

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA,
MANIPUR, TRIPURA, MIZORAM AND ARUNACHAL PRADESH)

SHILLONG BENCH

W.P.(C) No. 339(SH) of 2009

All Garo Hills Muster Roll
Workers Union
Represented by its General Secretary
And President,
Arai Mile, Tura
West Garo Hills :: Petitioner

-vs-

The State of Meghalaya
Represented by its Commissioner
and Secretary,
Labour Department, Shillong :: Respondent

W.P.(C) No. 344(SH) of 2009

1. Meghalaya PWD Muster Roll
Workers, represented by its
Secretary.
2. PHE Department Muster Roll
Workers, Shillong, Meghalaya,
Represented by its Secretary.
3. Meghalaya Forest Department
Muster Roll Union,
Represented by its Secretary.
4. Shillong Municipal Manual Workers
Union, represented by its Secretary. ::
Petitioners

-vs-

The State of Meghalaya
Represented by its Commissioner
and Secretary,
Labour Department, Shillong :: Respondent

BEFORE
THE HON'BLE MR JUSTICE T VAIPHEI

Advocate for the Petitioner : Mr AS Siddique,
Mr R Kar,
Ms.S Bhattacharjee,
Ms SG Momin, Advs.

Advocate for the Respondents : Mr B Bhattacharjee, GA

Date of hearing : 28.08.2012

Date of judgment and order : 11-09-2012

JUDGMENT AND ORDER

The sole question for consideration in these two writ petitions is, whether the recommendation of the Advisory Board constituted under Section 7 of the Minimum Wages Act, 1948 ("the Act" for short) for revising minimum rates of wages is binding upon the State Government? The writ petitions are filed by the All Garo Hills Muster Rolls Workers Union, Meghalaya PWD Muster Roll Workers, PHE Department Muster Roll Workers, Meghalaya Forest Department Muster Roll Union and Shillong Municipal Manual Workers, who are represented by their respective Secretaries. In accordance with the mandates of the Act, the State-respondents issued the Notification dated 3-5-2007 under Section 7 constituting the State Minimum Wages Advisory comprising of Government employers and employees for revising the rates of minimum wages for various employees. A Sub-Committee was, however, constituted by the Advisory Board under the Chairmanship of the Labour Commissioner, Meghalaya for determining the procedure, etc. for fixing/revising the rates for the minimum wages. The Sub-Committee, after considering the rates of minimum wages of the North Eastern States as well as other States,

the consumer price index furnished by the Director of Economics & Statistics, the proposed revised rates of the Central Government and the circulars of the Central Government on rates of minimum wages for Meghalaya, submitted its report to the Advisory Board on 14-10-2008. On the basis of the report of the Sub-Committee, the Advisory Board, after detailed deliberation, recommended the revised rates of minimum wages for the three categories of workers as follows:

(1) Unskilled labour	-----	Rs.100/- per day.
(2) Semi-skilled labour	-----	Rs.110/- per day.
(3) Skilled labour	-----	Rs.125/- per day.

2. The Advisory Board, while the recommendation, had taken into account (i) the Consumer Price Index furnished by the Director of Economics & Statistics for the period from April, 2003 to March, 2008 taking the average increase as 42%, (ii) the rates of minimum wages of other States, (iii) the proposed revised rates of the Central Government, (iv) circular of the Central Government on rates of minimum wages for Meghalaya, (v) National Minimum Floor level wages which is Rs.80/- per day since September, 2007, the local conditions prevailing in the State, the capacity of the employers to pay, poverty line, influx of illegal migrants, special considerations to unskilled workers who constitute majority of the workers, etc. The Board also recommended the effective date for implementation of the revised rates to be 1st January, 2009 which would be for a period of three years to be clearly indicated in the Government Notification. The proposed revised rates were then notified inviting objections or suggestions from affected parties within 60 days. After the expiry of 60 days, the recommendation together with the objections/suggestions received from four organizations was placed before the

State Cabinet for consideration. The State Cabinet, however, fixed the revised rates for unskilled labour at Rs.100/- per day, for semi-skilled labour at Rs.120/- per day and for skilled labour at Rs.140/- per day, but the effective date for implementation of the revised rates was 24-8-2009 when it came to be published in the official Gazette.

3. Mr. R. Kar, the learned counsel for the petitioners, points out that the State-respondents had issued the notification dated 1-6-2004 fixing the minimum wages with effect from 1-4-2003, thereby necessitating the review at an interval not exceeding 5 years under Section 3(1)(b) of the Act, but in revising the minimum rates with effect from 24-8-2009 instead of 1-4-2008, the State-respondents have contravened Section 3(1)(b) which mandates such revision/review at an interval not exceeding 5 years: this breach of a statutory provision alone is sufficient to annul the impugned notification. It is contended by Mr. R. Kar, the learned counsel for the petitioners, that inasmuch as the State-respondents modified the proposed revised rates recommended by the Advisory Board, the legitimate expectation of the petitioners has been defeated. He further submits that the recommendation of the Advisory Board constituted under Section 7 of the Act about the effective date for implementation of the proposed revised rates as well as the period of three years for its enforcement whererafter the rates are again to be revised, could not have been deviated from by the State-respondents since such recommendations is binding upon them. By deviating from such recommendation of the Advisory Board, argues the learned counsel, the State-respondents have not only nullified the very mechanism provided for in the Act for revising the minimum wages

but also frustrated the very aims and objects of a social welfare legislation like the Act. He, therefore, urges this Court to quash the impugned notification dated 24-8-2009 and direct the respondent authorities to abide by the recommendations of the Advisory Board.

