Before : I. S. Tiwana & G. R. Majithia, JJ.

M/S. DELTA HAMLIN LIMITED, CHANDIGARH,—*Petitioner.*

versus

CHANDIGARH ADMINISTRATION, UNION TERRITORY, CHANDIGARH AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 4771 of 1990.

6th September, 1990

Minimum Wages Act, 1948—*S.* 5(1)(*b*)—*Revision of minimum wages—Proposal published in official Gazette—Date of hearing not specified—Wages revised—Validity of such notification.*

Held, that notifications fixing minimum wages are not to be lightly interfered with under Article 226 of the Constitution on the ground of some irregularities in the constitution of the committee or in the procedure adopted by the committee. It must be remembered that the committee acts only as a recommendatory body and the final notification fixing minimum wages has to be made by the Government. 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.

(Para 7)

CIVIL WRIT PETITION UNDER ARTICLE 226/227 *of the Constitution of India praying that the petition be accepted with further prayers:*

1. *that complete records of the case be called for from the respondents;*
2. *that a suitable writ or direction or order especially a writ of Certiorari be issued thereby quashing the impugned notification Annexure P-3;*
3. *that any other suitable writ order or direction be issued as this Hon'ble Court may deem fit and just in the facts and circumstances of the case in the interest of equity and justice;*
4. *that supply of advance copy of the writ petition to the respondents and filing of certified copies of the Annexures be dispensed with;*

5. *that cost of the petition be awarded to the petitioner;*

AND

6. *operation of the impugned notification and prosecution of the petitioner for non-payment of minimum rates of wages as per the impugned notification be stayed.*

Civil Misc. No. 5761 of 1990.

Application under section 151 *of the Code of Civil Procedure praying that the* ex-parte *stay order granted by this Hon'ble Court on 6th April,* 1990, *staying the prosecution of the writ petitioner, be vacated.*

R. L. Chopra, Advocate, *for the petitioner.*

Anand Swroop, Sr. Advocate with Rajiv Vij and Ajai Tiwari, Advocates, *for the respondents.*

JUDGMENT

I. S. Tiwana, J.

(1) The petitioner impugned the notification No. 5/10/34-HIII (4)-90/3268, dated 22nd February 1990, copy Annexure P-3, published by the Union Territory Administration revising the minimum rates of wages payable by 40 Scheduled Employments on the pleas that (i) it has not been issued by a competent authority and (ii) it has not been preceded by a legal or valid proposal as envisaged by section 5(1) (b) of the Minimum Wages Act, 1948.

(2) While elaborating his stand, the learned counsel urged that in the instant case the appropriate government, as envisaged by section 2(b)(ii) of the Act, was the State Government. According to him, neither the Union Territory Administration can be styled or held to be a State Government nor the notification published in the name of the Administrator, has been authenticated by a competent authority. Qua the stand at (ii), it is maintained by the learned counsel that in the absence of a legal and valid proposal published in the form of a notification in the official gazette, as envisaged by section 5(1)(b) of the Act, the fixation or revision of minimum wages as has been done,—*vide* Annexure P-3, stands vitiated. According to the learned counsel, the so-called notice published in the instant case, copy Annexure P-1, was defective inasmuch as the appropriate Government failed to specify the date on which the proposal with regard to revision of minimum wages was to be considered by it.

(3) Having given our thoughtful consideration to the entire matter in the light of the submissions of the learned counsel for the parties, and the material on record, we, however, find no merit in either of the two contentions of the learned counsel for the petitioner.

