

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 11701 of 2023

Goodricke Group Limited & Ors.

-Vs.-

The State of West Bengal & Ors.

For the petitioners : **Mr. Arijit Chaudhuri,
Mr. Arunava Ghosh,
Mr. Soumya Majumder,
Mr. Sharmistha Ghosh,
Mr. Amit Ghosh,
Mr. Victor Chatterjee.**

For the State : **Mr. Joydeep Kar, Sr. Adv.,
Mr. Santanu Kumar Mitra,
Mr. Amartya Pal,**

Heard on : **11.07.2023**

Judgment on : **01.08.2023**

Raja Basu Chowdhury, J.:-

1. The present writ application has been filed, *inter alia*, praying for direction upon the respondents to forbear from giving effect to the Advisory dated 27th April, 2023, and for a declaration that the said Advisory signed by the respondent no.2 is illegal, void and of no effect.
2. The petitioners are owners or lessees of tea plantations in West Bengal and are carrying on business, *inter alia*, of growing, harvesting and manufacturing tea at such plantations. The

petitioners contended that in usual course they employ workers for carrying out its business operations and that the provisions of the Minimum Wages Act, 1948 (hereinafter referred to as the “said Act”) apply in respect of such workers.

3. That the Government of West Bengal by a notification dated 17th February, 2015 had constituted a Minimum Wages Advisory Committee for the State of West Bengal (hereinafter referred to as the “said Committee”) in exercise of the powers conferred by clause (a) of sub-section (1) of Section 5 read with Section 9 of the said Act. The tenure of the said Committee was for a period of 2 (two) years from the date of the issue of the aforesaid notification. It is the petitioners’ case that prior to issue of the said notification, the wages of the workers of the tea plantations in West Bengal were fixed by tripartite settlements between the employers and the workers of such plantations. The settlements were entered into as per the provisions of the Industrial Disputes Act, 1947.
4. Last of such settlement was entered into on 20th February, 2015, and was to remain in force till wages were to be fixed in terms of the said Act. It is also the petitioners’ case that pending revision of minimum wages, in terms of the notification dated 17th February, 2015, the Government has from time to time issued Memoranda, enhancing the minimum wages of workers. Issuance of Memoranda to enhance the minimum wages is de hors the provisions of the said Act. It is, however, the case of the petitioners that the petitioners had accepted the aforesaid Memoranda and had paid such amount

principally to avoid any industrial unrest. Since then, the petitioners' financial condition had worsened and such fact was also notified on behalf of the petitioners, by a letter dated 10th June, 2022, addressed to the Chief Minister of the Government of West Bengal. Unfortunately, on 27th April, 2023, the Labour Commissioner, Government of West Bengal has issued an Advisory whereby the wages of daily rated workers of the organized tea gardens have been raised to Rs. 250/- per day, as a part of long term wage settlement with effect from 1st June, 2023, pending finalisation of the Charter of Demands, including finalisation of the revision of minimum wages of the workers in the employment of the plantations in West Bengal. It would appear that by a letter dated 8th May, 2023, the petitioners had questioned the said Advisory issued by the Government through their advocates letter and had called upon the Government to withdraw the said Advisory. Since, despite receipt of such letter the Advisory was not withdrawn, the present writ application has been filed.

5. Mr. Chaudhuri, learned senior advocate appearing on behalf of the petitioners, by referring to the provisions of the said Act, submits that the said Act does not recognize any authority of the State Government to unilaterally raise the wage structure, especially when an advisory committee has been set up by the Government to determine minimum wages. It has also been argued on behalf of the writ petitioners that the Labour Commissioner while issuing the advisory, was at best, enjoying the status of a conciliator. By

referring to the provisions of the Industrial Disputes Act, 1947, elaborate submissions have been advanced, as regards the powers, the extent of duties and responsibilities of a Conciliation Officer. It has also been contended that the Labour Commissioner do not enjoy any right or authority either under the Industrial Disputes Act, 1947 or under the said Act, to issue the aforesaid Advisory. Mr. Chaudhuri, by placing reliance on a judgment delivered by a Co-ordinate Bench of this Hon'ble Court in the case of ***Terai Indian Planters' Association & Anr. v. State of West Bengal & Ors.*** registered as WP 19434 (W) of 2018, delivered on 3rd December, 2018, submits that this Hon'ble Court had the occasion to consider the issue whether in a pending conciliation proceeding under the Industrial Disputes Act, the Labour Commissioner has the power and jurisdiction to revise the rate of minimum wages as an interim measure. By referring to the aforesaid judgment, it is submitted that the Co-ordinate Bench of this Hon'ble Court, upon taking note of the submissions made by the parties by, *inter alia*, observing that although, a power has been conferred under the said Act, to revise the minimum wages upon following due procedure, however, since, the said Act does not provide for any interim measure, found the action of the State to be bad and dehors the provisions of the said Act and accordingly the memorandum to revise wages was set aside. By relying on the aforesaid judgment, he says that the present Advisory dated 27th April, 2023 is no different from the one

which has been set aside by the Co-ordinate Bench of this Hon'ble Court.

