

PUNJAB AND HARYANA HIGH COURT

Jaswant Rai Beri

Vs

State of Punjab

(Bishan Narain , J.)

07.04.1958

JUDGMENT

Bishan Narain, J.

1. The Punjab Government on 28-2-1957 issued a notification under Section 5(2) of the Minimum Wages Act, 1948 (Central Act XI of 1948), fixing minimum rates of wages of skilled and unskilled employees in private presses. Some of the owners of printing presses have filed this petition under Article 226 of the Constitution challenging the validity of this notification.

2. The Minimum Wages Act of 1948 (hereinafter called the Act) provides a machinery for fixation of minimum rates of wages payable to employees in certain trades specified in Part I of the schedule attached to the Act and it will be convenient to give its relevant provisions to appreciate the objections of the petitioners. Section 27 of the Act empowers the appropriate Government to amend the schedule by adding any employment in respect of which the Government is of the opinion that minimum wages should be fixed and lays down the procedure which must be followed for so amending the schedule. Section 5 lays down the procedure for fixing minimum wages. The Government may appoint a Committee to hold an inquiry and then to advise it in the matter of fixing minimum wages or in the alternative the Government may publish its own proposals for the information of persons likely to be affected. After considering the advice of the Committee or the representations on the proposals of the Government as the case may be, the Government shall fix the minimum rates of wages in respect of the scheduled employment by notification in the official gazette. The constitution of the Advisory Committee is laid down in S, 9 of the Act. It shall consist of Government nominees who do not represent any interest in the employment concerned and an equal number of representatives of the employers and employees concerned. The independent persons should not exceed one-third of the total number of the Advisory Committee, and one of these independent persons shall be appointed its Chairman. Section 30 empowers the Government to make rules for carrying out the purposes of

the Act. The rules inter alia lay down the procedure for filling of casual vacancies on resignation and cessation and for restoration of membership. The rules also lay down the regulations to be observed in the meetings of the Committee.

3. The Punjab Government amended para I of the schedule to the Act by adding "employment in private presses" and this addition was notified in the official gazette of 29-2-1956 after having notified its intention to do so as laid down in Section 27 of the Act. The Government then issued a notification under Section 5 of the Act constituting the Committee for fixing minimum wages in respect of private presses. The Government nominated two independent persons and three persons each representing employers and employees. This Committee was constituted on 27-1-1956. Subsequently in January 1957 additional members were nominated increasing the representation of employers and employees to five each. It appears that the Committee held six meetings. The Committee made its report on 10-2-1957. The petitioners allege that the report was considered by the Labour Minister who increased the rates suggested by the Committee and thereafter the Chief Minister further increased them. The notification under Section 5(2) of the Minimum Wages Act fixing the rates was issued on 28-2-1957. The real grievance of the petitioners which was repeatedly emphasised before me is that they are owners of small presses and the uniform rates fixed by the Government are so high that small presses are likely to be squeezed out of business and that they are likely to lose their source of livelihood.

They have challenged the validity of the Constitution of the Advisory Committee and of its proceedings as well as the validity of the impugned notification.

4. The learned counsel first argued that the Act did not apply to printing presses. It was conceded that by the notification dated 29-2-1956 issued under Section 27 of the Act the Government added to Part I of the schedule "14. Employment in private Presses" and that this amendment was effected in accordance with law. It is, however, argued that "private presses" do not refer to printing presses.

The word "press" means in ordinary parlance "an instrument or machinery by which pressure is applied", and its dictionary meaning includes a printing press. The word "private" is obviously intended to convey the idea of presses owned by private persons as distinct from the Government presses. The printing presses understood the expression in this sense; otherwise the employers' representatives in the Committee would have raised this objection there and admittedly this was not done.

The Committee made inquiries from various employers in this trade including two of the petitioners (vide para 19 (xvi) of the written-statement) and they gave their views without stating

that the Act did not apply to their trade. Speaking for myself, I have always considered the word "press" to mean "printing press" unless the contents show some other kind of press. This contention is therefore rejected.

5. It was then argued on behalf of the petitioners that the Advisory Committee was not properly constituted, because (1) proper persons to represent the categories mentioned in Section 9 of the Act were not appointed, (2) two of the employers' representatives never attended the meetings of the Committee, and as under Rule 9 they had ceased to be members, the Committee was not properly constituted at the time of its report and the employers* case was not adequately and fairly put before the Committee, and (3) the Labour Commissioner could not be appointed as Chairman of the Committee under Section 9 of the Act. The relevant portion of the notification constituting the Committee reads-

"In exercise of the powers conferred by Clause (a) of Sub-section (1) of Section 5 of the Minimum Wages Act, 1948 (Central Act XI of 1948), the Governor of Punjab is pleased to appoint the following persons to form a Committee to hold inquiries and advise the Government in fixing Minimum rates of wages for the first time in respect of the employment in private presses in Punjab, an employment added to the schedule by Punjab Government notification No. 2367-LP-56/9080 dated the 29th February, under the said Act-

"Government nominees who do not represent Any interest'-

(1) Labour Commissioner, Punjab, Chairman & Secretary.

