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W.P.No.7149 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.No.7149 of 2017 and
WMP.Nos.7745 & 7746 of 2017**

The Pharmaceutical Manufacturers'
Association of Tamil Nadu,
(Registration No.157 of 1980)
Rep. by its Hony. Secretary,
Shri R.Murugan,
Block- D1, Baidmetha Comlex,
Little Mount, Saidapet,
Chennai - 600 015.

.. Petitioners

Vs.

1. State of Tamil nadu,
Rep. by its Secretary,
Labour and Employment Department,
Fort.St.George,
Chennai - 600 009.

2. Pharm Products Desia Congress Thozhilalar Sangam,
Rep. by its Secretary,
No.15/R.S.6, Pookara 3rd Street,
Thanjavur.
(R2 impleaded vide order dated 18.07.2023
made in WMP No.27432 of 2017)

..Respondents

Petition filed under Article 226 of the Constitution of India, for
issuance of Writ of Certiorari, calling for the records of proceedings of
respondent issued in G.O.(2D) No.38, Labour and Employment (J1)



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Department, dated 05.10.2016 published in Part II - Section 2 of the Tamil Nadu Government Gazette dated 23.11.2016 and quash the same.

For Petitioner : Mr.S.Ravindran,
Senior Counsel for
Mr.A.Devnarendran

For Respondents : Mr.P.Kumaresan,
Additional Advocate General
assisted by Mr.S.John J.Raja Singh
For R1
Mr.S.Anbzhagan for R2

O R D E R

This petition has been filed seeking to quash the proceedings of first respondent in G.O.(2D) No.38, Labour and Employment (J1) Department, dated 05.10.2016 published in Part II - Section 2 of the Tamil Nadu Government Gazette dated 23.11.2016.

2. The case of the petitioner is that the petitioner association was founded in the year 1980 with an object to protect the rights of employers of pharmaceutical industry. The petitioner association was registered under Societies Registration Act, 1860. The members of the petitioner Association are involved in the manufacture of Allopathic Medicines, Nutraceuticals, health supplements and Siddha.



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3. The employment in medicine manufacturing industry consists of three categories viz., Administrative staff, Technical Staff and Non-technical staff. The first category is the administrative staff. They involved in the supervision of the medicine manufacturing units and also makes sure of the quantity and quality of medicine manufactured by other two categories. The second category is technical staff. They are entrusted with the job of manufacturing medicines and they perform the duty of manufacturing drugs in the prescribed quality. The technical staff exercise most important function and the same is crucial for medicine manufacturing industry. It is pertinent to mention that the employees under this category are involved in the manufacture of Allopathic Medicines and Ayush Medicines etc., on a same day in different timings. The 3rd category is non-technical staff mostly involved in the back office works. The non-technical staff are also involved in the marketing aspects. The packers mentioned in Grade 4 are unskilled; but they have been included in skilled category. The above category of workmen are paid with monthly salary according to their category and grade.

4. It is the further case of the petitioner that the pharmaceutical



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industry pricing is constantly regulated and controlled by the Government under the Drug Price Control order (DPCO). The National Product Pricing Authority (NPPA) periodically revises, fixes and reduces prices of the National List of Essential Medicines (NLEM) formulations. As per Section 9 of the Minimum Wages Act, 1948, the committee shall consist of persons to be nominated by the State representing employers and the employees, who shall be equal in number and independent persons not exceeding 1/3rd of its total number of members. The Joint Commissioner of Labour (Conciliation) vide letter dated 06.11.2007 sent a Bio-data form to the petitioner association to nominate a member for constitution of advisory committee to fix the minimum wages for employment in medicine manufacturing. In response to the same, the petitioner association vide letter dated 26.12.2007 filed the Bio-data form and sent it to the Joint Commissioner of Labour along with a covering letter.

5. The respondent published G.O.Ms.No.38, Labour and Employment Department, dated 05.10.2016 for fixation of minimum wages for employment in Medicine Manufacturing Industries under the Minimum Wages Act, 1948. In the Impugned G.O., the Government fixed the



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minimum rates of wages for different categories under different zones such as Zone A, Zone B and Zone C, but there is explanation in the G.O. as to classification of Zones.