4. On the other hand, Mr. B. Bhattacharjee, the learned counsel appearing for the State-respondents, supports the impugned notification and submits that the recommendations of the Advisory Board is not at all binding upon the State-respondents, who, after taking all aspects into consideration, re-fix the revised rates by modifying the recommendations of the Advisory Board, which does not warrant the interference of this Court. He, therefore, submits that the writ petition is devoid of merits and is liable to be dismissed. He presses into service the decision of the Patna High Court in ***Chakradharpur Bidi and Tobacco v. State of Bihar, 1997 (2) BLJR 1194*** to fortify his submission.

5. In so far as the first contention of the learned counsel for petitioner is concerned, he appears to have overlooked the proviso to Section 3(1)(b) of the Act, which clearly permits the State-respondents from reviewing the minimum rates even after the expiry of the said period of five years. Therefore, his first contention fails. Coming now to his second contention, Section 5 says that in revising minimum rates of wages fixed for the first time under the Act, the appropriate Government has the power to either appoint as many 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 by notification in the Official Gazette publish its proposals for the information of the affected parties 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) thereof provides that after considering the advice of the committee or committees so constituted or all representations received by it before the date specified in the notification under clause (b) of that sub-section (2) of Section 5, the appropriate Government can issue a notification in the Official Gazette fix or revise the minimum rates of wages in respect of each scheduled employment and unless such notification otherwise provides, revised rates are to come into force on the expiry of three months from the date of its issue. In this context, the proviso to clause (b) of sub-section (2) of Section 5 and Section 7 are important which shall be reproduced ad verbatim below:

“5 Procedure for fixing and revising minimum wages.— (1)

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(2)	**	**		**

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.”

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7. Advisory Board.— For the purpose of co-ordinating the work of committees and sub-committees appointed under Section 5 and advising the appropriate Government generally in the matter of fixing and revising minimum rates of wages, the appropriate Government shall appoint an Advisory Board.”

6. As already indicated, in this case, we are dealing with revision of the minimum wages which was fixed for the first time under the Act. By the Official Notification in the Official Gazette dated 7-5-2009 under Section 5(1)(b), the State-respondents published their proposal contained therein for the information of the affected persons calling for their objections or suggestion specifying herein that the proposals would be taken into consideration after the expiry of 60 days from the date of the notification. Apparently, objections and suggestions were received from as many as 14 organizations. It may be noted that the notification also declared that the revised rates should be deemed to come into force w.e.f. 1-1-2009. By the impugned notification, the State-respondents revised the rates of minimum wages as specified therein for the concerned employees including members of the petitioners with effect from 24-8-2009 when it was published in the Official Gazette. As noticed earlier, the State-respondents deviated from the recommendations made by the Advisory Board which, according to the petitioners, are binding upon them. Undoubtedly, the Advisory Board was constituted by the State-respondents under Section 5 for the purpose of consultation in the matter of fixing or revising the rates for minimum wages. The term “consult”, according to “Words and Phrases”, Permanent Edition, 1960, Vol. 9, P. 3, means to discuss something together, to deliberate”. Shorter Oxford English Dictionary gives a definition of the verb “to consult” as “to ask advice of, seek counsel from.”

7. The expression is best explained in ***Agriculture Training Board v. Aylesbury Mushrooms, (1972) 1 All ER 280*** when it said

that the essence of consultation is the communication of a genuine invitation, extended with a receptive mind, to give advice. If the invitation is once received, it matters not that it is not accepted and no advice is professed. In ***Rollo v. Minister of Town and Country Planning, (1948) 1 All ER 13***, Section 1(1) of the New Towns Act, 1946 envisages that the Minister of Town & Country Planning after consultation with local authorities, if satisfied that it is expedient in the national interest that any area of land should be developed as a new town by the Corporation established under the Act, he may make an order designating that an area as the site of the proposed new town. On October 7, 1946 press notice was issued giving the date of meeting of the representatives of the local authorities and the Minister explained in the meeting what he had in his mind in arriving at the boundaries of the area. Objections were raised and public enquiry was held. But actual explanation was not sought from any local authorities. In those circumstances contention was raised that there was no consultation as adumbrated under Section 1(1). Repelling the contention, the House of Lords held that in the meeting local authorities clearly were informed of the general nature of the proposal, the area suggested, its size and what the Minister wished and intended to do. Discussion was followed. Minutes were prepared and press notice was issued stating what had happened. In those circumstances, it was held that there was consultation and the requirement was complied with.

8. What has clearly emerged from the ratios of the foregoing decisions is that the term “consultation” cannot be equated with “concurrence”. All that the concept contemplates is that it is a

process which requires meeting of mind between the parties involved in the process of consultation on the material facts and points involved to evolve a correct or at least satisfactory solution.— See ***Indian Administrative Service (SCS) Assn. v. Union of India, 1993 Supp (1) 730***. In the instant case, the grievance of the petitioners as projected by their counsel is *not that there was no consultation* between the Department and the Advisory Board over the issue but their grievance is that the recommendation of the Advisory Board constituted under Section 5 of the Act, which is binding upon the State Government, was not followed by them thereby vitiating the impugned notification. In my judgment, this contention must fail. Nowhere in the Act is it mentioned that the recommendation of the Board shall be binding upon the State Government. Had that been the case, the Legislature would have said so unambiguously: Courts are not expected to insert words which are not there in the statute book, for that is a legislative function. In other words, the State-respondents, in not acting upon the recommendation of the Advisory Board constituted under Section 5 of the Act, cannot be said to have acted illegally.

9. The net result of the foregoing discussion is that there is no merit in this writ petition, which is hereby dismissed. However, there shall be no order as to cost.

JUDGE

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