

A MINISTRY OF LABOUR & REHABILITATION & ANOTHER.
V.
TIFFIN'S BARYTES ASBESTOS & PAINTS LTD. & ANR.
JULY 16, 1985
B (O.CHINNAPPA REDDY, V.BALAKRISHNA ERADI AND V.KHALID, JJ.)

Minimum Wages Act 1948, ss. 5(a) (9) and 9 - Appointment of Committee to advise the Government on fixation of minimum wages in certain mines - Government officials and persons not belonging to the concerned mines appointed as members Government officials, when 'independent persons' as contemplated by s. 9. Whether it is their duty to implement the provisions of the Act and the Government being not an employer - Employers representatives in the committee - Whether should be engaged for profit in the particular employment.

D After considering the advice of the Committee, appointed under ss.5(1)(a) and 9 of the Minimum Wages Act 1948, the Government of India by a Notification issued under the Act fixed the minimum rates of wages payable to certain categories of employees in the scheduled employment in certain mines. The mine-owners challenged the notification under Article 226 of the Constitution and the same was quashed by the High Court on the ground that the Committee on whose advice the Notification was based was improperly constituted for two reasons: (1) that the Chief Labour Commissioner (Central) New Delhi and Director, Labour Bureau, Simla, were Government employees in the Labour Department and were, therefore, not truly 'independent' so as to be eligible to be appointed to the Committee constituted under ss.5 and 9 of the Act and (2) that the so-called representatives of the employers on the Committee were not representatives of the named mining industries and were, therefore, ineligible to be appointed to the Committee to represent the employers of the particular scheduled employment.

Allowing the appeal of the Union of India,

HELD: 1. The Government employees, who are entrusted with the task of implementing the provisions of the Minimum Wages Act 1948, cannot, for that reason, be dubbed as interested and not independent persons. In a case where the Government itself is not an employer there is no justification for holding that Government employees become 'interested persons' contemplated by

s. 9 of the Act are persons who belong neither to the category of employers nor to the category of employees and there is no reason to think that Government employees are excluded. The term 'independent persons', is used in the section in contradistinction to the words 'persons representing employers and employees in the scheduled employments'. [305 F-H, 306 A-B]

Narottandas v. Gowariker & Ors. [1961] (1) LLJ 442; **Kohinoor Pictures (Pvt.) Ltd. v. State of West Bengal** [1961] (2) LLJ 741 and **Bansi Lal S. Patel v. State of Andhra Pradesh** [1965] 1 LLJ 28 overruled.

Jaswant Rai v. State of Punjab A.I.R. 1958 Punjab 425 and **Digvijaysinghi Salt Works Ltd. v. State of Gujarat** AIR 1971 Gujarat 14 approved.

State of Rajasthan v. Hari Ram Nathwani & Ors. [1976] (1) SCR 641 not applicable.

2. The persons appointed to the Committee to represent the employers were eligible to be appointed to the committee. The scheduled employments in the instant case are employment in Gypsum, Barytes, Bauxite and Manganese mines. For the purpose of appointing a Committee to represent the employers in the scheduled employment, it was not necessary that the persons appointed should be engaged for profit in the particular employment. It is enough if a nexus exists between the persons so appointed to represent the employers in the particular employment and the particular employment concerned. There was no material before the High Court nor was the High Court in a position to say that the persons appointed to the Committee to represent the employers were entirely unconnected with or ignorant of the particular employment. It is not understood how by merely looking at their names and the position occupied by them, the High Court was able to say that they were incompetent to represent the employers in the particular employments. The representatives of the employers consisted of Controller of the Indian Bureau of Mines, Secretary General of the Federation of the Indian Mining Industries, President of Mysore State Mine Owners Association, etc. etc. All these persons are intimately connected with the mining industry and it has not been shown that they were unconnected with or ignorant of the particular scheduled employments in mines. It is impossible to uphold the view of the High Court. [306 D-H, 306 A-E]

Champak Lal H. Thakkar v. State of Gujarat [1980] (4) SCC 329 not applicable.

A 3. Notifications fixing minimum ages should not be lightly interfered with under Article 226 of the Constitution except on the most substantial grounds. [307 G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 589 of 1972.