(2) Shri D. D. Puri, M. L. A., Yamunanagar.

'Employers' representatives' (1) Shri R. R. Shanna, General Manager, The Tribune, Ambala Cantt.

(2) Shri Ishar Singh, Majhail, Editor, The Daily Vartman, Katra Jallianwala Bagh, Amritsar.

(3) Shri Yash Pal, M. L. C., Vir Milap Press, Jullundur City.

'Empoyees Representatives'.

(1) Shri Satya Pal Bhushan, 572 Hussainpura Amritsar.

(2) Shri Baldev Singh, Secretary, Press Mazdoor Union, Jullundur City.

(3) Shri Dyal Singh Bhatia, Lino Type Operator, C/o The Tribune, Ambala Cantt. Subsequently two persons representing the employers and two representing employees were added as members

of the Committee.

6. Now under Section 5 of the Act the Govt. appoints the Advisory Committee to hold inquiry and to advise the Government regarding minimum wages. Section 9 provides that the Committee is to be constituted by the Government by nominating independent persons along with equal number of persons representing employers and employees. The petitioners' objection is that the Labour Commissioner being an official cannot be considered to be an independent person, and accordingly could neither be nominated as member of the Committee, nor could he be appointed its Chairman, and further that Shri Ishar Singh Majhail could not represent the employers as he did not own any press.

Their next objection to the Committee is that Shri D. D. Puri and Shri S. N. Khosla (appointed subsequently) had under the rules ceased to be members of the Committee in view of their absence from its meetings, and, therefore, the advice tendered by it cannot be said to be by the Committee as a whole.

7. There is no substance in these contentions. 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.

8. This brings me to the appointment of Shri Ishar Singh Majhail. He has filed an affidavit in this Court that he never owned any press and that he was only the editor of The Daily Vartman. He never protested that he could not and did not represent the owners of private presses and therefore could not be appointed as such to the Advisory Committee.

As an editor, he must be employing workmen or at least had a voice in the matter. An editor

would ordinarily know the employment conditions from the point of view of employers. In any case, the Act does not lay down that only employers can be nominated to the Advisory Committee and that no other person can represent them.

In the absence of any protest by Shri Ishar Singh Majhail or by other members representing the employers in the committee, it is impossible to hold that this appointment of Shri Majhail was not in accordance with law. It is not the petitioners' case that the Government made this appointment mala fide with ulterior object of prejudicing the employers' case. I, therefore, overrule this objection.

9. The petitioners' objection relating to the absence of Shri D. D. Puri and Shri S. N. Khosla from the meetings of the Committee is also without any force. One of the petitioners has filed an affidavit in this Court in these proceedings and therein he has stilted that the Advisory Committee held six meeting in all on 17-10-1956, 6-11-1956, 17-1-1957, 23-1-1957, 30-1-1957 and 7-2-1957.

Now, Shri D. D. Puri never attended any of these meetings and under Rule 9 (1) he ceased to be a member of the Committee after 17-1-1957. The Government's case is that Shri D. D. Puri continued sending information of his inability to attend the meetings of the Committee and the members never raised any objection. Now, Rule 9 (2) enables a defaulter under Rule 9 (1) to apply for restoration of his membership.

Shri D. D. Puri never took this step. The vacancy therefore occurred, and it was the duty of the Chairman to have sent the necessary information to the Government to enable it to fill up the vacancy under Rule 9 (3). The Chairman did not take this step. Shri S. N. Khosla ceased to be a member of the Committee after the meeting which took place on 7-2-1957 under the same rule. No meeting, however, took place thereafter, and only the report was submitted on 10-2-1957.

The question arises whether the omission to fill these vacancies vitiates the report to the extent that the notification under Section 5(2) must be held to be invalid. In my opinion, this consequence does not follow. Rules under Section 30 have been framed to regulate the meetings of the Committee. These rules provide for quorum and method of voting and enables decision to be taken by majority.

It follows that the Committee may give its report even when all the members of the Committee have not attended all its meetings. It is also unnecessary that all the members of the Committee should sign the report. Under Rule 17, proceedings of a Committee have to be forwarded to the Government and this rule enables the Government to gauge the views expressed by each category of the members.