(4) It is, no doubt, true that in the instant case the appropriate government competent to issue Annexures P-1 and P-3 was the State Government, but the stand of the learned counsel that the Chandigarh Administration is not to be considered as a State Government for purposes of the impugned notifications Annexures P-1 and P-3, is totally untenable. As a matter of fact, this legal aspect of the matter has been examined by us recently in *Punjab Financial Corporation* v. *The Union Territory, Chandigarh and others* (1), in context of section 2(a)(ii) of the Industrial Disputes Act, 1947, defining appropriate government, which definition is concededly analogous to the one in section 2(b)(ii) of the Act. It has been ruled therein that whenever the expression 'State Government' is used in relation to a Union Territory, the Central Government would be the State Government. This has been so said in the light of the latest authoritative pronouncement of the apex Court reported as *Goa Sampling Employees' Association* v. *General Superintendance Company of India Pvt. Limited and others* (2). We also expressed the opinion that the Administrator of the Union Territory, Chandigarh not only by virtue of his appointment under Article 239 of the Constitution of India is an agent or delegatee of the President of India, i.e., the Central Government, but by virtue of section 8(b)(iii) of the General Clauses Act also has to be taken or treated as the Central Government in case his action falls within the authority given or delegated to him. We further held in the light of the notification of the Government of India (Ministry of Home Affairs) No. S.O. 3269, dated 1st November, 1966, that the Administrator of the Union Territory, Chandigarh has, in relation to the said Territory, been duly authorised to exercise and discharge the powers and the functions of the State Government under any law with effect from 1st November, 1966. In the light of this pronouncement of ours in *Punjab Financial Corporation's case* (supra) we need not dilate on the subject any further except to say that the notification in question has duly been authenticated by the Home Secretary of the Chandigarh Administration in view of the Government of India notification No. G.S.R. 1675 dated the 1st November, 1966, which authorises a

(1) CWP No. 2584 of 1985 decided on 7th June, 1990.
(2) A.I.R. 1985 S.C. 357.

Secretary/a Deputy Secretary/an Under Secretary or even an Assistant Secretary of any of the departments of the Chandigarh Administration to authenticate such a notification. We thus find no infirmity in the issuance or publication of the notification Annexure P-3 or the issuance of the earlier notification in the form of notice on 1st November, 1989, Copy Annexure P-1.

(5) So far as the stand of the learned counsel for the petitioner noticed at (ii) above is concerned, the same is sought to be supported by two bench decisions reported as *Vasudevan* v. *State of Kerala* (3) and *Narottamdas* v. *P. B. Gowrikar* (4). The contention is that in the absence of strict compliance of section 5(1)(b) of the Act, no valid revision of minimum wages can possibly take place. The relevant part of this section reads as follows:

> "In fixing minimum rates of wages in respect of any scheduled employment for the first time under this Act or in revising minimum rates of wages so fixed, the appropriate Government shall either—
>
> (a)
>
> (b) by notification in the official gazette published its proposals for the information of persons likely to be affected thereby and specify a date, not less than two months from the date of the notification, on which the proposals will be taken into consideration."

In order to appreciate the submissions of the learned counsel, it is but necessary to notice the contents of the notification, i.e. Annexure P-1 also.

"Home Department Notification dated 1st November, 1989, No. 8/10/34-HIII(4)-89/21757. In exercise of the powers conferred by clause (b) of sub-section (1) of section 5 of the Minimum Wages Act, 1948 (Act No. 11 of 1948) and all other powers enabling him in this behalf, the Administrator, Union Territory, Chandigarh, is hereby pleased to publish the following proposal for the revision of minimum rates of wages (all inclusive), in respect of the following scheduled employments in Union Territory, Chandigarh, for the information of the persons likely to be affected thereby.

(3) A.I.R. 1960 Kerala 67.
(4) A.I.R. 1961 M.P. 182.

(6) Notice is bereby given that the said proposal will be taken into consideration by the Chandigarh Administration on or after the expiry of a period of two months from the date of publication of this notification in the official gazette, together with objection or suggestion, which may be received by the Labour Commissioner. Union Territory, Chandigarh, from any person in respect of the draft before the expiry of the period so specified.

PROPOSAL

Employment No. .....

....."