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From the Judgment and Order datd 8.7.1971 of the Andhra Pradesh High Court in W.P. No. 3980 of 1969.

AND

Civil Appeals Nos 541-546 of 1973

C

From the Judgment and Order dated 23.8.1971 of the Andhra Pradesh High Court in W.P. Nos. 1526,1624,3198,3199,3200 & 3210 of 1970.

G. Das, P.P. Singh, R.N.Poddar, for the Appellants in C.A. No. 589(N) of 1978.

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Respondent No. 1 in person. (not present) in C.A. No. 589(N) of 1972.

R.N. Poddar and Mrs. Indira Sawhney for the Appellants in C.A. Nos. 541-546 of 1972.

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Dr. Anand Prakash, Naunit Lal, Kailash Vasdev and Mrs. Vinod Arya for the Respondents in C.A. Nos. 541-546 of 1972.

The Judgment of the Court was delivered by

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CHINNAPPA REDDY, J. On October 16, 1968 the Government of India, Ministry of Labour, Employment and Rehabilitation, issued a notification, in exercise of their powers under section 5(1) (a) and 9 of the Minimum Wages Act, appointing a Committee "to hold enquiries and advise the Central Government regarding -

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(a) the fixation of minimum rates of wages for the first time under the said Act, and

(b) the revision of minimum rates of wages already fixed by the Central Government under the said Act,"

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in respect of the Employment in Manganese, Gypsum, Berytes and Bauxite Mines, Shri D.Venkatachalam, Chief Labour Commissioner

(Central), New Delhi and Shri K.K.Bhatia, Director, Labour Bureau, Simla were appointed as independent members of the Committee while (i) Shri K.S.Mahaptra, Controller of Indian Bureau of Mines, Nagpur, (ii) Shri Dev Coomer Singh, The Jhagrakhand Collieries Private Ltd., 14/4, Gariaghat Road, Calcutta-19, (iii) Dr. S.K.Das Gupta, Indian Aluminium Co. Ltd., 1, Middleton Street, Calcutta-16 (iv) Shri T.R. Goenka, Honorary Secretary General, Federation of Indian Mining Industries, 7, N.D.S.E. Part I, New Delhi-3 and (v) Mr. S.G.A. Naidu, President of Mysore State Mine Owners' Association, Bangalore, were appointed as representatives of the employers. Five other gentlemen were appointed as members of the Committee to represent the employees. Thereafter, on May 19, 1969, after considering the advice of the Committee, the Government of India issued a notification fixing minimum rates of wages payable to certain categories of employees in the scheduled employment in Barytes, Bauxite, Manganese and Gypsum Mines. The notification fixing minimum wages was questioned by several owners of mines in writ petitions filed in the High Court of Andhra Pradesh. The notification was quashed by the High Court of Andhra Pradesh on the ground that the Committee on whose advice it was based was improperly constituted for two reasons : (1) Shri Venkatachalam and Shri K.K. Bhatia were Government employees in the Labour Department and were, therefore, not truly "independent" so as to be eligible to be appointed to the Committee constituted under sections 5 and 9 of the Minimum Wages Act and; (2) The so called representatives of the employers on the Committee as appointed were not representatives of the Barytes, Bauxite, Manganese and Gypsum mining industries and they were therefore ineligible to be appointed to the Committee to represent the employers of the particular scheduled employments.

We are afraid, we are unable to subscribe to the view taken by the High Court. In our opinion, Government employees, who are entrusted with the task of implementing the provisions of the Minimum Wages Act, cannot, for that reason, be dubbed as interested and not independent persons. It may be that in a case where the Government itself is the employer in the particular scheduled employment, it may be possible to urge that Government employees are not independent persons (we express no opinion on that) but in a case where the Government itself is not an employer, we do not see any justification for holding that Government employees who are interested in the implementation of the Minimum Wages Act, for that reason only, become 'interested persons' and cease to be independent. The 'independent persons' contemplated by s.9 of the Act are persons who belong neither to the category

