

**HIGH COURT OF ORISSA : CUTTACK**

**W.P.(C) No.1971 of 2009**

An application under Articles, 226 and 227 of the Constitution of India.  
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Utkal Bidi Merchants' Association & another ... .. Petitioners.

Versus.

State of Orissa in Labour and  
Employment Department & Others ... .. opp.parties.

For Petitioners : M/s. N.K. Mishra, B.D. Mohapatra,  
D.K. Pani, A.K. Roy and  
Adity Mishra.

For opp.parties : Addl. Government Advocate.  
(opp.party nos.1 and 2)

M/s. S.K. Mishra, P.K. Mahapatra  
and S.S. Sahoo.  
(Intervenor-opp.party no.3)

**PRESENT**

**THE HON'BLE SHRI JUSTICE B.K.NAYAK**

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**Date of hearing : 06.05.2014 : Date of judgment: 16.05.2014**  
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**B.K.NAYAK, J.** The question that arises for consideration in this writ petition is whether the Government can while issuing notification under Section 5 (2) of the Minimum Wages Act, 1948 further increase the rate of minimum wages and go beyond their own proposal in the draft notification published under clause (b) of sub section (1) of Section 5 of the said Act.

2. The petitioners are Utkal Bidi Merchants' Association and Bidi Supply Company. Opposite party no.3 is the Orissa Bidi Shramik Mahasangha impleaded by way of intervention.

The Government of Orissa in the Labour and Employment Department in exercise of powers conferred by clause (a) of sub section (1) and clause (b) of sub section (2) of Section 3 read with Section 4 of the Minimum Wages Act,1948 (in short 'the Act') published draft Notification No.LL-I(AR)-51/07- 7224 dated 1<sup>st</sup> July,2008 proposing revision of minimum wages in respect of several items including piece rate of wages for rolling of bidis as well as packing and labelling of bidis as per Section 5 (1) (b) of the Act inviting objections/suggestions as at Annexure-2. As per the draft notification, minimum wages for rolling of one thousand bidis was proposed to be increased from Rs.45.20 to Rs.57.53 and similarly, for packing and labelling of one thousand bidis the wages was proposed to be increased from Rs.1.72 to Rs.2.19. In pursuance of the said notification, the petitioners filed objections/suggestions to the proposal on 20.08.2008 vide Annexure-3. In the objection it was mentioned that the proposal has been made without application of mind to the real state of affairs prevailing in the bidi industry and that in view of the anti smoking propaganda of the Government as also some social organizations, the bidi production is affected. Nothing has been said in the objection with regard to the proposed rate of increase of minimum wages. It transpires that the State Government again issued a proposal notification bearing No.LL-I(AR)-51/07-12648/LE, dated 15<sup>th</sup> December,2008 under Annexure-7 proposing revision of minimum piece-rate of wages for rolling of bidis as well as packing and labelling of bidis as required under Section 5 (1) (b) of the Act. Thereafter, the Government vide final notification No.LL-I(AR)-51/07-12962/LE dated 23.12.2008

(Annexure-6) revised piece-rate of wages for rolling of thousand bidis from Rs.45.20 to 63.28 and for rolling and labeling of one thousand bidis from Rs.1.72 to 2.408 and under the same notification the Government also cancelled the proposal notification dated 15.12.2008 (Annexure-7).

3. The petitioners have challenged the final notification under Annexure-6 revising minimum wages on the ground that under the proposal notification dated 01.07.2008 vide Annexure-2, the Government having proposed revision up to Rs.57.53 for rolling of bidis and up to Rs.2.19 for packing and labelling of the bidis, in the final notification it cannot go beyond the said proposal and further increase beyond the proposed rate, which has been done in the instant case, as the same is not permissible. It is also submitted by the learned counsel for the petitioners that the second proposal notification dated 15.12.2008 under Annexure-7 was a fresh proposal, which must be deemed to have substituted or cancelled the earlier proposal notification dated 01.07.2008 and, therefore, the subsequent proposal notification having also been cancelled under the final notification, there must be deemed to have been no notified proposal at all for revision of wages and, therefore, the final notification under Annexure-6 stands vitiated for non-compliance of Section 5 (1) (b) of the Act.

4. A counter affidavit has been filed by opposite party nos.1 and 2 sworn to by the Labour Commissioner, Cuttack. It is stated in the counter that the final notification under Annexure-6 has been issued revising the piece rate of minimum wages, after taking into consideration all the objections/suggestions received and the opinion of the State

Minimum Wages Advisory Board in order to bring the wages at par with the rate fixed for time rated employees and, therefore, there is nothing wrong in the impugned notification. It is stated that though a subsequent proposal notification vide Annexure-7 was issued, the same has been cancelled. It is the submission of the learned Additional Government Advocate that mere issuance of a second proposal would not ipso facto substitute the first proposal notification inasmuch as the second proposal notification was itself cancelled and the final notification has apparently been passed on the basis of the first proposal notification under Annexure-2 after taking into consideration the objection/suggestion, opinion of the Advisory Board and all other relevant factors.