6. In the given facts, it is submitted that this Court may be pleased to restrain the respondents from giving effect or further effect to the Advisory dated 27th April, 2023, and a declaration may be issued that the Advisory signed by the respondent no.2 is illegal, void and of no effect.
7. *Per contra*, Mr. Kar, learned senior advocate representing the State respondents, submits that although, by a notification dated 17th February, 2015, the said Committee had been set up under Section 5 of the said Act, for advising the Government in matters regarding fixing and revising of minimum wages and despite, by a further notification dated 4th March, 2015, the said Committee having been reconstituted for holding enquiry and for advising the Government in matters of fixing and revising of minimum rate of wages payable to employees employed in the Plantation of Tea in the State of West Bengal, there has been no final outcome as regards determination of wages under the said Act.
8. By drawing attention of this Court to a letter dated 21st February, 2015, it has been submitted that a tripartite Settlement was entered into on 20th February, 2015, regarding revision of wages and rates for daily rated workers. By placing reliance on the said Settlement which is a tripartite settlement, it is submitted that not only the petitioners but all the workers' unions are parties to the same and that the said settlement has come into force with effect

from 1st April, 2014 and shall remain in force till minimum rate of wages become effective under the provisions of the said Act.

9. According to Mr. Kar, the minimum wages under the said Act are yet to be finalized. By still further referring to clause no. 3 (III) of the said settlement, it is submitted that the State Government has been entrusted with the responsibility to take care of the interest of the employers and the plantation workers for development of tea industry. It is, on the basis of the aforesaid authority that the State Government from time to time as and by way of interim measure had raised the wages of the tea garden workers, initially from Rs. 132.50/- to Rs. 150/- and subsequently from Rs. 150/- to Rs. 159/- by Memoranda dated 29th December, 2017 and 15th March, 2018, respectively. Both the aforesaid Memoranda have been accepted by the parties and have been given effect to. Subsequently, when the wages of the daily rated workers were increased to Rs. 169/-, with effect from 1st October, 2018, as and by way of interim measure that the same was challenged by filing a writ application and by an order dated 3rd December, 2018, the said Memorandum was set aside for reasons noted hereinabove. Subsequently, the Government had once again enhanced the wages of daily rated workers from Rs. 176/- to Rs. 202/- by issuing a Memorandum dated 28th January, 2021, and again from Rs. 202/- to Rs. 232/- by issuing a further Memorandum dated 14th June, 2022. Neither of the aforesaid Memoranda were challenged by the petitioners, and the same have duly been given effect to.

Subsequently, however, when the Government in consideration of the Charter of Demand issued by one of the unions and by holding a meeting of the parties was, *inter alia*, pleased to issue the aforesaid Advisory dated 27th April, 2023, the same has been challenged by filing the present writ application.

10. Mr. Kar submits that the last wage settlement had been entered into on 20th February, 2015. Although, such a settlement provided for interim increase pending finalisation of minimum wages under the said Act, however, in the interregnum, by reasons of rise in the whole sale price index, it had become necessary for the State Government to take appropriate steps to ensure a living wage, conditions of work ensuring decent standard of life are met in relation to workers associated with the tea industry. It is for such reason that the rise in the wage structure had been necessitated. By referring to the advisory, it is submitted that what has been fixed is not beyond the living wage and it is within the policy of the State to enhance the wages. The State is under an obligation in terms of Article 43 of the Constitution of India to secure a living wage and conditions of work securing decent standard of life and full enjoyment of leisure and social and cultural opportunities for its workers. The Hon'ble Supreme Court has recognised such right of the State. In support of his aforesaid contention, he places reliance on a judgment delivered by the Hon'ble Supreme Court in the case of ***Standard Vacuum Refining Co. of India v. Workmen & Anr.***, reported in **AIR 1961 SC 895**. By placing reliance on a

judgment delivered by the Hon'ble Supreme Court in the case of ***Centre for Public Interest Litigation v. Union of India and Ors.***, reported in **(2016) 6 SCC 408**, it is submitted that if the policy is for public good, the Courts ought not to interfere.

