



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON:	15.03.2021
DELIVERED ON:	24.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD)No.333 of 2020

and W.M.P. (MD) Nos.11618, 250 & 252 of 2020

(Through Video Conference)

Association of Healthcare ProvidersIndia,
Tamil Nadu Chapter,
Rep. By its Joint Secretary of T.N.Chapter,
J.Adel ... Petitioner

Vs.

- 1) The State of Tamil Nadu,
Rep., by its Principal Secretary to Government,
Labour and Employment Department,
Fort St.George,
Chennai 600 009
- 2) The State of Tamil Nadu,
Rep. By the Principal Secretary to Government,
Health and Family Welfare Department,
Fort St.George, Chennai 600 009
- 3) The State of Tamil Nadu,
Rep. By the Project Director,
Tamil Nadu Health Systems Project,
Teynampet, Chennai 600 018. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to include the petitioner Association and costing accountant in the Committee formed under G.O.Ms.No.116 dated 16.07.2019, Labour and Employment (J2) Department and to arrive at a decision after doing costing of medical procedures, till such time, no coercive action should be taken against AHPI member hospitals by stopping CMCHIS scheme within a time to be stipulated by this Court.

For Petitioner : Mr.S.Venkatesh

For Respondents : Mrs.J.Padmavathi Devi,
Special Government Pleader.

O R D E R

The brief facts of the case are as follows:-

1.1. The petitioner herein, is an Association of Healthcare



Providers, providing various healthcare services in the State of Tamil Nadu. The members of the Association are such Hospitals, that provide healthcare services.

1.2. The employment in "Hospitals and Nursing Homes [other than Government and Employees State Insurance (E.S.I.) Hospitals and Dispensaries]", is a scheduled employment under the Minimum Wages Act, 1948 (hereinafter referred to as the 'Act') and the Committees, Sub-Committees and Advisory Board constituted under the Act advises the State Government for fixation / revision of the minimum rates of wages to the employees in Hospitals and Nursing Homes, that provide these healthcare services, among other employments. The petitioner herein, is aggrieved against their non-inclusion as a member of such Committee and hence, the present writ petition.

2. The learned counsel for the petitioner would submit that, the last Committee for revision of minimum rates of wages for the employment in Hospitals and Nursing Homes, was constituted under G.O.Ms.No.116, Labour and Employment (J2) Department, dated 16.07.2019 and out of the six members nominated therein, five representatives of the Employers were unilaterally selected from the same Association and the Employees were represented by 6 different Unions and hence, there is no representation from the Healthcare Services sector. He further submitted that there was no representation of independent members also, as required under the Act.

3. Mrs.J.Padmavathi Devi, learned Special Government Pleader would submit that G.O.Ms.No.116, Labour and Employment (J2) Department, dated 16.07.2019 was initially valid for a period of six months and subsequently extended till nine months and ultimately, the Committee itself had lapsed and therefore, the Committee would be re-constituted shortly, in accordance with the provisions of the Act.

4. Before addressing the facts involved in the present case, it would be appropriate to refer to the provisions and procedures for formation of such a Committee, for revision of minimum rates of wages for the employment in Hospitals and Nursing Homes under the Act.

4.1. While Section 3(1)(a) of the Act provides for fixation of minimum rates of wages payable to the employees in a scheduled employment, Section 3(1)(b) provides for review of the minimum rates at intervals, not exceeding five years. The procedure for fixing and revising the minimum wages, is provided under Section 5 of the Act, as per which, provision has been made for appointment of Committees / Sub-Committees for advising the appropriate Government for fixation/ revision of the minimum rates of wages.



4.2. The composition of the Committees referred to under Section 5 of the Act is provided under Section 9 of the Act, whereby the Committees/ Sub Committees/ Advisory Board shall consist of equal number of persons representing the Employers and Employees in the scheduled employment and independent persons not exceeding one-third of the total number of members. The Tamil Nadu State Amendment has enabled, "Employment in Hospitals and Nursing Homes" as a 'scheduled employment' under the Act.

