in the notification dated the 4th March, 1959, cannot lie, and that they are not entitled to wages in accordance with that notification. The ground given by it is that, as admittedly the adjudication proceeding relating to the rates of wages payable to that petitioners was pending when the notification fixing the minimum rates of wages was issued by Government of Bihar, flip minimum rates so fixed cannot apply to these petitioners.

7. The first point which Mr. Krishna has urged is that the provisions of Sub-Section (2-A) of Section 3 inserted in the main Act by the amending Act cannot be given resrospective effect. He says that wages, according to the minimum rates fixed in the notification of the 4th March, 1959, had already become due to the petitioners for the period from the date of enforcement of that notification up to the date on which they filed their application under Section 20 of the Act, and that their right to receive wages at those rates could not he done away with by the amending

provision. It seems to me, however, that there is no substance in this point. The amending provision makes it perfectly clear that it has expressly been given overriding effect. The words which may be emphasized are "notwithstanding anything contained in the Act." This non-abstante clause leaves no room for doubt that although, in accordance with the main Act, the petitioners may have been entitled to receive wages at the minimum rates fixed by the Governor of Bihar they would not be so entitled if the provisions of sub Section (2-A) apply. I am therefore, clearly of the opinion that the provision must be given full effect.

8. The only other point which learned counsel has argued is that, if the provision has retrospective effect, it must be held to be discriminatory. He has urged that, as soon as the notification of the 4th March. 1959, came into force employers of Muzaffarpur District other than the company became liable to pay minimum wages at the rates fixed in that notification; but the company did not become liable to pay the petitioners at those rates. This, according to him, is a discrimination between different bodies of the same class. In my judgment, there is no force in this argument also. The reason for the classification is manifest. When there is no dispute pending adjudication by the Industrial Tribunal, the only authority which can fix minimum wages is the appropriate Government When an industrial dispute is already pending adjudication the minimum wages to be paid by the employer to the employees can be fixed by the Industrial Tribunal itself. This is the reason why Sub-Section (2-A) has been inserted by the amending Act. This provision envisages two classifications : one class consisting of employers and employees who have no industrial dispute pending adjudication, and another class consisting of employers and employees who have already a dispute pending adjudication. That being so, the provision does not offend against Article 14 of the Constitution, and can not be held to be discriminatory. It is well settled that there can be no class legislation but there is no objection if there is a reason able nexus between the classification and the object to be achieved. I may put the principle in the words of S.R. Das C.J., in *Bidi Supply Co. v. Union of India*[1], which are as follows.

> "It is now well-established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (2) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases : namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration".

For the reasons which I have given above the second point urged by learned counsel also fails.

9. The Labour Court has rightly upheld the preliminary objection of the management and there is no reason at all to issue a writ, order or direction for quashing the decision that Court. Both the applications are therefore, dismissed with consolidated costs of Rs. 100 in each case, payable fit the management of the company.

Tarkeshwar Nath, J.

10. I agree.

Applications dismissed.

Cases Referred.

[1] AIR 1950 SC 479