11. On the question of finalization of minimum wages it has, however, been the joint prayer of both the parties that necessary directions may be issued for finalization of the minimum wages at the earliest.
12. Heard the learned advocates appearing for the parties and considered the materials on record.
13. From the sequence of events narrated hereinabove, it would transpire that on 17th February, 2015, the Government had constituted a Minimum Wages Advisory Committee to hold enquiry and advise the State Government. Subsequently by a notification dated 4th of March, 2015, the committee was reconstituted for holding enquires and to advise the State Government in the matter of fixing and revising of minimum rate of wages payable to the employees employed in the plantation of tea in the State of West Bengal.
14. In the interregnum, however, a tripartite settlement was entered into between the parties whereunder the rate of wages of daily rated workers in the tea gardens were increased in the following manner:

*“a) (i) The rates of wages of the daily rated workers of the tea gardens of Hill areas **(Darjeeling, Kalimpong and Kurseong Sub-Divisions)** would be increased as under:*

<i>With effect from 01.04.2014</i>	<i>From Rs 90.00 per day to Rs 112.50 (Rs 90.00+ Rs 17.50 + Rs 5.00 (one time allowance) per day</i>
<i>With effect from 01.04.2015</i>	<i>From Rs 112.50 per day to Rs 122.50 per day</i>
<i>With effect from 01.04.2016</i>	<i>From Rs 122.50 per day to Rs 132.50 per day</i>

ii) The existing practice of payment of Extra Leaf Price (ELP) in respect of tea gardens of Hill areas will be continued.

b) i) The rates of wages of the daily rated workers of the tea gardens of Dooars and Terai regions would be increased as under:

<i>With effect from 01.04.2014</i>	<i>From Rs 95.00 per day to Rs 112.50 per day</i>
<i>With effect from 01.04.2015</i>	<i>From Rs 112.50 per day to Rs 122.50 per day</i>
<i>With effect from 01.04.2016</i>	<i>From Rs 122.50 per day to Rs 132.50 per day</i>

ii) The rates of Extra Leaf Price (ELP) for tea gardens in Dooars and Terai regions will be revised from the date of signing of this Agreement i.e. 20.02.2015 as follows:

For output upto 6 kgs above Base Task @ Re.3.00 per kg

For output above 6 kgs above Base Task @ Rs.3.50 per kg”

15. I find that the said settlement has come into effect from 1st April, 2014 and shall remain in force till the minimum rate of wages become effective under the provisions of the said Act. The wage structure, however, appears to have been revised from time to time. On the basis of a Memorandum issued on 29th December, 2017 and again on 15th March, 2018, the rate of wages of a daily rated workers were revised to Rs. 159/- per day. Both the aforesaid

revisions were accepted by the parties and given effect to. None of the parties had questioned the authority of the State in issuing and/or enforcing such revision of wage structure. Subsequently, on 31st August, 2018, when a further revision was effected, the same was challenged by filing a writ application, *inter alia*, on the ground that the Labour Commissioner did not have the jurisdiction to enhance the same.

16. Records would reveal that a Co-ordinate Bench of this Hon'ble Court was, *inter alia*, pleased to set aside the same, holding that the Labour Commissioner lacked the jurisdiction and/or authority to grant the interim relief. The aforesaid order, however, does not reflect whether the Co-ordinate Bench of this Hon'ble Court was enlightened with regard to the revision of such interim tripartite settlement by issuing Memoranda which were not only accepted by the parties but were acted upon. It is, however, also curious to note that even after this order was passed, the Labour Commissioner, by issuing a memorandum and a clarification dated 20th January, 2021 and 8th January, 2021, respectively, had further enhanced the wages of the daily rated workers at the rate of 15 per cent so that it would be rounded off to Rs. 202/-. And again, by another Memorandum dated 14th June, 2022 the Additional Labour Commissioner was, *inter alia*, pleased to provide as follows:

“A meeting was held on 02/02/2022 at the Conference Hall of Shramik Bhavan, Siliguri with the representatives of Trade Unions of Tea Garden Workers

and the Representatives of Tea Garden Owners' Associations to discuss the issue of enhancement of wages/salary of the organized Tea Garden Workers.

