Bidi, Bidi Leaves vs The State Of Bombay on 15 November, 1961

Equivalent citations: 1962 AIR 486, 1962 SCR SUPL. (1) 381, AIR 1962 SUPREME COURT 486, 1961 2 LABLJ 663, 1961-62 21 FJR 331, 1964 BOM LR 375

Author: P.B. Gajendragadkar

Bench: P.B. Gajendragadkar, A.K. Sarkar, K.N. Wanchoo, K.C. Das Gupta, N. Rajagopala Ayyangar

PETITIONER:
BIDI, BIDI LEAVES' AND TOBACCO MERCHANTSASSOCIATION

Vs.

RESPONDENT:
THE STATE OF BOMBAY

DATE OF JUDGMENT:
15/11/1961

BENCH:
GAJENDRAGADKAR, P.B.
BENCH:
GAJENDRAGADKAR, P.B.
SARKAR, A.K.
WANCHOO, K.N.
GUPTA, K.C. DAS
AYYANGAR, N. RAJAGOPALA

CITATION:
1962 AIR 486 1962 SCR Supl. (1) 381
CITATOR INFO :
D 1969 SC1306 (9)
E&R 1978 SC 694 (87)

ACT:
Minimum Wages-Bidi industry Notification fixing minimum wages, prescribing method for discarding of 'Chhat' bidis and payment therefore-If ultra vires- -Doctrine of implied powers-Notification No. MWA 1557 J dated June 11, 1948-Minimum Wages Act, 1948(11 of 1948), ss. 2(h) 3, 5, 20 and 21.

HEADNOTE:

By s. 3 of the Minimum Wages Act, 1948, the appropriate Government is authorised to fix minimum rates of wages for employees in the Scheduled employments and s. 5 lays down the procedure for fixing and revising such minimum wages. The State Government published a notification dated June 11, 1958, fixing minimum rates of wages in respect of employments in bidi making in the Vidarbha region. Clauses 1 and 2 of the notification prescribed the minimum rates district wise and provided for higher rates for making bidis known as 'Hatnakhun' in all the districts. Clauses 3 to 7 dealt with disputes between the employers and the employees as to how bad bidis were to be discarded and in what proportion and as to the payment for such discarded bidis. The appellant contended that cls. 3 to 7 of the notification were ultra vires:

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Held, that cls. 3 to 7 of the Notification were outside the purview of the powers conferred upon the State Government

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by s. 5 of the Act and were ultra vires. The provisions of the Act empowered the Government only to fix minimum wages; they did not authorise it to make rules for resolving the disputes regarding the rejection of bad bidis and regarding the payments to be made for the rejected bidis.

The Act empowered the Government to fix the remuneration payable to an employee if the other terms of the contract were observed; it did not authorise the Government to vary the other terms. Under the contract the employer was entitled to decide which bidis to discard, and to retain such bidis and to pay only for such bidis as were accepted by him. Clauses 3 to 7 of the notification purported to modify these terms in material particulars and this was not within the power conferred by the Act upon the Government. Nor could these clauses be justified on the basis of implied powers. The doctrine of implied powers could only be invoked when it was found that a duty was imposed or a power conferred on an authority buy a statute and it was further found that the duty could not be discharged or the powers could not be exercised at all unless some auxiliary or incidental power was assumed to exist. Even if cls. I and 2 would become ineffective without cls. 3 to 7 being there that would not be a proper basis for invoking the doctrine of implied powers. The definition of

'wages' in s. 2(h) of the Act postulated the binding character of the other terms of the contract and brought within the purview of the Act only the term relating to wages. By implication the very basic concept of wages could not be ignored. By ss. 20 and 21 the Act makes specific provision for the settlement of claims in regard to payment of minimum wages and as such no powers could be implied in the Government to set up a separate machinery to settle such disputes. Further no power could be implied to make cls. 1 and 2 of the notification effective: such power could only be implied if it was necessary to make s. 5 of the Act itself effective.

Michael Fenton and James Fraser v. Jhon Stephen Hompton, (1957-59) 117 R. R. 21, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 415-418 of 1960.

Appeals from the judgments and orders dated September 23, 1958, of the Bombay High Court in Special Civil Applications Nos. 205 and 214 of 1958.

A. V. Viswanatha Sastri, S. P. Verma, S. N. Andley, Rameshwar Nath and P. L. Vohra, for the appellants (in C. A. No. 415 of 1960).