6. The respondent has fixed minimum rates of wages for medicine manufacturing industries, hosiery manufacturing industries and knitting industries. The minimum rates of wages fixed for the employees working in hosiery manufacturing industries and knitting industries, is very meagre but the minimum rate of wages fixed for the employees of medicine manufacturing industries is exorbitant. Apart from that, the other two industries do not have price control system and they can fix their own prices for their products, whereas the medicine manufacturing industries are under the clutches of price control authorities and they cannot fix the price of their own. Hence this Petition has filed to quash the proceedings of first respondent in G.O.(2D) No.38, Labour and Employment (J1) Department, dated 05.10.2016 published in Part II - Section 2 of the Tamil Nadu Government Gazette dated 23.11.2016.

7. A counter affidavit has been filed by the second Respondent



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wherein it has been stated that the second respondent sangam is a registered trade union bearing Reg. No. 623/Taj, affiliated with INTUC. The members of the Petitioner union are employees of "Pharm Products Private Ltd" situated in Thanjavur. The employees in the medicine industries were demanding for minimum wage to be fixed. Following the demand, the first Respondent issued G.O.Ms.No.20, (Labour and Employment) dated 31.01.2001, including the employment in medicine industry under scheduled employment of the Act, and thereafter, constituted the advisory committee in G.O.Ms. 33, dated 11.1.2003, under Sec 5(1) (a) of the Act, to hold inquiries with the employers/employees and submit their report/advice in the matter of revising the wages for employees in Medicine Manufacturing industries. Thereafter, the First Respondent revised wages for various employees employed in medicine manufacturing industries in G.O.Ms.No.38 (Labour and Employment) dated 5.10.2016 (published in Gazette on 5.11.2016). Against the above said G.O., the petitioner herein preferred the present writ petition. The present writ petition is not maintainable since the necessary parties i.e., the beneficiaries either in the personal capacity or in the representative capacity, are not impleaded by the writ petitioner. Since almost all the drugs are taken out from the control of



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DPCO, except numbering 15 drugs, the members of the petitioner are free to fix their own price. The fixation of the minimum wages based on the recommendation of the committee does not require any interference. The contention raised was already rejected by this Court in Writ Petition No. 4469 of 2001 dated 5.9.2003. The relevant factor for fixation of minimum wages is based on the requirement of the workmen and not the capacity of the industry or employer. As per sec 3 (3) of the Act, the State is empowered to fix different minimum rates of wages for different industries. And the said contention was negated by the Division Bench of this Court in W.A.No.867 of 2015 dated 13.7.2016. The Government considered the recommendation of the committee before issuing the same. Further the Writ Petitioner did not challenge/object the constitution of the committee which was formed in the year 2013 itself, and hence it cannot question the formation as well as the members of the committee now.

The Supreme Court in *Ministry of Labour and Rehabilitation v. Tiffin's Barytes Asbestos and Paints Ltd., (1985-II-LLJ-412,)* observed as follows:



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"A notification fixing minimum wages, in a country where wages are already minimal 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."

8. On the earlier occasion, the Hon'ble Supreme Court has taken a view that having regard to the concept of minimum wages, if an employer is not able to pay such minimum wages to his employees, as fixed by the government, he can as well close his business itself. Under such circumstances, the prayer in the writ petition need not be considered favourably and the writ petition is liable to be dismissed.

9. This Court has given anxious consideration to the rival submission made by the learned counsel on either side and perused the materials available on record.

10. The facts of the case are not in dispute. The learned counsel for



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the petitioner vehemently contended that the Minimum Wages Act specifies composite of committee while fixing the minimum wages for the employees and the Government are strictly following the same; failing which, any exercise done by the Government will become only redundant. As per Section 9 of the Act, the committee shall consist of persons to be nominated by the State representing employers and the employees, who shall be equal in number and independent persons not exceeding $1/3^{\text{rd}}$ of its total number of members, and that one of such independent persons shall be appointed as the Chairman by the State. It is the contention of the petitioner that invoking Section 27 of the Minimum Wages Act vide G.O.Ms.No.20 Labour and Employment (J2) dated 31.01.2001, the State Government included employment in Medicine Manufacturing Industries in the schedule of the Minimum Wages Act, 1948. The Joint Commissioner of Labour (Conciliation) vide letter dated 06.11.2007 sent a Bio-data form to the petitioner association to nominate a member for Constitution of Advisory Committee to the minimum wages for employment in Medicine manufacturing. In response to the same, the petitioner association vide letter dated 25.12.2007 filled the Bio-data form and sent it to the Joint Commissioner of Labour along with the covering letter.



