

State Of Rajasthan & Another vs Hari Ram Nathwani & Ors on 3 September, 1975

Equivalent citations: 1976 AIR 277, 1976 SCR (1) 641, AIR 1976 SUPREME COURT 277, 1975 2 SCC 517, 1976 LAB. I. C. 259, 1975 UJ (SC) 811, 1976 (1) SCR 841, 1975 2 LABLN 249, (1956) 1 LAB L J 1, 31 FACLR 316, 48 FJR 176, ILR 1976 KANT 591

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Bench: N.L. Untwalia, A. Alagiriswami, P.K. Goswami

PETITIONER:

STATE OF RAJASTHAN & ANOTHER

Vs.

RESPONDENT:

HARI RAM NATHWANI & ORS.

DATE OF JUDGMENT 03/09/1975

BENCH:

UNTWALIA, N.L.

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UNTWALIA, N.L.

ALAGIRISWAMI, A.

GOSWAMI, P.K.

CITATION:

1976 AIR 277 1976 SCR (1) 641

1975 SCC (2) 517

CITATOR INFO :

D 1985 SC1391 (2)

ACT:

Minimum Wages. Act (11 of 1948) ss. 5(C)(e), 7 and 9-Appointment of "government officers on committees and Advisory Board as independent members-Propriety-Advisory Board appointing its own sub-committees-Propriety-S. 5(1)(a), scope of.

HEADNOTE:

Section 5(1) of the Minimum Wages Act 1948, provides two types of procedure for fixing and revising minimum wages in respect of any scheduled employment. Section 7 provides

for the appointment of an Advisory- Board. If the procedure provided in s.5(1) (a) is followed consultation with the Advisory Board is not u-required while it is mandatory in case the procedure in cl. (b) is followed. Under cl. (a), the Government can appoint as many Committees or sub-committees as it considers necessary to hold inquiries and advise it in respect of such fixation or revision. Section 9 requires that every committee, sub committee and the Advisory Board shall consist of representatives of the employers and employees in equal numbers and independent persons, whose number shall not exceed 1/3 of the total number of members. One of the independent persons shall be appointed Chairman. [643 G-644 F]

In the present case the State Government followed the procedure under cl. (a) and appointed a committee for revising the wages with respect to employment in Mica Mines which is a scheduled employment under the Act. The committee consisted of five members, two representative of the employers,. two of the employes and a Professor of Economics of a Government college as an independent member. It submitted its report to the Government. The Government referred the matter to the Advisory Board which consisted of 21 members, 8 representatives of the employers. 8 of the employees and 5 government officers as independent members. The Advisory Board appointed a sub committee to further into matter. In the sub-committee were taken same persons who were, not members of the Advisory Board. The sub committee made its recommendations and the Advisory Board after considering those recommendations also submitted its report and the State Government accepted it with slight variations and fixed minimum wages by a notification. The respondent challenged its validity and the High Court struck it down holding that, (i) the constitution of The Wage Committee and the Advisory Board was not valid because the economics professor and the 5 government member were not independent members, (ii) the Board had exceeded its power. in appointing a sub-committee. and. (iii) the Board committed an illegality in taking into consideration its recommendations while submitting its report to the Government.

Allowing the appeal to this Court,

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HELD :(1) It may be that in certain circumstances persons who are in service of' the Government may cease to have an independent character if the question arises of fixation of minimum wages in a scheduled employment. In. the case of fixation of minimum wages in a scheduled employment in which the Government is directly interested, whether Government servants can come in the category of independent members in addition to the Government officer who come on the Board or Committee as representatives of the employers is a matter which has to be considered in an appropriate case. But in the instant case the constitution of the Wage

Committee or the Advisory Board was not bad as Government was not an employer in the Mica Mines in respect of which minimum wages were fixed. [646 A E]

The State of Andhra Pradesh v. Narayana Velur Beedi Manufacturing Factory and others [1973] I Labour Law Journal, 476, followed.