(7) The submission in nutshell is that in the absence of the specification of a date on which the Chandigarh Administration was to consider the objections to the proposals made by the persons likely to be affected by the revision of wages, it cannot be treated to be a legal or valid publication. The submission however need not delay us any long in view of the latter authoritative pronouncement of the Kerala High Court itself in *M. Plantations Limited* v. *Kerala State* (5), wherein the above noted two judgments relied upon by the learned counsel for the petitioner have been thoroughly considered and distinguished. We, therefore, find it wholly unnecessary to record a detailed analysis of these two judgments and have chosen to respectfully adopt the opinion expressed by the Full Bench. The learned Judges of the Full Bench while analysing section 5(1)(b) of the Act and differing with the opinion expressed by the learned Judges of the two Division Benches, referred to above, observed as follows:

> "To us it appears that the specification of the date is for a different purpose. It is only by way of intimation to those who may be interested in filing representations that they should do so before a particular date and to secure to them a reasonable time for that purpose the minimum period is specified in the section. In cases where the right to file representation is not restricted in the notification to a period of less than the two months prescribed in the section there cannot be a violation of S. 5(1)(b)."

(5) 1976(1) L.L.J. 114.

It deserves to be highlighted here that in the instant case too the petitioner did file its objections or proposals on 29th December, 1989 (copy Annexure P-2) i.e. much earlier to the publication of the impugned notification dated February 22, 1990, Annexure P-3. The other relevant observations made in the above noted Full Bench judgment with which we fully concur are as follows:—

> "The right of those likely to be affected by the proposals to file representations at any time before the date specified in the notification and the duty of the Government to consider such representations before finally deciding upon the question of fixing or revising the minimum wages appear to us to be the main content of the procedural requirement of Section 5 when resort is made to the procedure prescribed under S. 5(1)(b). Of course, there is the further requirement that the Advisory Board should be consulted. Such consultation must necessarily be on the proposals and therefore that cannot be at a stage prior to the publication of the proposals. There is no reason to assume either on the language of the section or on its scheme that the consultation with the Advisory Board must be prior to the receipt of representations. There is much less reason to assume that the opinion of the Advisory Board which must necessarily reflect the considered views of an expert body, would be available by or before the date specified in the notification. Hence it is difficult to read into S. 5 of the Act the requirement that the Government which is to specify the date on which the proposals are to be taken up for consideration is also obliged to finalise the matter on the said date. While that may be possible in some cases in several others where the representations call for a time convassing (consuming) examination either due to their number or due to the importance of the points raised it may not normally be possible for the Government to consider the proposals on the date specified. That is apart from the fact that the Government may not be able to get the benefit of the views of the Advisory Board by that time. We see no reason why we should, notwithstanding the undesirable results indicated, hold that S. 5 obliges the Government to consider the proposals on the date specified when the plain language of the provision does not compel such a construction."

Besides this, it is not a matter of dispute that the law stated in section 5 of the Act is only procedural. This is what has been observed by their Lordships of the Supreme Court in their latest pronouncement reported as *Ministry of Labour and Rehabilitation and another* v. *Tiffin's Barytes Asbestos and Paints Limited and another* (6), wherein infraction of such procedural law was alleged or relied upon for striking down the notification published under the Minimum Wages Act. "We also wish to emphasise that notifications fixing minimum wages are not to be lightly interfered with under Article 226 of the Constitution on the ground of some irregularities in the constitution of the committee or in the procedure adopted by the committee. It must be remembered that the committee acts only as a recommendatory body and the final notification fixing minimum wages has to be made by the Government. 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".

In the light of the above discussion, we nonsuit the petitioner and dismiss the writ petition but with no order as to costs.

S.C.K.

Before : *A. L. Bahri, J.*

AMRITSAR IMPROVEMENT TRUST, AMRITSAR,—*Petitioner.*

versus

BAWA RAM AND ANOTHER,—*Respondents.*

Civil Revision No. 1188 *of* 1990.

11th September, 1990.

Arbitration Act (X of 1940)—S. 17 & 39—Award filed in Court—Objection filed against the Award—Composite order dismissing objection and making Award rule of the Court—Appeal against such order—Competency of.

(6) A.I.R. 1985 S.C. 1391.