The Committee appointed under Section 5(1) is only an advisory body and the Government is not bound to accept any of its recommendations. The object of this provision is to enable the Government to collect data required for fixing the minimum wages. It is not the petitioners' ease that the absence of these members prejudiced them. In spite of the absence of these two persons the employers were adequately represented in the Committee.

Moreover, the Committee's recommendations were not followed in the present case and the minimum wages suggested by it were increased by the Government according to the petitioners' allegations. Therefore it cannot be said that the Committee did not properly and adequately represent the interests of the employers. In a case where the term of the Committee had expired before it made the report, the Supreme Court held that it was only a procedural irregularity which did not vitiate the report: vide *Edward Mills Co. Ltd., Bcawar v. State of Ajmer*, (S) AIR 1955 SC 25 (A).

At best the petitioners have succeeded only in pointing out certain procedural irregularities which, in my opinion, do not substantially affect the fixation of minimum wages. In any case these irregularities do not vitiate the fixation of minimum wages by the Government after taking into consideration the advice given by the Advisory Committee. This objection therefore fails.

10. It was then urged on behalf of the petitioners that the notification fixing the minimum rates of wages was invalid. The relevant portion of the notification reads-

"The recommendations of the Committee constituted under Section 5(1)(a) of the Minimum Wages Act, 1948, in respect of private presses having been duly considered, the Governor of Punjab in exercise of the powers conferred by Clause (a) of Sub-section (1) of Section 3 read with Sub-section (2) of Section 5 of the said Act, is pleased to fix the following minimum rates of wages (including dearness allowance) within the meaning of Clause (ii) of Sub-section (1) of Section 4 of this Act for employees in private presses in this State." The notification then proceeds to name twelve categories of unskilled labour and nine categories of semi-skilled labour and fixes minimum wages of each category. The validity of this notification is challenged on the grounds (1) that it contravenes the provisions of Section 4 of the Act, (2) that the minimum rates were fixed without considering the paying capacity of small presses, and (3) that the Government had no power to enhance the rates suggested by the Advisory Committee. I now proceed to discuss these objections seriatim.

11. The notification fixes "minimum rates of wages (including dearness allowance) within Section 4(1)(ii)". It is argued that there is no mention of dearness allowance in this provision of law. This argument is devoid of any force. It is true that the Act makes no specific mention of the

term "dearness allowance", but it is well-known that it refers to an allowance paid on rise of cost of living.

Section 4(1)(ii) lays down that minimum rates may consist of a basic rate of wages with or without the cost of living allowance. In the present case an inclusive rate has been fixed including a basic rate of wages and cost of living allowance. This, in my opinion, is in accordance with law. It was urged that the notification does not indicate the intervals at which the dearness allowance is to be adjusted and is therefore invalid, and for this purpose reliance was placed on *State of Madras v. Ramachandra Rao*, AIR 1957 Andh Pra 565 (B).

In that case, however, the notification fixed the rate under Section 4(1)(ii) which specifically lays down that the minimum rate may consist of a basic rate of wages and a special allowance at a rate to be adjusted at such intervals and in such a manner as the Government may direct so as to bring the same in record with the cost of living allowance as far as possible.

In the present case the Government has chosen to fix the minimum rate as laid down in Section 4(1)(ii) wherein a direction of adjustment at certain intervals is not necessary. The present case may, however, also be held to be covered by Section 4(1)(ii) which enables Government to fix all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

It is not necessary to decide whether Section 4(1)(ii) or Section 4(1)(iii) applies to the present fixation of rates because even a wrong mention of the provision of law in the notification would not invalidate it. Whether the rate is fixed under Section 4(1)(ii) or 4(1)(iii) the fixation of an all-inclusive rate of minimum wages is valid. This contention therefore is rejected.

12. Shri Harbans Singh Doabia then urged that the fixation of minimum rates without considering the paying capacity of small presses is invalid. It is, however, conceded that the rate fixed is not beyond the capacity of large presses. This contention, however, was not raised in the writ petition in this form.

The petitioners counsel also argued that presses should have been divided into different categories and their minimum rates should have been fixed separately for each category and that the fixation of uniform rates for all types of presses is unjust and contrary to the intention of the legislature. If these contentions were upheld, then the result would be that the minimum rates of wages would be fixed according to the capacity of the weakest or marginal firms in the employment concerned and the break-up of wages in a trade or employment would vary according to the paying capacity of various categories of firms engaged in that business.

These arguments are really based on the doctrine of laissez faire and on the notion that there should be absolute freedom of contract between the employers and the employees. These principles are now outmoded and have no application to a welfare state like ours as is clear from the provisions of the Act now under consideration as well as from the entire body of labour legislation.

