

Engineering Workers' Union Vs. Union of India (UOi)

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Court : Mumbai

Decided On : Aug-31-1990

Reported in : 1991(1)BomCR148; [1991(62)FLR846]; (1994)IIILLJ942Bom

Judge : S.M. Daud, J.

Acts : [Constitution of India](#) - Article 14; [Minimum Wages Act, 1948](#) - Sections 3(2A)

Appeal No. : W.P. No. 2335 of 1983

Appellant : Engineering Workers' Union

Respondent : Union of India (UOi)

Advocate for Def. : H.V. Mehta and ;S.K. Kundu, Adv.

Advocate for Pet/Ap. : Nishita Mhatre and ;P.M. Patel, Adv.

Disposition : Petition allowed

Judgement :

S.M. Daud, J.

1. This petition under Article 226 of the Constitution takes exception to the validity of Sub-section (2-A) of section 3 of the [Minimum Wages Act, 1948](#) - hereinafter referred to as 'the Act'.

2. The Act is a device to provide minimum rates of wages to the workers of certain employment. The Legislation is actuated by an awareness of the fact that there are several employments where labour is being exploited and where it is necessary to fix a minimum wage so that the workmen employed are not deprived of the basic requirements for their survival and capacity to work. Section 3 empowers the appropriate Government to fix minimum wages of a scheduled employment. The procedure is that an employment deemed worthy of being included in the schedule is first notified and thereafter the minimum rates of wages payable to the workmen are either fixed by the Government itself or accepted on a recommendation made by the Committee appointed under Section 5. The possibility of workmen being compelled to accept a wage lesser than the minimum wage is contemplated by the Act and this has been sought to be countered by Section 25 which renders null and void any contract or agreement whereby an employee either relinquishes or reduces his right to a minimum rate of wages or any privilege or concession accruing to him under the Act.

3. Petitioner is a Trade Union registered under the Trade Unions Act, 1926. It claims to represent a large number of workmen employed in the Engineering Industry in Greater Bombay. Petitioner takes exception to the provisions mentioned in the first paragraph, which provision was brought into force by the Minimum Wages (Amendment) Act of 1961 - hereinafter referred to as 'the 1961 amendment'. The said provision, according to the Statement of Objects and Reasons, was much so that -

'No minimum rates of wages shall be fixed or revised in respect of employees employed in a scheduled employment during the pendency of any dispute before a Tribunal over the rates of wages payable to such employees or during the period the award made by such Tribunal is in operation'.

The intent reproduced above is translated into the impugned section in these words:-

'Where in respect of an industrial dispute relating to the rates of wages payable to any of the employees employed in a scheduled employment, any proceeding is pending before a Tribunal or National Tribunal under the Industrial Disputes Act,

1947 (M of 1947), or before any like authority under any other law for the time being in force or an award made by any Tribunal, National Tribunal or such authority is in operation, and a notification fixing or revising the minimum rates of wages in respect of the scheduled employment is issued during the pendency of such proceeding or the operation of the award; then, notwithstanding anything contained in this Act, the minimum rates of wages so fixed or so revised shall not apply to those employees during the period in which the proceeding is pending and the award made therein is in operation or, as the case may be, where the notification is issued during the period of operation of any award, during that period; and where such proceeding or award relates to the rates of wages payable to all the employees in the scheduled employment, no minimum rates of wages shall be fixed or revised in respect of that employment during the said period'.

The gist of the aforementioned provision is that where any dispute relating to the rates of wages payable to labour is pending before a Tribunal or any other authority under any law for the time being in force, or an award made by the Tribunal during the pendency of the dispute is in operation, a notification fixing or enhancing the minimum wage payable though applicable to that class of employment shall not be availed of by those workmen figuring in the industrial dispute or governed by the award in operation. Their colleagues not figuring in the pending industrial dispute or not governed by an award in operation are freed from the liability imposed upon them. Petitioner takes exception to the deprivation of the statutorily fixed or revised minimum wage to the above class. The contention is that this deprivation is violative of several provisions of the Constitution and is therefore liable to be struck down. The relief sought is a direction that the impugned provision be not applied to the detriment of labour and that the Respondent-Union of India be directed to rectify the impugned provision so as to exclude from its operation labour likely to be adversely affected as a result thereof.

4. Respondent has not filed a return. Mr. Mehta representing it has raised various contentions in a desperate attempt to somehow save the impugned provision.