A. S. Bodde and Ganapat Rai, for the appellants (in C. A. No. 417 of 1960) and respondents (in C. A. No. 418/60).

H. R. Khanna and R. H. Dhebar, for the appellants (in C. As. Nos. 416 and 418 of 1960) of 1960).

A. G. Ratnaparkhi, for respondent No. 3 (in C. A. No. 415 of 1960).

1961 November 15. The Judgment of the Court was delivered by GAJENDRAGADKAR, J.-These four appeals consist of two sets of cross appeals each and they arise from two petitions filed in the High Court of Bombay at Nagpur challenging the validity of the notification dated June 11, 1958, issued by the State of Bombay, now represented by the State of Maharashtra, under s. 5 of the Minimum Wages Act, 1948, (11 of 1948) (hereafter called the Act.) The petitioners in Special Civil Application No. 205 of 1958 are the Bidi, Bidi Leaves and Tobacco Merchants' Association, Gondia and two others, whereas the petitioners in Special Civil Application No. 214 of 1958 are Haji latif Ghani Kachhi and five others. The impugned notification consists of seven clauses. By the majority decision of the High Court cls. 1 to 5 and the first part of cl. 6 are held to be intra vires, whereas the latter part of cl. 6 and cl. 7 as well as the explanation added to it are held to be ultra vires. The first part of the finding is Challenged by the petitioners in the two writ petitions by their Civil Appeals

Nos. 415 and 417 respectively, while the latter part of the finding is challenged by the State of Maharashtra in its Civil Appeals Nos. 416 and 418 respectively. Thus, Civil Appeals Nos. 415 and 416 are cross appeals and Civil Appeals Nos. 417 and 418 are cross appeals. These appeals have been brought to this Court with a certificate granted by the High Court under Art. 132(1) of the Constitution. As will presently appear the only point which calls for our decision in these appeals is one relating to the validity of the impugned notification; and so the certificate might well have been given under Art. 133 (1)(c) and not under Art. 132 (1) because the case does not involve a substantial question of law as to the interpretation of the Constitution. For convenience we will refer to the petitioners in the writ petitions as petitioners and the State of Maharashtra as the respondent in these appeals.

The petitioners are bidi manufacturers in different parts of the Vidarbha region and they employ a large number of persons for the purpose of making bidis for them. It appears that the Government of the State of Madhya Pradesh within whose jurisdiction Vidarbha was then situated had fixed the minimum rates of wages in respect of employment in tobacco (including bidi making) manufactories by issuing a notification on January 11, 1951. This notification had purported to fix the minimum rates of wages per 1000 bidis by reference to different localities in the State. The rates thus fixed were inclusive of dearness allowance or compensatory cost of living allowance and they varied from place to place as specified in columns 2 to 4 of the notification respectively. An Advisory Board was thereafter constituted by the said State in exercise of the powers conferred on it by s. 7 of the Act. Subsequently, in 1956 the said minimum rates of wages were revised by a notification issued on February 23, 1956. As a result of the State Reorganisation Act, 1956 (37 of 1956) the Vidarbha region became part of the State of Bombay. After Vidarbha thus became a part of the State of Bombay the Government of Bombay notified that the Advisory Board appointed by the said Government under s. 7 shall be the Advisory Board for Vidarbha. This notification was issued on November 1, 1956. The Government of Bombay then issued a notification publishing the draft of the notification which was proposed to be issued under s. 5, sub-s. (2) read with cl. (b) of sub-s. (1) of s. 5, and notice was thereby given to all the bidi manufacturers that the said draft would be taken into consideration on or after March 1, 1957. Thereafter the procedure prescribed by s. 5 was followed, an enquiry was held, a report of the Advisory Board was received and finally the impugned notification was issued on June 11, 1958. It is the validity of the several clauses contained in this notification that is challenged before us in the present appeals.

In their petitions the petitioners alleged that cls. 3 to 7 of the notification were invalid and ultra vires the powers of the respondent under ss. 3, 4 and 5 of the Act. According to them the respondent had no power to make provision for deciding as to the extent to which "chhat" will be permitted or directing the action to be taken by the employer and employee relating to bad bidis. Their contention was that the said clauses purported to make provisions for the settlement of disputes between the employer and the employee concerning an Industrial matter and were outside the purview of the respondent's power under the relevant sections. They urged that the different provisions of the notification were so interrelated that it was difficult to dissociate one from the other and so it was necessary that the notification as a whole should be quashed.