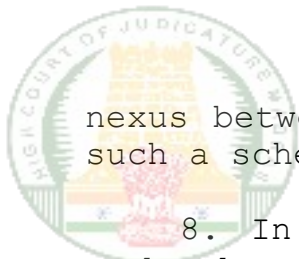
5. A comprehensive reading of the aforesaid provisions of the Act would indicate that, for the fixation/ revision of minimum rates of wages in "Employment in Hospitals and Nursing Homes", requires to be recommended by the Committees/ Sub-Committees constituted under the Act. Such Committee is mandated to be equally represented by the Employers and Employees, as well as by independent person(s), whose number should not exceed one-third of the total number of the members.

6. The purpose of the nomination of the members of the Committee is, to defend the Employers'/ Employees' interest in matters relating to fixation / revision of the minimum wages for the respective scheduled employment and such member of the Committee participates as a representative of the Principal. Hence, it is imperative that there should be a nexus between the person appointed in the Committee and the scheduled employment.

7. A three-Judge Bench of the Hon'ble Supreme Court in **Ministry of Labour and Rehabilitation vs. Tiffin's Barytes Asbestos and Paints Limited** reported in (1985) 3 SCC 594 had an occasion to deal with the composition and qualification of the Committee members constituted under section 5(1) of the Act, in the following manner:-

"...For the purpose of appointing the Committee to represent the employers in a 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. 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..."

In the said judgment by the Hon'ble Supreme Court, challenge was laid to the constitution of the Committee and the resultant notification issued under Section 5(1) r/w Section 9 of the Act, fixing the minimum wages for the workers in a scheduled employment. Thus, as per the dictum, it is crucial to ensure that, there is a



nexus between the scheduled employment and the members representing such a scheduled employment.

8. In ***Kerala Private Hospital Association vs State of Kerala and others***, reported in (2018) 1 SCC 98, the Hon'ble Supreme Court laid further emphasis on the nexus between the persons, who were nominated and for whom they were nominated. In this background, the facts of the present case were looked into.

9. The petitioner's Association has been providing various healthcare services, including Tamil Nadu Government Scheme for health insurance viz. Chief Minister's Comprehensive Health Insurance Scheme (CMCHIS). When the Government had lastly revised the constitution of the Committee under the Act, five out of the six Employers' representatives were nominated from the Indian Medical Association, Tamil Nadu Branch and there was no nomination of independent persons, as contemplated under Section 9 of the Act.

10. The learned Special Government Pleader would admit that the period of the earlier Committee, which was constituted under G.O.Ms.No.116, Labour and Employment (J2) Department, dated 16.07.2019 had lapsed. While that being so, there cannot be any impediment for the Government to constitute a new Committee by adhering to the procedures contemplated for the composition of the Committee under Section 9 of the Act.

11. The petitioner's Association has been consistently requesting the Government to include their members as a part of the Committee in order to safeguard the interest of the Healthcare Providers under employment in the Hospitals and Nursing Homes. It is alleged that when the petitioner's Association had filed a writ petition in W.P.(MD) No.11580 of 2018 before this Court, orders of interim injunction dated 31.05.2019 was granted, refraining the Government from initiating distraint proceedings against the members of the petitioner's Association, owing to which, the Government had attempted to discontinue the Chief Minister's Comprehensive Health Insurance Scheme (CMCHIS) to the members of the petitioner's Association.

12. Insofar as the nomination of the members of the Committee is concerned, Section 9 of the Act mandates for, equal representations from the Employer and Employees in the scheduled employment. While considering such nominations, the Hon'ble Supreme Court had held in ***Tiffin's Barytes Asbestos & Paints Ltd.'s case*** (cited supra) that such nominated persons, should be engaged from fields that has nexus to the scheduled employment. The earlier representatives of the Employers were predominantly from the Indian Medical Association and there was no specific representation among them, insofar as the healthcare procedures in the Hospital and Nursing Homes were concerned.



