

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2007

CORAM

THE HON'BLE MR.AJIT PRAKASH SHAH, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE V.RAMASUBRAMANIAN

W.P.No.9182 of 2007

&

M.P.Nos.1 and 2 of 2007

Tamil Nadu Spinning Mills Association,
No.24, 11th Cross Street,
Thiruvalluvar Nagar,
Spencer Compound, Dindigul,
Rep. By its Chief Advisor
Mr.K.Venkatachalam ...Petitioner.

Vs.

The State of Tamil Nadu,
Rep. By its Secretary to Government,
Labour and Employment Department,
Fort St.George,
Chennai - 9. ...Respondent

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India
for a declaration declaring G.O.Ms.No.1 of Labour and
Employment Department, dated 03.01.2007 as unlawful and ultra
vires the Constitution of India since it is opposed to the powers
conferred on the respondent Government under the provisions of
the Minimum Wages Act, 1948.

For Petitioner :: Mr. R.Muthukumaraswamy,
Senior Counsel

For Mr.R.S.Pandiyaraj.

For Respondent :: Mr. Rajakalifulla, Govt. Pleader
Assisted by

Mr.V.R.Thangavelu, Govt. Advocate.

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O R D E R

(Order of the Court was made by the Hon'ble The Chief Justice)

The petitioner is an association of yarn spinning mills in the State of Tamil Nadu. The petitioner association is espousing the cause of the spinning industry and redressing the grievances of its members through various legal avenues. In the present writ petition, the petitioner has prayed for a declaration to declare the G.O.Ms.No.1, Labour and Employment Department, dated 03.01.2007, by which the "Employment in Textile Mills" is included in Part I of the Schedule to the Minimum Wages Act, 1948 (Central Act XI of 1948), as unlawful, ultra vires, and amounting to abuse of power conferred under Section 27 of the said Act.

2. For the sake of convenience, we narrate briefly the material facts leading to the filing of this writ petition. The object of the Minimum Wages Act, 1948 (herein after referred to as the "Act"), as stated in the preamble, is to provide for fixing minimum rates of wages in certain employments. The schedule attached to the Act, specifies, under two parts, the employments in respect of which the minimum wages of the employees can be fixed; and Section 27 authorises the "Appropriate Government", after giving three months' notice of its intention to do so, to add to either part of the schedule, any other employment, in respect of which it is of the opinion that minimum rates of wages should be fixed under the Act. It appears that the State Government received complaints from several trade unions and also from private individuals that some of the textile mills in the State are engaging young women in employment, designating them as "apprentices" and are paying them absolutely meager amount as wages. This amount is called as "stipend" and after three years of such engagement, these young women are discharged from their services, on the ground that their training period is over. The scheme of engagement of the young women is generally called as "Mangalya Thittam" or "Camp Coolie Scheme". It appears that the textile mills are recruiting women under "Camp Coolie Scheme" mainly from the poor families from the villages for petty wages of Rs.30/- to Rs.35/- per day and at the end of the three-year period they are sent out of employment by paying a lump sum amount ranging between Rs.30,000/- and Rs.40,000/-. It appears that this method of engagement of women, which was originally followed in the textile mills in one or two places of the State has started spreading, and is now prevalent in many of the textile mills in Dindigul, Theni, Madurai and Coimbatore Districts. The wide prevalence of this method, was brought to the notice of the government through a large number of complaints to the Labour Department. The government after considering all these facts, decided to fix minimum wage for the employment in textile mills. It appears that in the textile mills in the State of Tamil Nadu more

than one lakh workers are employed and the government was of the opinion that if minimum wages are fixed for this employment, the exploitation of young women could be avoided to a great extent. Therefore, as a first step the government in G.O.Ms.No.18, Labour and Employment, dated 09.02.2005 issued a preliminary notification for the inclusion of the "Employment in Textile Mills", in the schedule to the Act, as minimum wages could be fixed only for the employments included in the schedule to the Act.