After careful consideration of the matter, the Labour Department, West Bengal hereby notifies that the owners of the tea gardens will raise the wages of daily rated workers to Rs. 232/- per day from Rs. 202/- per day, thereby enhancing an amount of Rs. 30/- per day as an interim measure with effect from 01/01/2022, pending finalisation of the Charter of Demands including finalisation of the revision of Minimum Wages in the employment of the plantation in West Bengal. Similarly, the salary of the monthly rated tea garden employees will also be raised @ 15% of their existing gross salary w.e.f. 01/01/2022 as an interim measure.

The Tea Garden owners are requested to pay the arrear of wages/salary payable to the daily rated workers as well as the monthly rated employees, by virtue of this increase, within July, 2022 in two instalments.”

17. There appears to be no challenge to the aforesaid increase as well. Records could further reveal that by a notice dated 10th June, 2022, the Consultative Committee of Plantation Associations had placed before the Chief Minister diverse facts and had in paragraph 12 thereof, requested that the proposed increase of 15 per cent may be split over 24 months period commencing from 1st June, 2022. It would not appear that any objection was raised as regards the authority or jurisdiction of the Labour Commissioner to decide this issue. On the contrary, it would be apparent that the parties had

submitted for an intermediate settlement before the Labour Commissioner pending finalisation of the minimum wages.

18. From the records, it would also appear that there has been interim enhancement on yearly basis, obviously the increase was necessitated taking into consideration the increase in the whole sale price index. Such interim arrangement, obviously, had to be worked out since, the workers could not be called upon to wait indefinitely for the settlement of Wages under the said Act. I also notice that after the Charter of Demand was received from the unions, the Labour Commissioner, by communication dated 21st March, 2023, had forwarded the same for consideration to the owners of the Tea plantations. It, however, does not appear from the documents on record whether the petitioners had objected to the Labour Commissioner making an intermediate arrangement of enhancing the wages. It was only when the Advisory dated 27th April, 2023 had been issued that the petitioner caused an advocate's letter to be issued on 8th May, 2023 questioning the authority and/or jurisdiction of the Labour Commissioner to enhance the wages.

19. I find that the Labour Commissioner had from time to time enhanced the wages pending finalisation of the minimum wage settlement. Although, it has been strenuously argued on behalf of the petitioners that the Government did not have the authority and jurisdiction to adjudicate, in relation to interim enhancement of wages, pending finalisation under the said Act, I, however, find that

it is the petitioners who had, in fact, all along accepted the enhancement of wages of the daily rated workers working in the tea garden. The contention of the petitioners that to avoid industrial unrest, the petitioners had been accepting the enhancement and the present enhancement, if accepted, would jeopardise the petitioners' interest, does not appear to be convincing. I am afraid that I am unable to accept the same.

20. Having regard to the conduct of the petitioners, and the peculiar facts of this case, considering the human problem involved, it is only reasonable to conclude that the approach that was adopted by the parties, was to consciously overcome the delay in finalisation of the minimum wage structure. No doubt that when a statutory authority is required to do a particular act in a certain way, the statutory authority cannot deviate therefrom. The present case, however, appears to be somewhat different. Here the petitioners have consciously allowed the Government to decide on the matter taking note of the peculiar circumstances, and the Government having done so, in my view, the petitioners cannot be permitted to question the action taken by the State. The petitioners cannot be permitted to blow hot and cold at the same time. Admittedly, the petitioners having accepted and implemented the previous decisions as regards enhancements as noted above, cannot question the authority of the Government to issue the aforesaid Advisory. The aforesaid fact was not before the Co-ordinate Bench of this Hon'ble Court while delivering the judgment

in the case of ***Terai Indian Planters' Association*** (supra). The aforesaid judgement is thus, distinguishable on the facts of the case and do not assist the petitioners.

21. Having regard to the aforesaid, I am of the view that the petitioners cannot be permitted to question the Advisory issued by the respondent no.2 at this stage.

22. At the same time by taking note of the long pendency of the decision for determination of minimum wages in respect of the workers employed in the tea plantations in the State of West Bengal, I am of the view that the State Government should take immediate steps for finalisation of the minimum wages and the entire process should be completed preferably within a period of six months from the date of communication of this order.

23. The challenge to the advisory dated 27th April, 2023 fails. The writ application, accordingly stands disposed of. There shall be no order as to costs.

24. Urgent photostat certified copy of this judgment, if applied for, be given to the parties on priority basis upon completion of requisite formalities.

(Raja Basu Chowdhury, J.)

Later :

25. Mr. Majumder, learned advocate representing the petitioners, prays for stay of operation of the aforesaid judgment insofar as the

same concerns the rejection of the challenge to the advisory dated 27th April, 2023. The same is considered and refused.

(Raja Basu Chowdhury, J.)