The directive principle embodied in Article 43 of the Constitution also indicates the same conclusion. The workmen of our country are particularly exposed to exploitation as on account of the present state of economic development of our country employers can always get workers on starvation wages. In my view both these arguments are based on conceptions which are foreign to fixation of minimum rates of wages.

Minimum rates are fixed by Government to avoid exploitation of workers who are not in a position to bargain effectively for minimum WAGES, and the basic principle of a welfare State is that no person should be placed in a position to exploit another person and that every citizen should get at least economic justice. Every employee is entitled to a minimum living wage although what is a minimum living wage depends to a great extent on the economic wealth and development of a country at a given time.

This concept must necessarily change as the country's wealth increases. The Supreme Court in "Crown Aluminium Works v. Their Workmen, AIR 1958 SC 30 (C), has observed-

"There is, however, one principle which admits of no exceptions. No industry has a right to exist unless it is able to pay its workmen at least a bare minimum wage. It is quite likely that in under-developed countries where unemployment prevails on a very large scale, unorganised labour may be available on starvation wages; but the employment of labour on starvation wages cannot be encouraged or favoured in a modern democratic welfare State.

If an employer cannot maintain his enterprise without cutting down the wages of his employees below even a bare subsistence or minimum wage, he would have no right to conduct his enterprise on such terms."

If the petitioners cannot pay the minimum wages fixed by the Government, then they should either improve the organisation of their businesses so as to be able to do so or go out of the industry.

13. The learned counsel for the petitioners invited my attention to the recent decision of the Supreme Court under the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (Act XLV of 1955). In this case, which has not yet been reported Express

Newspaper (Private) Ltd. v. Union of India, since reported in AIR 1958 SC 578) (D), their Lordships set aside the decision of the Wage Board constituted under the Working Journalists Act on the ground that it had fixed the wages without taking into consideration the paying capacity of the newspaper industry as a whole or of an individual unit and thereby contravened Section 9 of the Working Journalists Act. Section 9(1) of the Act reads-

"In fixing rate of wages in respect of working journalists, the Board shall have regard to the cost of living, the prevalent rates of wages for comparable employments, the circumstances relating to the newspaper industry in different regions of the country, and to any other circumstances which to the Board may seem relevant."

It will be noticed that this section lays down various matters that must be considered by the Board before fixing wages. These matters are wide enough to include consideration of paying capacity of the employers in the newspaper industry. It follows that under that Act fair and reasonable wages are to be fixed after taking into consideration inter alia the capacity of the employers and the requirements of the working journalists.

These considerations have no application to the case where minimum rates of wages in an industry have to be fixed and it is for this reason that the Minimum Wages Act does not contain any provision like Section 9(1) of the Working Journalists Act. It was not argued before me that the rates fixed in these employments were unreasonably high or that they were higher than those found in other employments involving similar kinds of work. The judgment of their Lordships of the Supreme Court therefore has no application to the present case.

14. Finally, the validity of the notification was challenged on the ground that the Chief Minister had no jurisdiction to increase the rates fixed by the Advisory Committee or those fixed by the Labour Minister. It was argued that the Government was hound to accept the advice tendered by the Advisory Committee.

This argument is contrary to Section 5(2) which lays down that the Government shall fix the minimum rates of wages after considering the advice of the Committee. Under this provision of the statute the Government is not bound to accept the Committee's recommendation, and it is not the petitioners' case that the Committee's report was no taken into consideration before the notification in dispute was issued.

As regards the advice tendered by the Minister, to the Governor, it is conceded that the notification has been issued in the name of the Governor of the Punjab and that it has been authenticated in accordance with law (Article 166 of the Constitution). The Government has therefore fixed the minimum rates in accordance with law, and it is not open to this Court to

inquire as to what advice the particular Minister or the Chief Minister tendered to the Governor.

15. The learned counsel half-heartedly argued that if it is open to the Government to depart from the advice tendered by the Advisory Committee, then Section 5(2) contravenes Article 19(1)(g) of the Constitution. This matter, however, has been authoritatively decided by the Supreme Court in *Bijay Cotton Mills Ltd. v. State of Ajmer*, (S) AIR 1955 SC 33 (E), wherein it has been held that the Government's power to fix minimum wages is not in contravention of Article 19(1)(g) of the Constitution and that it is protected by Article 19(6).

16. All the points raised in the petition were not argued before me. I have discussed the points raised by the learned counsel for the parties in the course of arguments.

17. For all these reasons, I dismiss this petition with costs. The petitioners shall pay the costs of the Government and those of the employees separately. Counsel's fee Rs. 100/- in each case.