642

(2) The Advisory Board can device its own procedure and collect information by appointment of sub-committees consisting only of some of its members. But the Advisory Board has no power to appoint a rival subcommittee to the one appointed by the Government and take in such subcommittee, persons who are not members of the Board as was done in this case. Therefore, the Advisory Board committed an irregularity in appointing the sub-committee and taking into consideration its report. [646 E-G]

(3) But it does not follow that the impugned notification based upon the report of the Advisory Board was bad even if the irregularity is assumed to be an illegality. The recommendations made by the Board even on consideration of the report of its sub-committee was only that of the Advisory Board. Since the procedure was under s. 5(1)(a) it was not mandatory for Government to take the opinion of the Advisory Board at all. Therefore, the impugned notification and the proceedings pursuant to it cannot be quashed [646 G-647 B]

Gulamahamed Tarasaheb, a Bidi factory by its proprietors Shamrao and other v. State of Bombay and others A.I.R.. 1962 Bombay 97 referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1800 of 1969.

Appeal by special leave from the Judgment and order dated the 25th January., 1967 of the Rajasthan High Court in D.B. Civil Writ Petition No. 406 of 1966.

S. M. Jain, for the appellant.

The Judgment of the Court was delivered by UNTWALIA, J.-The hearing of this appeal filed by the State of Rajasthan and another by special leave proceeded ex-parte against the respondents. After examining all the pros and cons of the dispute involved in this appeal with the assistance of the learned counsel for the appellants we have come to the conclusion that the appeal should be allowed.

From time to time the Government of Rajasthan fixed or revised the minimum rates of wages for employees in the Mica Mines throughout the State of Rajasthan under section 5(2) of the Minimum Wages Act, 1948-Central Act 11 of 1948- hereinafter. called the Act. The employment in the Mica

Mines is a scheduled employment within the meaning of section 2(g) of the Act. Eventually the minimum rates of wages were fixed by the Government by a notification dated the 31 July, 1965, the validity of which was challenged in the Rajasthan High Court by several employers in the Mica Mines in Civil Writ No. 406/1966 and 15 other writs. Several proceedings initiated on the basis of the impugned notification were also challenged by the employers. A Bench of the Rajasthan High Court allowed the writ applications, quashed the impugned notification and the proceedings taken in pursuance thereof. This appeal arises out of Civil Writ No. 406/1966 in which the employer is respondent no. 1.

The notification dated 31-7-1965 was challenged on several rounds and we will be concerned with some of them in this appeal. The relevant facts are these. For the purpose of revising the minimum wages fixed by the earlier notification dated the 24th-April, 1959, The State Government in the first instance appointed a Committee consisting of five members on the 17th May, 1962. The constitution of the Committee was, however, revised by notification dated the 26th November, 1962. This committee consisted of five members, two representatives of the employers, two representatives of the employees and one Professor K. S. Mathur, Head of the Department of Economics Degree College, Ajmer. The last was taken as an independent member of the committee. It submitted its report to the Government. The matter was referred by the Government to the Advisory Board constituted under section 9 of the Act. It appears that a Sub-committee as appointed by the Advisory Board to go into the matter further and to consider the report of the Wage Committee appointed earlier by the government on the 26th November, 1962'. In the Sub-committee were taken some persons who were not members of the Advisory Board. The Sub-committee also submitted its report to the Advisory Board which consisted of 21 members, 8 employers' representatives, a employees' representatives and 5 Government officers appointed in the category of independent members. The proceedings of the Board dated the 7th May, 1965 showed that it considered the recommendations of the Wage Committee and the Sub-committee and then submitted its report containing its recommendations of the wage structure suggesting an alternative scale of minimum wages according as the linking of Dearness Allowance with the consumer-price-indices. The State Government accepted the wage structure recommended by the Board but with slight variation in the matter of the linking basis with Dearness Allowance and made it all inclusive rates of minimum wages per month.