The respondent disputed the correctness of the contentions raised by the petitioners. It urged that there were constant disputes among bidi manufacturers and bidi workers regarding the minimum wages fixed in the Vidarbha region and so the respondent thought it necessary to institute an enquiry into these complaints in order to decide whether it was necessary to revise the minimum wages prescribed by the earlier notification and the mode of determining those wages. It was only after a comprehensive enquiry was held at which all parties were heard that the respondent issued the notification in question. Its case was that the minimum rates of wages had been fixed on industry-cum-regionwise basis and that cls. 3 to 7 were intended to make the fixation of minimum rates of wages effective. According to the respondent, the absence of any rules regarding the exercise of the right of "chhat" by the employers tends to deprive the bidi workers of their right of getting minimum rates of wages, and so cls. 3 to 7 were deliberately introduced to make the material provisions of the Act effective in their implementation.

These petitions were first heard by Mudholkar and Kotval, JJ. Mudholkar, J. held that all the clauses in the impugned notification were valid for, according to him, though the Act had not conferred express powers on the respondent to prescribe the impugned clauses of the notification yet the respondent could prescribe the said rules under the doctorine of implied powers. Kotval, J., agreed that cls. 1 and 2 were valid but he thought that even under the doctrine of implied powers the remaining cls. 3 to 7 could not be sustained. According to him the said clauses were, however, severable from cls. 1 and 2 and so they should be struck down leaving cls. 1 and 2 in tact. Since there was a difference of opinion between the two learned judges the matter was referred to Tambe, J. He held that cls. 1 to 5 and the first part of cl. 6 were intra vires where as the latter part of cl. 6 and cl. 7 as well as the explanation added to it were ultra vires. After Mr. Justice Tambe pronounced his judgment the matter was again referred to a Division Bench, and the Division Bench, in accordance with the majority opinion, has upheld the validity of cls. 1 to 5 and the first part of cl. 6 and has struck down the latter part of cl. 6 as well as cl. 7 and its explanation. It is against this decision that the petitioners and the respondent have come to this Court with a certificate granted by the High Court in that behalf.

Before dealing with the merits of the controversy between the parties it would be relevant to refer to the material provisions of the Act. The Act was passed in 1948 in order to provide for fixing minimum rates of wages in certain employments. Its provisions apply to the scheduled employment which expression under s. 2

(g) means an employment specified in the schedule, or any process or branch of work forming part of such employment. It is common-ground that employment in any tobacco (including bidi making) manufactory is a scheduled employment under the schedule of the Act. Section 2(h) defines wages and it prescribes inter alia, that wages means all, remuneration capable of being expressed in terms of money which would, if the terms of the contract of employment, express or implied, were fulfilled be payable to a person employed in respect of his employment or of work done in such employment, and includes house-rent allowance, but does not include the items specified by cls.(i) to

(v) of the said definition. Section 3 authorises the appropriate Government to prescribe different minimum rates of wages for different scheduled employments, different classes of work in the same

scheduled employments, adults, adolescents, children and apprentices and different localities. Under s. 4 are prescribed the components of the minimum rates of wages. Section 5 provides for the procedure for fixing and revising minimum wages. Section 7 provides, inter alia, that minimum wages payable under the Act shall be paid in cash. Under s. 12 an obligation is imposed on the employer to pay every one of his employees engaged in the scheduled employment wages at a rate not less than the minimum rate of wages fixed by the notification issued in that behalf. Section 12 (2) saves the application of the provisions of the payment of wages Act. Section 20 authorises the appropriate Government to appoint an authority to hear and decide for any specified area all claims arising out of the payment of less than the minimum rates of wages and other claims specified therein. The remaining sub-sections of the said section prescribe the procedure for determining such claims. Under s. 21 a single application can be made in respect of a number of employees who wish to prefer a claim for the decision of the authority under s. 20. Section 22 prescribes penalties for the offences therein specified. Section 22A provides that if any employer contravenes any of the provisions of the Act or any rule or order made thereunder he shall, if no other penalty is provided for such contravention, be punishable with fine which may extend to five hundred rupees. Section 22B provides, inter alia the manner in which Courts may take cognizance of a complaint against any person for an offence committed under the Act. That in brief is the scheme of the material provisions of the Act.

At this stage it would be necessary to read the several clauses of the impugned notification :

> "No. MWA. 1557-J. In exercise of the powers conferred by sub-section (2) of section 5 read with clause (b) of sub-section (1) of that section of the Minimum Wages Act, 1948 (XI of 1948) and after consulting the Advisory Board and in supersession of the former Government of Madhya Pradesh Labour Department Notification No. 564-451 XXIII, dated 23rd February, 1956, the Government of Bombay hereby revise the minimum rates of wages in respect of the employment in any tobacco (including bidi making) manufactory in the Vidarbha region of the State of Bombay as mentioned in the Schedule hereto annexed and directs that this notification shall come into force with effect from 1st July, 1958.