The learned counsel for the intervenor-opposite party no.3 submits that there is no infirmity in the final notification under Annexure-6 and that in the meantime the wages have been revised further for other schedule employments and because of the pendency of the writ petition, there has been no further revision of wages for Bidi Manufacturing Industry.

5. The contention of the learned counsel for the petitioners that the appropriate Government cannot fix minimum wages at a higher rate than that proposed in the draft notification is not acceptable inasmuch as the question is no more res-intergra. While considering such question the Hon'ble Supreme Court in the case of **Chandra Bhawan Boarding and Lodging v. State of Mysore (supra) : 1970-II-LLJ-403** held as follows :

“15. xxx xxx We have no doubt that reasonable opportunity had been given to all the concerned parties

to represent their case. We are unable to agree that the impugned order is vitiated because of the Government's failure to constitute a committee under Section 5 (1)(a). We see no substance in the contention that the Government is not competent to enhance the rates of wages mentioned in the proposal published. If it has power to reduce those rates, as desired by the employers, it necessarily follows that it has power to enhance them. There is no merit in the contention that the Government must go on publishing proposals after proposals until a stage is reached where no change whatsoever is necessary to be made in the last proposal made."

6. With respect to revision of wages, particularly in the Bidi Manufacturing Industry, the High Court of Bombay in the case of ***Gulamahamed Tarasaheb v. State of Bombay and others :AIR 1962 BOMBAY 97 (V 49 C 23)*** held as follows :

"7. But then Mr. Pendse argues that after the Government make their proposals and representations are received by them, they have also to consult the Advisory Board and the final notification would be issued after considering all representations and the opinion of the Advisory Board. Mr. Pendse contends that the representations being made on the basis of the draft notification and the opinion of the Advisory Board having been also received on the basis of the said notification, it would not be open to the Government further to increase the rates of minimum wages and go beyond their own proposals under the draft notification. We are unable to

accept this argument either. As we have already stated, the draft notification is published for the information of persons, who are likely to be affected and contains the proposals of Government, and these proposals would be subject to further consideration in the light of representations received by the government and the advice tendered by the Advisory Board. The employers would be naturally making a representation, as they have done in the present case, showing reasons why there should be no increase in rates, and if the workers are dissatisfied with the increase proposed by Government, the workers might also make representations for the purpose of persuading Government to make a further rise in the rates of minimum wages. The Advisory Board also might either advise the government to reduce the proposed rates or to increase them, or support their proposals on the basis of the data that the Advisory Board might have taken into consideration. In our view there is nothing in Section 5 or any other provision of the Act which prevents Government from either reducing or increasing the rates of minimum wages which they might publish as their proposals under Sec.5(1)(b) of the Act.

**8.** ... .... Section 5 of the Act does not contemplate a publication of fresh proposals on the part of Government after the receipt of representations. The employers in the present case had clearly indicated in their re-presentation that any further increase beyond the prevailing rates under the Hyderabad notification would seriously affect the industry. That was the point of view which industry

placed before Government in its representation. In our view, it was open to the Government to go beyond their draft proposals, after taking into consideration all the representations received and the opinion of the Advisory Board, which they have done in the present case. This argument, therefore, on behalf of the petitioners also must be rejected.”

7. The view of the Bombay High Court and the Hon'ble apex Court has been followed by the High Court of Karnatak in the case of **Mangalore Ganesh Beedi and Allied Beedi Factories Workers Association v. State of Karnatak and Others : 2003-III-LLJ-861**, by the Andhra Pradesh High Court in the case of **Basti Ram Narain Das v. State of A.P. :AIR 1969 AP 227**, by the Rajasthan High Court in the case of **Issardas K. Bros. v. State of Rajasthan : 1981 Lab IC 294 (Raj)** and by the Calcutta High Court in the case of **Gaganendra Kumar Ghose v. State of West Bengal: 1977 Lab IC 618 (Cal.)**

8. The other contention raised on behalf of the petitioners that the issuance of subsequent draft notification dated 15.12.2008 (Annexure-7) shall be deemed to have substituted or cancelled the draft notification dated 01.07.2008 (Annexure-2) proposing revision of wages is also not tenable. The draft notification under Annexure-7 does not indicate that it superseded or cancelled the earlier draft notification dated 01.07.2008. On the contrary, while issuing the impugned final notification under Annexure-6, the Government has already cancelled the subsequent draft notification dated 15.12.2008 and it is specifically stated in the final notification that the same was issued after considering

the objections/suggestions received from different quarters in pursuance of the first draft notification dated 01.07.2008 and taking into account the opinion of the Advisory Board. It is trite as per the decision of the apex Court in the case of ***Chandra Bhawan Boarding and Lodging*** (supra) that the Government must not go on publishing proposals after proposals until a stage is reached where no change whatsoever is necessary to be made in the last proposal.

9. In the aforesaid view of the matter and no other contention having been raised, this Court finds no infirmity in the impugned notification. The writ petition is devoid on merit and is accordingly dismissed. No costs.

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***B.K.Nayak,J.***

*Orissa High Court, Cuttack*  
*The 16<sup>th</sup> May, 2014/Gs.*