The learned Acting Chief Justice of the Rajasthan High Court who delivered the leading judgment in the case, on a consideration of the various divergent decisions of the High Courts came to the conclusion that the constitution of the Wage Committee was not valid as the Professor of the Government College was not an independent member. Similarly the constitution of the Advisory Board was also bad as the five Government officers on the Board could not be said to be independent members. He was also of the view that the Board had exceeded to power in appointing a Sub-committee and committed an illegality in taking into consideration its report while making recommendations to the Government. The other learned Judge with some amount of reservation and diffidence agreed to the order proposed by the learned Acting Chief Justice. It may be stated here that the fixation of the minimum wage in the notification dated the 31st July, 1965 was also challenged before the High Court on certain grounds relating to the merits of the fixation but the High Court has over-ruled such objections.

Section 5 of the Act provides the procedure for fixing and revising minimum wages in respect of any scheduled employment. There are two types of procedure indicated in clauses (a) and (b) of sub-section (1). Obviously in the present case the procedure followed was the one provided in clause (a). We shall now read sub-section (2) of section 5 with the proviso appended thereto:

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

Provided that where the appropriate Government proposes to revise the minimum rates of wages by the mode specified in clause (b) of sub-section (1), the appropriate Government shall consult the Advisory Board also "

It would be noticed that the power to fix the minimum wages is the Government. Under clause (e) of sub-section (1) the Government can appoint as many committees and sub-committees do it considers necessary to hold enquiries and advise it in respect of such fixation or revision of minimum wares. Section 7 of the Act says:

"For the purpose of co-ordinating the work of committees and sub-committees appointed under section 5 and advising the appropriate Government generally in the matter of fixing and revising minimum rates of wages, the appropriate Government shall appoint an Advisory Board."

If the procedure provided in clause (a) is followed, consultation with the Advisory Board is not required in terms but is resorted to while it is mandatory in case of procedure (b). Section 9 provides:

"Each of the committees, sub-committees and the Advisory Board shall consist of persons to be nominated by the appropriate Government representing employers and employees in the scheduled employments, who shall be equal in number, and independent persons not exceeding one-third of its total number of members; one of such independent persons shall be appointed the Chairman by the appropriate Government."

The question as to whether a Government officer could be appointed on Committee, Sub-committee to or the Advisory Board as an independent person came up for consideration before the various High Courts. Majority of them took the view that it could be so. A few High Court, however took a contrary view. In the judgment under appeal the High Court of Rajasthan has fallen in the line of the minority. But recently the point has been set at rest by a decision of this Court in *The State of Andhra Pradesh v. Narayana Velur Beedi Manufacturing Factory and others* (1) . We consider it

appropriate to quote the whole of graph 10 or that judgment:

"In our judgment the view which has prevailed with the Majority of the High Courts must be sustained. The committee or the advisory board can only tender advice which is not binding on the government While fixing the minimum wages (1) [1973] 1 Labour Law Journal 476 or revising the same as the case may be of course, the Government is expected, particularly in the present democratic set up, to take that advice seriously into consideration and act on it but it is not bound to do so. The language of s. 9 does not contain any indication whatsoever that persons in the employment of the Government would be excluded from the category of independent persons. These words have essentially been employed in contradistinction to representatives of employers and employees. In other words, apart from the representatives of employers and employees there should be persons who should be independent of them. It does not follow that persons in the service an employee of the Government were meant to be excluded and they cannot be regarded as independent persons vis-a-vis the representatives of the employers and employees. Apart from this the presence of high Government officials who may have actual working knowledge about the problems of employers and employee can afford a good deal of guidance and assistance in formulating the advice which is to be tendered under S. 9 to the appropriate Government. It may be that in certain circumstances such per sons who are in the service of the Government may cease to have an independent character if the question arise of fixation of minimum wages in a scheduled employment in which the appropriate Government is directly interested. It would, therefore, depend upon the facts of each particular case whether the persons who have been appointed from out of the class of independent persons can be regarded as independent or not. But the mere fact that they happen to be Government officials or Government servants will not divest them of the character of independent persons. We are not impressed with the reasoning adopted that a Government official will have a bias or that he may favour the policy which the appropriate Government may be inclined to adopt because when he is a member of an advisory committee or board he is expected to give an impartial and independent advice and not merely carry out what the Government may be inclined to do. Government officials are responsible persons and it cannot be said that they are not capable of taking a detached and impartial view.