A of employers nor to the category of employees, and there is no reason to think that Government employees whose task is merely to implement Parliamentary Legislation made pursuant to Directive Principles of State Policy and the State's social obligations in that direction are excluded. The term 'independent persons', it must be emphasised, is used in the section in contra distinction to the words 'persons representing employers and employees in the scheduled employments'. We disagree with the view expressed by the Madhya Pradesh High Court in **Narottandas v. Gowarikar & Ors.** [1961] 1 L.L.J. 442 and Calcutta High Court in **Kohinoor Pictures (Pvt.) Ltd. v. State of West Bengal** [1961] 2 L.L.J. 741 and the Andhra Pradesh High Court in **Bansi Lal S. Patel v. State of Andhra Pradesh** [1965] 1 L.L.J. 28. We agree with the view taken by the Punjab High Court in **Jaswant Rai v. State of Punjab** A.I.R. 1958 Punjab 425 and the Gujarat High Court in the **Digvijaysingji Salt Works Ltd. v. State of Gujarat** A.I.R. 1971 Gujarat 14. The decision of this Court in **State of Rajasthan v. Hari Ram Nathwani & Ors.** [1976] 1 S.C.R. 641 does not assist either party.

D There is equally no substance in the other contention which found favour with the High Court, namely, that the persons appointed to the Committee to represent the employers were ineligible to be appointed to the Committee as they did not represent employers in the particular scheduled employment. The scheduled employments with which we are concerned are employment in Gypsum mines, employment in Barytes mines, employment in Bauxite mines and employment in manganese mines. It is not explained why the persons appointed to the Committee to represent the employers are ineligible to represent employers in the scheduled employments. The High Court merely says "on a perusal of the names of the employers' representatives, we find that none of them can be said to be the representatives of the Barytes mines. When the minimum wages of the categories of employees are to be fixed in respect of Barytes mines, there is no point in appointing the representatives of other employments. The Government in its counter has not stated that any of the employers' representatives, who have been nominated to the Committee, are the representatives of the Barytes mines. The learned counsel appearing for the Central Government also has not been able to point out whether any one of those nominees of the Government as employers' representatives really represent the Barytes mines or has got expert knowledge of the employers and their working conditions in the scheduled employments of Barytes mines. We, therefore, hold that the composition of the Committee is defective in respect of the nominations of the employers representatives. This is sufficient to

quash the notification which is based upon the advice of such a defectively and irregularly constituted Committee." We are afraid that the approach of the High Court was entirely wrong. For the purpose of appointing the Committee to represent the employers in a scheduled employment, it was not necessary that the person appointed should be engaged for profit in the particular employment. It is enough if a nexus exists between the persons so appointed to represent the employers in the particular employment and the particular employment concerned. For example, it may be absurd to appoint persons engaged in the newspaper industry to a Committee to represent employers concerned in the employment of Barytes mines or Bauxite mines. The case before us is not one of that nature at all. There was no material before the High Court nor was the High Court in a position to say that the persons appointed to the Committee to represent the employers were entirely unconnected with or ignorant of the particular employments. We fail to understand how by merely looking at their names and the positions occupied by them, the High Court was able to say that they were incompetent to represent the employers in the particular employments. The first of them was the Controller of the Indian Bureau of Mines, another was the Secretary General of the Federation of Indian Mining Industries and yet another was the President of the Mysore State Mine Owners' Association. All of them are intimately connected with the mining industry and it has not been shown that they are unconnected with or ignorant of the particular scheduled employments in mines. We find it impossible to uphold the view of the High Court. The decision of this Court in **Champak Lal H. Thakkar v. State of Gujarat** [1980] 4 S.C.C.329, is of no assistance whatever. In the circumstances we allow the appeals, set aside the judgment of the High Court and dismiss the Writ Petitions filed in the High Court. We also wish to emphasise that notifications fixing minimum wages are not to be lightly interfered with under Article 226 of the Constitution on the ground of some irregularities in the Constitution of the Committee or in the procedure adopted by the Committee. It must be remembered that the Committee acts only as a recommendatory body and the final notification fixing minimum wages has to be made by the Government. Notification fixing minimum wages, in a country where wages are already minimum should not be interfered with under Article 226 of the Constitution except on the most substantial of grounds. The legislation is a social welfare legislation undertaken to further the Directive Principles of State Policy and action taken pursuant to it cannot be struck down on mere technicalities.

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