3. As per Section 27 of the Act, three months time from the date of publication of the above said preliminary notification in Part II - Tamil Nadu Government Gazette, dated 30.03.2005 was given for filing of any objections or suggestions regarding the proposal. The Government after considering all the objections/suggestions felt that the term "textile mills" is a generic term which is used in common parlance to describe composite mills, spinning mills, weaving mills and open ended mills, etc. The government also found that there was a tendency on the part of the employers to split the various processes of the textile mills and have it done at different premises. In order to describe with precision the types of textile mills and the types of processes in the textile mills for which minimum wages could be fixed, it proposed to modify the term "Employment in Textile Mills" as follows:

"Employment in Textile Mills including Composite Mills, Spinning Mills, Weaving Mills, Open Ended Mills and the various processes in the above said mills like Blow Room, Carding, Drawing, Fly Frames, Spinning, Winding, Doubling, Reeling, Packing, Warping-sizing and other processes in the Textile Mills, whether carried out singly or together".

4. Therefore, in the above circumstances, the government once again issued a fresh preliminary notification in G.O.Ms.No.67, Labour and Employment, dated 08.08.2006, in which, it cancelled the earlier preliminary notification dated 09.02.2005 and gave three months time for filing objections/suggestions. After considering the objections/suggestions so received, the government decided to confirm the preliminary notification dated 08.08.2006 without any modification, and published it in G.O.Ms.No.1, Labour & Employment Department, dated 03.01.2007, which is impugned in the present writ petition.

5. Mr.R.Muthukumaraswamy, learned Senior Counsel appearing for the petitioner association raised three submissions before us;

(i) that the legislative policy or the standard for exercise of power under Section 27 is to prevent sweated labour as well as exploitation of unorganized labour, and it was mandatory to form an opinion as to the necessity to bring textile mills under the schedule to the Act, but in the present case there is practically no

material to show that there was any formation of opinion that necessitates the inclusion of textile mills in the schedule;

(ii) that in view of the definition of the word "Appropriate Government" contained in Section 2(b) and also in view of the fact that the textile industry is included in the first schedule to the Industries (Development and Regulation) Act, 1951, the

"Appropriate Government" in respect of the textile industry is the Central government and thus, the impugned notification issued by the State Government is without jurisdiction; and

(iii) that in view of the bar contained in Section 3(2A) of the Act, it is not permissible for the State government to fix the minimum rates of wages in respect of the scheduled employment when any industrial dispute relating to the rates of wages payable to the employees working in the scheduled employment is pending before the Tribunal or the National Tribunal under the Industrial Disputes Act, and therefore, the issuance of notification under Section 27 of the Act would be an exercise in futility as much as the State Government will not be able to fix the minimum wage in respect of the textile workers, in view of the pendency of the proceedings before the special tribunal.

6. Re: Contention (i)

Mr.R.Muthukumaraswamy, learned Senior Counsel for the petitioner strenuously contended that the power of the State Government under Section 27 of the Act is a conditional one. The legislative policy or the standard for the exercise of power under Section 27 is ordinarily to prevent sweated labour or exploitation of unorganized labour. He submitted that insofar as the textile industry in the State of Tamil Nadu is concerned, from time to time, references have been made to the Tribunal for fixation of the wages of the textile workers, and from time to time, awards have also been passed, and last such award (K.Natarajan Award) was passed on 29.11.1996. Learned Senior Counsel urged that it is mandatory for the State Government to form an opinion as to the necessity to bring textile mills under the schedule of the Act with proper justification, since it is a conditional exercise of power guided by legislative policy. According to him, there is no material on record to indicate that there was formation of opinion by the Appropriate Government for the inclusion of textile mills in the schedule to the Act. Therefore, according to him, the impugned notification under Section 27 of the Act is manifestly vitiated by total non-application of mind and the notification is clearly in violation of the legislative policy.