SCHEDULE Subject to the other provisions of this Schedule, the revised minimum rates of wages payable to employees per thousand bidis (when leaves are supplied by the employer) shall be as follows:

> Area Revised rates in Rs.
>
> (i) Nagpur District ... 1.69
>
> (ii) Bhandara District ... 1.62
>
> (iii) Chanda, Akola, Buldana, Yeotmal, Amravati and Wardha District ... 1.56

2. For all bidis in which 7 chhataks or more of tobacco mixture is used and for those bidis which are known as "Hatnakun" bidis, there shall be an increase of 12 Naye Paise per 1000 bidis in the rates mentioned above in all the areas.

3. It shall be within the discretion of the employer to decide which are "chhat"

bidis or bad bidis, up to 5 per cent of the bidis prepared by the employee. If the employer decided that any bidis are "chhat" or bad, the "chhat" or bad bidis up to 5 per cent shall be destroyed forthwith by the employee and whatever tobacco is recovered from them shall be retained by the employer. If, however the employer wants to retain these "chhat" or bad bidis, he shall pay full wages for the same to the employee.

4. If "chhat" or bad bidis are more than 5 per cent, but less than 10 per cent, and if there is any dispute between the employer and the employee as to whether the '"chhat" or bad bidis is done properly or not, equal number of representatives of the employer and the employees shall inspect the "chhat" is done properly or not. If there is any difference of opinion among the representatives of the two sides, the majority opinion shall prevail. If the opinion is equally divided and the employer wants to retain the "chhat" bidis, he shall pay wages for "chhat" bidis between 5 per cent to 10 per cent at half the rates fixed above. If the employee does not want to retain these bidis the employee shall destroy them forthwith.

5. The employer shall nominate his representatives and the employees shall elect their representatives.

6. In the case of "chhat" above 10 per cent., the employee shall be entitled to full wages. It shall, however, be open to the employer to take suitable action against the employee if the "chhat" is more than 10 per cent for 6 continuous working days in a calendar month.

7. The "chhat" shall be made once in a day only, at any premises within a distance of not more than 2 miles from the premises where bidis are manufactured.

Explanation:-For the purpose of this Schedule the expression "employer" includes his thekedar, contractor or agent as the case may be.' The validity of cls. 1 and 2 is not in dispute. The petitioners, however, contend that cls. 3 to 7 are outside the powers conferred on the respondent by the relevant provisions of the Act and as such are invalid. It is common ground that even if the impugned clauses are held to be ultra vires they are severable from cls. 1 and 2 so that the invalidity of the impugned clauses will not affect the validity of the said two clauses and they will stand even if the other clauses are struck down.

In determining the question about the validity of the impugned clauses it is necessary to refer to two material facts. The nature and scope of the terms of contract between the petitioners and their employees are really not in dispute. It is alleged by the petitioners that they employ a large number of persons for the purpose of making bidis for them, that these persons are supplied with tendu leaves, tobacco and other necessary materials, they take the said articles to their respective places

where they work and brings back the bidis prepared by them to the employer. The employer then examines the bidis' accepts such of them as are found to have been prepared according to the terms of the contract rejects such of them as are found to be of poor quality and not prepared according to the terms of the contract and pays for the bidis actually accepted. The respondent has not traversed these allegations made by the petitioners. It admitted that the workers are paid on piece-rate basis and the payment is made "on the basis of bidis selected and accepted by the employer after rejecting certain portions of bidis prepared by the workers". In fact the respondent has expressly stated that "there is a recognised practice of making payment on the basis of bidis accepted by employers as coming up to a certain standard of skill". It is further admitted that the employers have insisted on their right in principle of rejecting the sub-normal or sub- standard bidis prepared by the employees. Thus, there is no doubt that under the terms of the contract the workers are entitled to receive payment only for the bidis accepted by the employers, and not for those which are rejected. It is also not disputed that the bidis which are rejected by the employers otherwise known as "chhats" are retained by the employer though he refuses to take them into account in the matter of payment to the workers on the ground that they do not come up to the standard of skill or quality prescribed by the contract.