The learned Acting Chief Justice of the High Court considered many of such decisions of the High Courts in his judgment and posed a question "Suppose, the Government is an employer in the particular scheduled employment for which wages are sought to be fixed under the Act. employment for be postulated in such a case that an officer of the Government can property appointed as an 'independent' person on any of the statutory bodies in question?" An answer in the negative was given. He then said "I need hardly add in this connection that if the Government be not an employer in any of the scheduled employments, there II would be no objection to the Government officers of the requisite calibre and experience being appointed as independent persons within the meaning of the section". But thinking that in the list of the scheduled employment are included "employments

such as public motor transport.

and construction and maintenance of roads and building operations and may be, for aught we know, in certain other employments also" in which the State Government is an employer and the Advisory Board constituted is meant for advising the Government in those employments also he held the constitution of the Advisory Board to be bad. In the extract which we have given. above from the decision of this Court a sentence is to be found resembling the line of thinking of the learned Acting Chief Justice. This Court has said "It may be that in certain 1 circumstances such persons who are in the service of the Government may cease to have an independent character if the question arises of fixation of minimum wages in a scheduled employment in which the appropriate Government is directly interested" The question as to whether in such a situation a Government officer appointed on the Board or a Committee can be said to be independent member or not will have to be cautiously considered when an appropriate occasion arises for the same. After all, even in such cases the final authority fixing or revising the minimum wages in a scheduled employment is the Government. (Government officers can undoubtedly come on the Board or the Committee as representatives of the employers. Whether in such a situation more Government servants can come in the category of the independent members is a question which is open to serious debate and doubt. But in the instant case on the authority of this Court it is clear that the constitution of either the Wage Committee or the Advisory Board Was not bad, is the Government was not an employer in the Mica Mines in respect of which employment only minimum wages were fixed by revision in the notification dated the 31st July, 1965.

No procedure has been prescribed in the Act as to the method which the Advisory Board is to adopt before making its recommendations to the State Government. It can devise its own procedure and collect some informations by appointment of a sub-committee consisting only of some of its members as was the case in the decision of the Bombay High Court in Gulamhamed Tarasaheb, a Bidi Factory by its proprietors Shamrao and others v. State of Bombay and others(1). But surely the Advisory Board has no power to appoint a rival sub- I. Committee to the one appointed by the Government and take in such subcommittee persons who are not members of the Board, as was done in this case. There is, therefore, no doubt that the Advisory Board committed an irregularity in taking into consideration the report of the sub-committee invalidly appointed by it. Does it necessarily follow from this that the impugned notification dated 31-7- 1965 based upon the report of the Advisory Board which in its turn had taken into consideration not only the report of the Committee appointed by the Government but also that of the sub-committee appointed by the Board is bad? on a careful consideration of the matter we give our answer in the negative. The irregularity, even characterising it as an illegality, committed by the Advisory Board in taking into consideration the report of the sub-committee was not such as to nullify its recommendation contained in its report, or, in any event, the final decision of the Government contained in the impugned notification. It must be remembered that the procedure followed in this case was the one provided in section 5(1) (1) A.I.R.. 1962 Bombay 97.

(a) in which case it was not mandatory for the Government to take the opinion of the Advisory\Board. After all, the recommendations made by the Board even on consideration of the report of the Sub-committee along with that of the Committee was the advice of the Board. The

Government did accept it but accepted it after some modification. In such a situation we do not think that the notification dated 31-7- 1965 deserves invalidation. It follows as a corollary that the proceedings started pursuant to the notification cannot also be quashed.

In the result we allow this appeal, set aside. the judgment and order of the High Court and dismiss the connected writ application filed by respondent No. 1. Since he has not appeared there will be no order as to costs.

V.P.S.

Appeal allowed.