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11. It is the contention of the petitioner association that it has not received any communication from the Government thereafter. However, on 05.10.2016, the Government has issued the impugned Government Order fixing the minimum wages for employees in medicine manufacturing industries. The petitioner has specifically contended that the association has recommended the name of Mr.Rajarathinam to represent the petitioner association. However, without any reply, either accepting or rejecting the recommendation made by the petitioner association, the Government has formed a committee and fixed the minimum wages. In short, the learned counsel for the petitioner submitted that the Government has formed a committee consisting of members who are willing to dance to the tune of the Government and agreed to whatever terms the Government dictates.

12. The learned Government Advocate submitted that the committee was formed as per the Rules made in the Act and there was no violation of the same. The learned Government Advocate filed a counter affidavit on behalf of the first respondent.



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13. On a perusal of the counter affidavit, it could be seen that the specific averments raised by the petitioner in the grounds of the petition viz., recommendation of Mr.Rajarathinam as member of the committee, was conveniently not answered by the first respondent. The first respondent has merely stated that a committee was formed consisting representatives of the employers and workers. However, the counter is silent as to who are the members of the committee and who participated and deliberated about minimum wages to be fixed.

14. The second respondent who was later impleaded in the writ petition has filed a detailed counter. The learned counsel for the second respondent strongly objected to the contention raised by the learned counsel for the petitioner and in the present circumstances, the minimum wage fixed in the year 2016 is itself very low and it needs to be revised for the present day inflation. The minimum wage of the Manager fixed in the impugned Government order is only Rs.12,555/- per month which is highly improbable for a family to survive with this meagre amount of Rs.12,555/-. The minimum wage fixed for the helper/sweeper is Rs.9,955/- per month.



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This amount is *per se* very low. The learned counsel, therefore, contended that the impugned Government Order need not be interfered with.

15. This Court satisfied itself that the committee that was formed for fixing the minimum wages for the employees in the medicine manufacturing industries is formed as per the Rules and Regulations made in the Minimum Wages Act. The Government has accommodated three members from employers/manufacturers side and three members from workers side. The petitioner association has taken a specific contention that they have sent a bio-data to nominate or recommend a member on their side and in response thereto, the petitioner association has also recommended the name of Mr.Rajarathinam to represent on their behalf. The Government has not given any reply either accepting or rejecting the said nomination. However, the Government has formed a committee and passed impugned Government Order fixing the minimum wages without considering the request of the petitioner association.

16. This Court is in complete acceptance with the arguments made by the learned counsel for the second respondent. As rightly pointed out by the learned counsel for the second respondent, in these days of high inflation, it



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would be highly miserable for a family to survive with a mere sum of Rs.12,555/- in the case of Manager or a meagre amount of Rs.9,988/- in the case of Helper/Sweeper. However, the association cannot be made of merely sentiment/emotion, this Court has to go by records.

17. The petitioner has demonstrated before this Court that the Government has not formed the committee as specified under Section 9 of the Minimum Wages Act. Therefore, the impugned Government Order is liable to set aside and the same is set aside.

18. Accordingly, the writ petition is allowed. However, the second respondent Workers Association is free to move the Government to form an another committee and fix minimum wages. In case, if such application is made by the second respondent for fixing the minimum wages, the Government shall form a committee, as specified in Section 9 of the Act, as early as possible and fix minimum wages within a period of two months from the date of receipt of a copy of this order and the committee shall fix the minimum wages for the workers within a month, thereafter. No costs. Consequently, connected miscellaneous petitions are closed.



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M.DHANDAPANI,J.

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

To

The Secretary,
Labour and Employment Department,
Fort.St.George,
Chennai - 600 009.

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