It also appears to be true that the employees in this region have been protesting against improper rejection of the bidis by the employers. They have contended that the employers reject an unreasonably high proportion of bidis falsely dubbing them as of sub-normal quality without paying anything to the workers for their labour spent in rolling such rejected bidis. In its affidavit the respondent has emphasised that as a result of to is method of discarding bidis on the ground that they are of sub-standard quality bidis workers were deprived of the labour charges for bidis which are rejected by their employers; and so it was urged that the question of fixing maximum rates of wages for bidi workers necessarily involved the question as to the quantum or percentage of such rejection which should be permissible to the employer. According to the respondent the impugned notification has purported to fix the minimum rates of wages after taking into consideration the problem presented by the practice of discarding bidis and paying wages to the workers only for such bidis as are accepted. In support of the validity of the notification the respondent also relied on the fact that the formula prescribed by the notification had been evolved after taking into account the representations made both by the employers and the employees. In fact, according to the respondent, this said formula represented a substantial degree of agreement between the parties on this point.

It would thus be seen that on the two material facts there is really no serious dispute between the parties. The respondent agrees that under the practice which must be taken to be consistent with the implied terms of contract between the bidi manufacturer and his employee, after the bidis are prepared by the employees and brought back to the employer the employer has a right to examine the quality of the bidis, accept only such as have come up to the standard prescribed by the contract and reject the rest. The practice further justifies the payment of wages to the employees only for the bidis actually accepted and not for those which are rejected though the rejected bidis may be retained by the employer. On the other hand, it is not, and cannot be seriously disputed by the petitioners that in some cases this practice may work great hardship on the workers, and in every case the workers do not get wages for the labour put by them in rolling the rejected bidis. The main

question which arises for our decision in the present appeals is whether the injustice resulting from the practice of discarding bidis and not making any payment for them to the workers can be checked, controlled and regulated by the respondent by issuing a notification under the powers conferred on it by s. 5 of the Act. If the relevant provisions of the Act confer upon the respondent the power to check the evil against which the workers complain then of course the validity of the impugned clauses would be beyond challenge. If, on the other hand, the power to prescribe or revise minimum rates of wages does not either expressly or by necessary implication include the power to provide for the machinery to check the evil in question, then the impugned clauses would be ultra vires however necessary it may be to check and control the said evil in question.

In this connection let us broadly examine the scope and effect of the impugned clauses. Clauses 1 and 2 prescribe the revived minimum rates districtwise and provide for the payment of higher Price for the bidis known as Hatnakhun bidis in all and the said districts. These two clauses are obviously valid and the petitioners have not disputed the conclusion of the High Court in that behalf. Clauses 3 to 6 deal with the problem of the that bidis or bidis which are rejected because they are bad. Clause 3 leaves it to the discretion of the employer to decide which are chhat bidis up to 5 percent of the bidis prepared by the employees. This clause provides that the bidis to rejected would be destroyed and tobacco recovered from them retained by the employer; and it adds that if the employer wants to retain the rejected bidis he shall pay full wages for the same to the employee. In other words this, clause means that the employer may discard bidis up to 5 percent but if he does not want to pay the workers for the said bidis he must destroy them. That would show that the discretion exercised by him is honest and fair. If, on the other hand, he wants to retain the said bidis that would mean that he thinks that the bidis would find a market and in that case he must pay for them on the basis that they are good bidis. On principle this provision may perhaps not be open to any serious criticism and it is not unlikely that if the notification had not made further detailed provisions by cls. 4 to 6 the present dispute would not have been brought before the High Court. The employers probably do not have a serious grievance against cl. 3 on the merits.

Clause 4 deals with cases where the rejection may be more than 5 per cent but less than 10 per cent of total work produced by the worker. In regard to this class of cases cl. 4 provides for a machinery to deal with cases falling under it. Representatives of the employers and employees have to be appointed and they have to decide whether the work have been properly done or not. The decision would be according to the opinion of the majority. If the opinion is equally divided and the employer wants to retain the chhat bidis, between 5 per cent to 10 per cent he shall pay at half the rates fixed in cl. 1. If the employer does not want to retain them the employees shall destroy them, The clause does not seem to provide for 3 7 case where the majority opinion may support the rejection between 5 per cent and 10 percent; that is a lacuna in the clause. The only comment which can be legitimately made against the clause on its merits is that the setting up of the machinery for a kind of adjudication of the dispute between the employer and the employee may, instead of solving the difficulties in actual working, add to them.

That takes us to cl. 6. This clause has been very severely criticised by the petitioners. It provides that in case of chhat about 10 per cent the employees shall be entitled to full wages which means that even if chhat above 10 per cent is made reasonably and for a proper cause the employer has to pay

for the discarded work as therein prescribed; the only right given to the employer in such a case is to take suitable action against the employee if the chhat is more than 10 per cent and that too for six continuous working days in a calendar month. Prima facie this clause appears to be unreasonable and unjust.

