



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
06.02.2018	04.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.8104 of 2017

and

W.M.P. (MD) No.6234 and 6235 of 2017

Cashew Factory Owners Development
Association of Tamilnadu,
Represented by its Secretary,
No.9/3, Thettivilai, Kuzhithurai,
Kuzhithurai Post - 629 163,
Kanyakumari District.

... Petitioner

Vs.

1. The State of Tamilnadu,
Represented by its Secretary,
Department of Labour and Employment,
Chennai - 600 009.

2. The Commissioner of Labour,
College Road, Chennai - 600 006.

... Respondents

Prayer: Writ Petition - filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned G.O.(2D).No.10, Labour and Employment (J1) Department, dated 15.02.2016, issued by the first respondent State Government and the consequent Gazette notification dated 09.03.2016 and quash the same and further direct the respondents to reconsider the same in accordance with law.

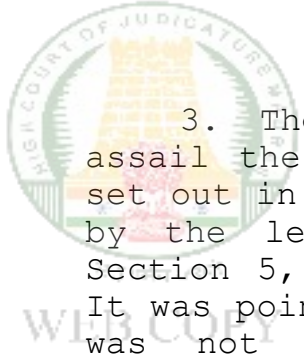
For Petitioners : Mr.K.Prabhu,
for M/s.Isaac Chambers.

For Respondents : Mr.J.Gunaseelan Muthaiah,
Additional Government Pleader.

ORDER

Heard the learned counsel on either side.

2. The petitioner is a registered Association of the owners of the cashew factories in the State of Tamilnadu. The petitioner is aggrieved by the impugned notification issued under the provisions of Minimum Wages Act, 1948 [hereinafter referred to as "the Act"]
seeks to enforce the minimum rates of wages for the employment in cashew-nut industry.



3. The learned counsel appearing for the petitioner would assail the impugned notification on the ground that the procedure set out in Section 5 of the Act was not followed. Emphasis was laid by the learned counsel on the expression "shall" occurring in Section 5, which indicates the mandatory nature of the provisions. It was pointed out that even though objections were given, the same was not even taken into account, while passing the final notification.

4. The grievance of the petitioner is that the industry is dependant primarily on imports and that the rates now proposed in the impugned Government Order are neither practical nor viable and the implementation would result in mass closure of the units. In particular, the mandatory provisions set out in Sections 5 and 7 of the Act have not been complied with. There was no constitution of an Advisory Board as mandated under Section 7 of the Act. There was no proper consultation and the objections of the cheque holders were not taken into account.

5. This Court went through the rival pleadings and also the materials on record.

6. Section 7 of the Act states that 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.

7. The petitioner's contention is that no such Advisory Board was appointed in this case and therefore the entire notification is liable to be set aside.

8. The respondents have not only filed a counter-affidavit rebutting this contention, but also enclosed the relevant Minutes in the typed set of papers filed by them. In Paragraph No.11 of the counter-affidavit, it has been averred that the minimum rates of wages were fixed for employment in cashew-nut industry by the Government after consultation with the minimum wages (State) Advisory Board. Therefore, the contention raised by the petitioner's counsel with regard to violation of Section 7 of the Act stands rejected.

9. A look at the statutory scheme set out in Section 5 of the Act would show that the Government has a choice before it. Section 5 of the Act reads as follows:

"5.Procedure for fixing and revising minimum wages--(1) In fixing minimum rates of wages I respect of any scheduled employment for the first time under this Act or in revising minimum rates of wages so fixed, the appropriate Government shall either---



(a) 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

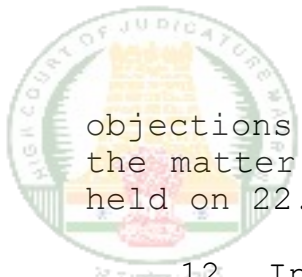
(b) by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected thereby and specify a date, not less than two months from the date of the notification, on which the proposals will be taken into consideration.

(2) After considering the advice of the committee or committees appointed under clause (a) of sub-section (1), or as the case may be, all representations received by it before the date specified in the notification under clause (b) of that sub-section, the appropriate Government shall, by notification in the Official Gazette, fix, or, as the case may be, revise the minimum rates of wages in respect of each scheduled employment, and unless such notification otherwise provides, it shall come into force on the expiry of three months from the date of its issue:

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."