7. We find absolutely no merit in the above submissions of the learned Senior Counsel. In the first instance, there is no restriction placed upon the powers of the government to include in the list only such categories of labour which can be characterized as sweated labour. In fact, the Act itself does not lay down any such restriction anywhere. Merely because the items mentioned in the

schedule show that it comprises sweated labour, it does not necessarily follow that no minimum wages can be fixed in regard to labour in general, which cannot actually be sweated labour. In *Edward Mills Co. Ltd. Vs. State of Ajmer*, AIR 1955 SC 25 the Supreme Court rejecting the contention that the power under Section 27 of the Act is totally unguided, and no principles prescribed, and no standards laid down, which could furnish an intelligent guidance to the administrative authority in making the selection, clearly held that the delegation of power under Section 27 of the Act is valid. B.K.Mukherjea, J. speaking for the Bench observed:

"The 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 facts that the list of trades has been drawn up in the schedule attached to the Act but 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 is not already included in the list. We do not think that in enacting Section 27 the legislature has in any way stripped itself of its essential powers or assigned to the administrative authority anything but an accessory or subordinate power which was deemed necessary to carry out the purpose and the policy of the Act." (emphasis supplied)

8. The Statement of Objects and Reasons of the Act gives two conditions under which minimum wages could be fixed. It could be either in the specific employment where sweated labour is involved or where the chances of exploitation of labour is present in the

industry. The workers in the textile industry cannot be said to be non-sweated labour. It is not a white-collar job. The exploitation of women labour in textile mills in Tamil Nadu was brought to the notice of the government. As already seen the government had received complaints from several trade unions and also from private individuals that many of the textile mills in the State are engaging young women, giving them the designation of "apprentice" and are paying them a very meager amount as wage, and called that amount as "stipend", and after the expiry of three years discharging these young women on the ground that their training period is over. In fact, in W.P.No.27362 of 2007 (The District Anna Panchalai Thozhilalar Sangam, Dindigul Vs. The State of Tamil Nadu, Rep. By its Chief Secretary) the plight of the young female workers in the textile mills was brought to the notice of the Court. A Division Bench of this Court, after taking notice of the prevalence of the "Camp Coolie System" in large number of textile mills, by its order dated 03.10.2007, directed constitution of District Monitoring Committees to carry out inspection of the mills and to submit report to the Registrar General of this Court, with appropriate recommendation for the regularization of the concerned female employees and payment of their regular wages. Section 27 of the Act clearly empowers the "Appropriate Government" to add items to the schedule and it would be open to the "Appropriate Government" to adopt such a course if it is intended to achieve the object with which the impugned notification has been issued.

9. Re: Contentions (ii) & (iii)

Mr.R.Muthukumaraswamy, learned Senior Counsel appearing for the petitioner association submitted that the "Appropriate Government" is the Central Government in respect of the employment in textile mills, and not the State Government, and therefore, the impugned notification is without jurisdiction. Section 2(b) of the Act defines "Appropriate Government" to mean that in relation to any scheduled employment carried on by or under the authority of the Central Government or a railway administration or in relation to a mine, oil-field, or major port, or any corporation established by a Central Act, the Central Government, and in relation to any other scheduled employment, the State Government. The textile industry is not carried on by or under the authority of the Central Government or the other authorities mentioned therein. Therefore, it is only the State Government which is the "Appropriate Government" for the employment in the textile mills. So far as the powers under Section 27 of the Act are concerned, the inclusion of the textile industry as item 23 in the Schedule I to the Industries (Development and Regulation) Act, 1951 does not make it as one established under the authority of the Central Government and the inclusion of the textile mills in the said Act merely empowers the Central Government to regulate the said industry. The last submission of the learned Senior Counsel is based on Section 3 (2A) of the Act, which

contemplates that where a wage dispute is referred to a Tribunal or National Tribunal the "Appropriate Government" should not fix the minimum wage in respect of the employment in question. In the case on hand, the "Appropriate Government" has not yet fixed the minimum wages in respect of the textile industry. The challenge in the writ petition is only to the notification under Section 27 of the Act, whereby the textile industry has been included in the Part I of the Schedule to the Act. The pendency of the proceedings before the Special Tribunal has no bearing upon the exercise of the power by the Appropriate Government under Section 27 of the Act.

10. In view of the foregoing discussions, the writ petition fails, and accordingly, dismissed with costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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Copy to:-

The Secretary to Government,
Labour and Employment Department,
Fort St.George, Chennai - 9.

1 cc to Government Pleader, Sr. 65821
1 cc to Mr.R.S. Pandiaraj, Advocate, SR. 65762
1 cc to Government Pleader, Sr. 61755

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