The explanation to cl. 7 is also criticised by the petitioners because the thekedar, contractor or agent, who is appointed by the employer would, if the explanation is valid, be liable to perform all the obligations imposed on the employer by the relevant provisions of the Act such as ss. 12 and 18. We have examined the broad features of the notification and indicated the comment made on it by the petitioners for the purpose of showing that on the merits some of the clauses do not appear to be fair and just, but that is not the ground on which their validity can be or has been challenged before us. The main argument in support of the challenge rests on the assumption that cls. 3 to 7 are all beyond the powers conferred on the respondent by the relevant provisions of the Act; and it is this argument which needs to be examined.

It is well settled that industrial adjudication under the provisions of the Industrial Disputes Act, 1947(14 of 1947) is given wide powers and jurisdiction to make appropriate awards in determining in industrial disputes brought before it. An award made in an industrial adjudication may impose new obligations on the employer in the interest of social justice and with a view to secure peace and harmony between the employer and his workmen and full co-operation between them. Such an award may even alter the terms of employment if it is thought fit and necessary to do so. In deciding industrial disputes the jurisdiction of the tribunal is not confined to the administration of justice in accordance with the law of contract. Mukherjee, J., as he then was, has observed in The Bharat Bank Ltd., Delhi v. Employees of the Bharat Bank Ltd., Delhi the tribunal "can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or given effect to the contractual rights and obligations between them which it considers essential for keeping industrial peace." since the decision of the Federal Court in Western India Automobile Association v. Industrial Tribunal, Bombay, it has been repeatedly held that the jurisdiction of industrial tribunals if much wider and can be reasonably exercised in deciding industrial disputes with the object of keeping industrial peace and progress (Vide: Rohtas Industries, Ltd., v. Brijnandan Pandey; The Patna Electric Supply Co. Ltd., Patna v. The Patna Electric Supply Workers Union. Indeed, during the last ten years and more industrial adjudication in this country has made so much progress in determining industrial disputes arising between industrial of different kind and their employee that the jurisdiction and authority of industrial tribunals to deal with such disputes with the object of ensuring social justice is no longer seriously disputed.

But, it is necessary to remember that no claim can be made for such broad jurisdictional power by the respondent when it purports to issue a notification under the provisions of the Act. These powers and authority would necessarily be conditioned by the relevant provisions under which it purports to act, and the validity of the impugned notification must therefore be judged not by general considerations of social justice or even considerations for introducing industrial peace; they must be judged solely and exclusively by the test prescribed by the provisions of the statute itself. It appears that in 1956 before Vidarbha became a part of the state of Bombay the State Government of

Madhdya Pradesh had made a comprehensive reference for the arbitration by the State Industrial Court between the bidi manufacturers of Bhandara District and their employee. In this dispute all the material issues arising from the prevailing practice which authorised employers to reject chhat bidis had been expressly referred for adjudication. Subsequently, when the impugned notification was issued the respondent apparently took the view that what could have been achieved by reference to the arbitration of state Industrial Court may well be accomplished by issuing a notification under s. 5 of the Act. It may be that there is substance in the grievance made by the employees that the practice of rejecting chhat bidis often leads to the injustice and deprives them of the wages legitimately earned by them by rolling the said bidis and there can be no doubt that if a comprehensive reference is made for the decision of this industrial dispute between the bidi manufacturers and their employees an award may well be passed which will resolve this dispute; but the question which falls for our decision is whether the relevant provisions of the Act authorised the State Government to make rules for the decision of the dispute in that behalf and for the payment of minimum rate of wages on the basis of such decision? In our opinion, the answer to this question has to be in the negative.

What is the extent of the authority conferred on the respondent in fixing or revising minimum rates of the wages under the relevant provisions of the Acts In dealing with this question we must necessarily bear in mind the definition of the term "wages" prescribed by s. 2(h). As we have already been the term "wages" includes remuneration which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment. In other words, the terms "wages" refers to remuneration payable to the employee as a result of the terms of employment. What would be the amount to which the employee is entitled if the other terms of the contract are preferred ? That the question which has to be asked in determining what the term "wages" means under (h). No doubt ss. 3, 4 and 5 authorised the appropriate Government to fix the minimum rates of wages. In other words, if the wages fixed by a contract which is either express or implied are found to be low authority is conferred on the appropriate Government to increase them so as to bring them to the level of what the said Government regards as the minimum wages in the particular scheduled employment in the particular area concerned. This means that power is conferred on the appropriate Government to modify one term of the contract express or implied between the employer and the employee and that is a term which has reference to the payment of wages. If for a certain piece of work done by the employee the employer has agreed to pay him either expressly or by implication a certain amount of wages the appropriate Government can issue a notification and prescribe that for the said work done under the contract the employer must pay his employee a much higher rate of wages and the higher rate of wages thus prescribed would be deemed to be the minimum rate of wages between the parties.