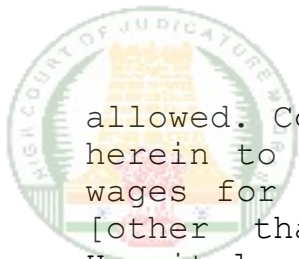
13. By applying the ratio laid down by the Hon'ble Supreme Court in the aforesaid decisions, it can be said that the persons employed in the healthcare services were not represented in the Committee, that advises for the fixation / revision of the rates of minimum wages in the scheduled employment. Thus, it would be imperative to direct the Government to nominate the member(s) of the petitioner's Association, as one or more of the members to represent the Employers, under the Committee constituted under Section 9 of the Act, for determining the minimum rates of wages for the health care employees.

14. It is also the grievance of the petitioner that, until the costing of the medical procedures are determined, the revision of the minimum wages in this scheduled employment, would not be feasible. When Section 9 of the Act mandates representation from independent persons, not exceeding one-third of the total members, there is duty cast upon the Government to consider the nominations of independent members/ members also for the purpose of determining the costing/ accounting of the medical procedures in the scheduled employment. Thus, this Court is of the view that one registered and independent Cost Accountant from the 'Institute of Cost Accountants of India' can be nominated in the Committee under Section 9 of the Act, for the purpose of determining the costing procedures for Healthcare employees in the Hospitals and Nursing Homes of Tamil Nadu.

15. In the light of the observations made, this Court is of the affirmed view that since the Employer Committee constituted under Section 9 in G.O.Ms.No.116, Labour and Employment (J2) Department dated 16.07.2019 had lapsed and also since the Government had not chosen to nominate the representatives from the healthcare providers and independent members, for determining the costing in such employment, it would be appropriate to include the members from the petitioner's Association among the Employers' representatives, apart from the independent members.

16. At this juncture, the learned counsel for the petitioner submitted that, there is a threat of distraint action against the members of the petitioner's Association. As observed earlier, this Court had granted an order of interim injunction, restraining the Government from discontinuing the CMCHIS or initiating distraint proceedings against the members of the Association. In the light of the interim orders of this Court and the continuing apprehension expressed by the petitioner, this Court is of the view that, the interest of the members of the Association can be protected till the Committee under Section 9 of the Act, is re-constituted and the minimum rates of wages for the Healthcare Providers are revised.

17. For the reasons stated above, the Writ Petition stands



allowed. Consequently, there shall be a direction to the respondents herein to constitute a Committee, for revision of minimum rates of wages for the scheduled employment in "Hospitals and Nursing Homes [other than Government and Employees State Insurance (E.S.I.) Hospitals and Dispensary]" under Section 5 (1)(a) of the Act, by incorporating atleast one member of the petitioner's Association, as its Committee member and also by including an independent member, being a Cost Accountant from the 'Institute of Cost Accountants of India' for the purpose of determining the costing procedures in the aforesaid scheduled employment, as expeditiously as possible. Till such time, the Committee as referred to above is constituted and minimum rates of wages for the health care services are revised, the respondents herein are refrained from initiating distraint action from suspending/terminating the petitioner's Association member hospitals from the Chief Minister's Comprehensive Health Insurance Scheme (CMCHIS). However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To:

1) The Principal Secretary to Government,
Labour and Employment Department,
Fort St.George,
Chennai 600 009

2) The Principal Secretary to Government,
Health and Family Welfare Department,
Fort St.George, Chennai 600 009

3) The Project Director,
Tamil Nadu Health Systems Project,
Teynampet, Chennai 600 018.

+2 CC to M/s.S.VENKATESH, Advocate (SR-13475[F] dated 25/03/2021)

W.P. (MD) No.333 of 2020

24.03.2021

SRK (CO)

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