5. Mrs. Mhatre representing the petitioner contends that the impugned provision violates the very object of the Act and this is best illustrated by the fact that it goes

contrary to Section 25. There can be no justification for depriving workmen of a statutorily fixed minimum wage, fixed whether for the first time or as the result of a revision, merely because an industrial dispute in relation to the rates of wages is pending or the same is to prevail pursuant to the operation of an Award. Mr. Mehta counters this submission by a reference to the provisions of Section 17-A, 19 and 25-J of the Industrial Disputes Act, 1947 (I.D. Act). Learned Counsel first relies upon subsection (2) to (4) of Section 17-A, which empower the appropriate Government or the Central Government as the case may be to make an order rejecting or modifying an award including an arbitration award given by a Board or a Court. Mr. Mehta submits that this enabling power is a measure of relief available to the workmen where they feel that the award is oppressive or unjust. There is of course, the requirement that the appropriate Government or the Central Government should feel that the en-forceability of the award 'will be inexpedient on public grounds affecting the national economy or social justice'. Nonetheless the effect will be that labour deprived of the benefit of a minimum wage notified by the Government will have to go without the said minimum wage until the Government is persuaded to believe and can act upon the belief that the award in whole or in part requires to be rejected or modified. In the meantime those who are not affected by the operation of the award shall get the benefit of the statutorily fixed or revised minimum wage. The right to approach and persuade the appropriate Government or the Central Government cannot therefore be said to be an efficacious remedy. Turning to section 19, Mr. Mehta refers to the short duration of the award. The normal duration of an award is one year. This period can be shortened by the appropriate Government. But for this also a proposal will have to be made to the appropriate Government. Again, until the Government can be persuaded to act i.e. to shorten the duration of the award, those governed by the operation of the award will suffer and they will not get the minimum wage statutorily notified which benefit will be available to their more fortunate brethren and for the mere happen-stance that the latter are excluded from the operation of an award or are not figuring in a pending industrial dispute. The proviso to Section 25-J upon which Mr. Mehta relied, says:-

'Provided that where under the provisions of any other Act or rules, orders or notification issued thereunder or under any standing orders or under any award,

contract of service or otherwise, a workman is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act. the workman shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act'.

I fail to see how this proviso is of any application to the point under consideration. The proviso is in the nature of a qualification to the main part of Section 25-J which says that the chapter in which the said section appears shall have effect notwithstanding anything inconsistent therewith contained in any other law etc. etc. But the impugned provision of the Act also has a non obstante clause and because it is more to the point, it will prevail as against the involved language in which the proviso to Section 25-J of the I.D. Act is clothed.

6. Mr. Mehta claims that even if there be something to be said in favour of the petition, it is unthinkable that any tribunal or authority will fix wages less than the notified minimum wage. I agree that this will be so. In fact the Supreme Court in *Jaydip Paper Industries v. The Workmen*, : (1972)ILLJ244SC sustained the award of an Industrial Tribunal which had fixed a wage in excess of the statutorily notified minimum wage. This was done on the base of the construction placed upon the language employed in the impugned provision which arose for consideration in that case also. But that does not solve the problem. In the aforementioned case itself it was recognised that the Industrial Tribunal adjudicating an industrial dispute relating to wages of the employees in a scheduled employment could fix minimum wages at a higher or lower grade. What was sustained in that decision was a wage higher than the pendentelite notified statutory minimum wage. The question here is what should labour do, when merely because of the pendency of an industrial dispute relating to rates of wages or the operation of an award, it has to undergo the hardship or not getting the statutorily notified benefit of a minimum wage, and this, for the mere reason that an industrial dispute is pending or it is subject to the operation of an award, the termination of which is some distance away. Having regard to the fact that the concept of minimum wage is a well established concept, there seems to be no opinion but to quash the impugned provision. In *U. Unichoyi v. State of Kerala* : (1961)ILLJ631SC , the components of

a minimum wage were specified thus:

'Sometimes the minimum wage is described as a bare minimum wage in order to distinguish it from the wage structure which is 'subsistence plus' or fair wage, but too much emphasis on the adjective 'bare' in relation to the minimum wage is apt to lead to the erroneous assumption that the maintenance wage is a wage which enables the worker to cover his bare physical needs and keep himself just above starvation. That clearly is not intended by the concept of minimum wage. On the other hand since the capacity of the employer to pay is treated as irrelevant it is out right that no addition should be made to the components of the minimum wage which would take the minimum wage near the lower level of the fair wage, but the contents of this concept must ensure for the employee not only his sustenance and that of his family but must also preserve his efficiency as a worker. The Act contemplates that minimum wage rates should be fixed in the scheduled industries with the dual object of providing sustenance and maintenance of the worker and his family and preserving his efficiency as a worker'.

This clarifies the concept of a minimum wage. It is not proper that my class of workmen taken by the sweep of the impugned provision should be deprived of the benefit of a statutorily notified minimum wage. In the petition relief has been sought so as to protect only a limited class of the deprived section, viz. those governed by an award in operation. Mrs. Mhatre seeks that the prayer be read as also including those involved in industrial disputes relating to rates of wages payable. I accede to the request for to refuse it would be to compel the petitioner or some other class of workmen to file a fresh petition. The device of severability is not of any assistance to Mr. Mehta in this case, for the impugned sub-section is so inextricably beyond redemption that the said doctrine is of no assistance to redeem anything from out of the debris.

7. The result of the foregoing discussion is that the petition succeeds. Declared that Section 3(2-A) of the Act is violative of the equality clause of the Constitution, viz. Article 14 and is therefore void. It shall not be applied to the detriment of workmen. Respondent is at liberty to re-formulate the provision so as to escape the vice of unconstitutionality. Rule in these terms made absolute with parties

being left to bear their own cost. Mr. Mehta seeks and I therefore stay the operation of the judgment for a period of six weeks.

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