It would, however, be noticed that in defining "wages" cl. 2(h) postulates that they would be payable if the other terms of the contract of employment are fulfilled. That is to say, authorising the fixation of minimum rates of wages the other terms of the contract of employment have always to be fulfilled. The fulfillment of the other terms of the contract is a condition precedent for the payment of wages as defined under s. 2 (h) and it continues to be such a condition precedent even for the payment of the minimum rates of wages fixed and prescribed by the appropriate Government. The

significance of the definition contained in s. 2(h) lies in the fact that the, rate of wage may be increased but no change can be made in the other terms of the contract. In other words, the Act operated on the other terms of the Contract on the other terms of the contract between the employer and the employee. That is the basic approach which must be adopted in determining the scope and effect of the powers conferred on the appropriate Government by the relevant provisions of the statute authorising it to prescribe fix or minimum rates of wages or to revise them. What the appropriate Government is authorised to do is to proscribe, fix or revise wages and wages are defined to be remuneration payable to the employees if the terms of the contract of employment, express or implied, were fulfilled.

This definition runs, as it inevitably must, through the and the material provisions of the Act and its importance cannot therefore be ignored.

Bearing this fact in mind let us examine the impugned clauses of the notification. Clauses 1 and 2 clearly fall within the purview of the power conferred on the respondent because they do no more than prescribe the minimum rates of rates as therein specified; out cls. 3 to 7 clearly and unambiguously purport to deal with the terms of the contract between the parties other than that relating to the remuneration. These clause are obviously intended to deal with the dispute between the employers and their employees as to how bidis should be discarded and in that proportion and what should be the procedure to be followed in regard to the? payment for such discarded bidis. In appreciating the true effect of these clauses it is necessary to recall that the parties are agreed about the practice at present prevailing which must be taken to represent the terms of the contract either express or implied. According to the said practice the employer decides which bidis should he discarded, he retains the discarded bidis and pays only for such bidis as are accepted be him. It if plain that the impugned clauses of the notification purport to modify these terms in material particulars and that and be plainly outside the jurisdiction of the authority of the respondent. It may well form the subject-matter of reference for industrial adjudication but it cannot form the subject-matter of a notification prescribing minimum rates of wages under ss. 3, 4 or 5. It is conceded by the respondent that there is no express provision in the act, which authorised the setting up of the machinery as prescribed by cls. 3 and 4 or for laying down the manner in which the employer should make payment for the discarded bidis. It is, however, strenuously urged that the validity of these clauses should be upheld on the ground of the implied power of the respondent; and that takes us to the question as to the true scope and effect of the doctrine of implied power.

> "One of the first principles of law with regal to the effect of an enabling act", observes Craies, "is that if a Legislature enables something to be done, it gives power at the same time by necessary implication to do everything which is indispensable for the purpose of carrying out the purposes in view(1)". The principle on which the doctrine is based is contained in the legal maxim 'Quando lex aliquid concedit concedere videtur et illud sine quo res ibsa ease non potest'. This maxim has been thus translated by Broom thus: "whoever grants a thing is deemed also to grant that without which the grant itself would be of no effect". Dealing with this doctrine Pollock, C.B., observed in Michaely Fenton and James Fraser v. John Stephen, Hempton "It becomes therefore all important to consider the true import of this

maxim, and the extent to which it has been applied. After the fullest research which I have been able to bastow, I take the matter to stand thus : Whenever anything is authorised, and especially if, as matter of duty, required to be done by law, and it is found impossible to do that thing unless something else not authorised in express terms be else done, then that something will be supplied by necessary intendment." This doctrine can be invoked in cases "where an Act confers a jurisdiction it also confers by implication the power of doing all such acts, or employing such means as are essentially necessary to its execution (3)." In other words, the doctrine of implied powers can be legitimately invoked when it is found that a duty has been imposed or a power conferred on an authority by a statute and it is further found that the duty cannot be discharged or the power cannot be exercised at all unless some auxiliary or incidental power is assumed to exist. In such a case, in the absence of an implied power the statute itself would become impossible of compliance. The impossibility in question must be of a general nature as that the performance of duty or the exercise of power is rendered impossible in all cases. It really means that the statutory provision would become a dead-letter and cannot be enforced unless a subsidiary power is implied. This position in regard to the scope and effect of doctrine of implied powers is not seriously in dispute before us. The parties are at issue, however, on the question as to whether the doctrine of implied powers can help to validate the impugned clauses in the notification.