10. It can follow the course of action set out in Section 5(1) (a) of the Act or the one under Section 5(1)(b) of the Act. In the present case, the Government has chosen to go by the procedure set out in Section 5(1)(b) of the Act. Therefore, the contention raised by the petitioner based on Section 5(1)(a) of the Act is totally mis-conceived. In the present case, the Government has issued the preliminary notification dated 05.02.2014. The employers and the employees' representatives were given two months' time to give their objections or suggestions.

11. Admittedly, the petitioner did not raise any objection or offer suggestion within the aforesaid stipulated period of two months. This Court went through the materials enclosed by the petitioner in the typed set of papers. There are totally eight documents enclosed in the said typeset. First one is the Certificate of Registration and second one is the Members list. Third document is the preliminary notification dated 05.02.2014. The representation of the petitioner is dated 17.10.2015. It is obviously beyond the period of two months. Having failed to submit the objections or suggestions within the time stipulated in the statutory notification, the petitioner cannot be heard to say that his



objections were not considered. But the Government rightly placed the matter before the State Level Advisory Board during its meeting held on 22.09.2015.

12. In the counter-affidavit, it has been specifically averred that after a detailed deliberation, it was agreed by the members of the Advisory Board to send the proposal for confirming the preliminary notification. The petitioner's Association gave a representation dated 17.10.2015 and the same was received by the office of the second respondent on 02.11.2015 through the Chief Minister's Cell. Since the petitioner's representation was belatedly received, the same could not be placed before the Advisory Board. The petitioner has only to blame himself for this.

13. The petitioner would point out that the final notification dated 09.03.2016 is ambiguous as increase of 25 paise per point was not specified. But subsequently, an amendment was made and the word "25 paise" was inserted and published in the Tamil Nadu Government Gazette dated 11.05.2016. Therefore, this contention as regards ambiguity in the final notification no longer survives.

14. The petitioner has alleged that the notification in question would render the entire industry unviable and they will have to shut down their units. But, the Hon'ble Supreme Court has held that in construing the provisions of the Act, Court should adopt the beneficial rule of construction and preference is to be given to the construction, which helps to sustain the validity of the impugned notification. But, of course, in this case, such an occasion has not arisen. In the very nature of things, the workers are entitled to be paid a minimum wage and the employers' financial capacity cannot be taken into consideration. In fact, it is an irrelevant consideration. No industry has a right to exist unless it is able to pay its workman atleast a bare minimum wage.

15. The Hon'ble Supreme Court observed in the case of Messrs. Crown Aluminium Works vs. Their Workmen reported in AIR 1958 SC 30 that if the employer cannot maintain his enterprise without getting down the wages of his employees below, even a bare minimum wage, he would have no right to conduct his enterprise on such terms.

16. The learned counsel appearing for the petitioner would press the point that the Government cannot take any hasty or capricious decision in the matter of fixing minimum wages and that is why, statutory safeguards have been provided. In this case, as already pointed out, this procedural mandate was duly complied with. It is not as if the Government confirmed the preliminary notification hastily. The preliminary notification was published in February, 2014 and the final notification was made only on 09.03.2016. There has been a two years' gap. In the meanwhile, the matter was placed before the Advisory Board and after taking its counsel, the Government proceeded to confirm the preliminary notification.



17. It is true that the employer would be put to some difficulties and hardship. But, then, that is only a reasonable restriction. By paying minimum wages to the employees not only their physical subsistence, but also maintenance of their health and dependents have been taken care. It is one of the cherished objectives of the Constitution. Article 43 talks about minimum wage. Therefore, in such matters, this Court should be very slow to interfere. This Court is of the view that no case has been made out for interference.

18. In the result, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous petitions are dismissed.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government of Tamilnadu,
Department of Labour and Employment,
Chennai - 600 009.
2. The Commissioner of Labour,
College Road, Chennai - 600 006.

+1CC to M/s.Isaac Chambers, Advocate, SR.No.66828

W.P.(MD)No.8104 of 2017
04.06.2018

SM
ES/JC/SAR 2/25.06.2018/5P/4C