The respondent strenuously contends that cls. 1 and 2 of the notification which have prescribed the minimum rates of wages per 1000 bidis would become ineffective unless cls. 3 to 7 supplement them. The argument is that by improper or dishonest exercise of the power conferred on the employer by the contract of employment to discard chhat bidis the employees would be cheated of their legitimate due wages under cls. 1 and 2 and so, in order to make the provisions of cls. 1 and 2 effective some subsidiary provisions had to be made for settling the dispute between the employer and his workmen in regard to chhat bidis. As we have already observed, the grievance made by the employees on the score of improper rejection of bidis may in many cases be well-founded; but the seriousness of the said grievance and the urgent necessity to meet it would hardly be a proper basis for invoking the doctrine of implied power where the provisions of the statute are quite clearly against the assumption of such implied power. The definition of the term "wheres"

postulates the binding character of the other terms of the contract and brings within the purview of the Act only one term and that relates to wages and no other. That being so, it is difficult to hold that by implication the very basic concept of the term "wages" can be ignored and the other terms of the contract can be dealt with by the notification issued under the relevant provisions of the Act. When the said other terms of the contract are outside the scope of the Act altogether how could they be affected by the notification under the Act under the doctrine of implied powers Besides, in this connection it is also necessary to bear in mind the provisions of ss. 20 and 21 of the Act. These two sections provide for the settlement of claims made by employees in regard to the payment of minimum rates of wages. If for instance, good bidis are rejected by the employer as chhat bidis

improperly and without justification the employees can make a claim in that behalf and the same would be tried under ss. 20 and 21. Therefore the Act has made a specific provision for the enforcement and implementation of the minimum rates of wages prescribed by notifications. The present notification purports to ignore the said provisions and sets up a machinery to settle the said disputes. Clauses 1 and 2 of the notification have prescribed the revised minimum rates of wages. If, in the matter of payment of the said wages, any disputes arise they must be left for adjudication by the authority prescribed by s. 20. That is another reason why the doctrine of implied powers cannot be invoked in support of the validity of the impugned clauses in the notification.

There is yet another consideration which is relevant in dealing with the question about the implied powers. The doctrine of implied power can be invoked where without the said power the material provision of the Act would become impossible of enforcement. In the present case all that s. 5 requires is the fixation of minimum rates of wages, and that has been done by the notification by cls. 1 and 2. What the subsidiary clauses purport to do is to make the enforcement of the fixed rate effective by providing for a machinery to deal with the possible disputes arising between the parties as a result of the practice of discarding chhat bidis. In other words, cls. 1 and 2 fix the minimum rates of wages and thus s. 5 has been complied with and enforced. The remaining clauses purport to make the implementation of the provisions of cls. 1 and 2 effective. That is very different from giving effect to s. 5 itself. The enforcement of the notification is clearly not the same thing as exercising the power of fixing or revising the minimum rates of wages under s. 5. A Power may be implied, if necessary, in discharging the duty imposed upon the appropriate Government or in exercising the power conferred on the State Government in the matter of fixing or revising the minimum rates of wages; but surely no power can be implied for making effective the implementation of the notification issued under the said power or in the discharge of the said duty. The purpose of the Act cannot be said to have failed after the minimum rates of wages are prescribed and notified. What may turn out to be ineffective is the provision for payment of the said wages by reason of the rejection of good bidis; but that is a matter of an industrial dispute which has to be adjudicated upon under ss. 20 and 21 or under other provisions of the law. It is true that a large section of the workers in the bidi trade is illiterate, uneducated and unorganised; and there can be no doubt that their grievance on the ground of improper rejection of the bidis deserves to be redressed, but, in our opinion, the procedure adopted by the respondent in redressing the said grievance is outside the scope of the Act, and therefore beyond the powers conferred on it by s.

5. The proper remedy in such a case may be to make a comprehensive reference of the dispute to the competent industrial tribunal and invite the tribunal to make a proper award in that behalf. We are, therefore, inclined to take the view that cls. 3 to 7 which form an integral scheme are outside the purview of the powers conferred on the respondent by s. 5 of the Act and must therefore be declared to be ultra vires. It is common-ground that these clauses are severable from cls. 1 and 2 and that their invalidity does not affect the validity of the said two clauses.

are allowed and Civil Appeals Nos. 416 and 418 are dismissed. Respondent to pay the costs of the petitioners in Civil Appeals Nos. 415 and 417. One set of hearing cost.

C.A. Nos. 415, 417, allowed.

C.A. Nos. 416, 418 dismissed.