

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 6185 of 2002

**FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE A.S. SUPEHIA**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

GUJARAT RAJYA HOTEL FEDERATION & 9 other(s)
Versus
STATE OF GUJARAT & 1 other(s)

Appearance:
MS AISHWARYA REDDY FOR M/S TRIVEDI & GUPTA(949) for the
Petitioner(s) No. 1,10,2,3,4,5,6,7,8,9
MR ROHAN SHAH, AGP for the Respondent(s) No. 1,1.1,1.2,2

CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA

Date : __/02/2022

CAV JUDGMENT

1. The present writ petition has been filed *inter alia* praying for quashing and setting aside the impugned notifications dated 25/27.05.1999, 27.01.2001 and 15.12.2001 issued by the respondent No.1. However, the prayer in the writ petition is confined to quash and set aside the notification dated 15.12.2001 issued by respondent No.1.

2. Learned advocate Ms.Aishwarya Reddy appearing for the petitioners has submitted that the petitioner No.1 is a federation representing more

than 500 establishments engaged in the activity of running hotels/restaurants in the State of Gujarat, Petitioner Nos.2 to 7 are the members and officers of the petitioner no.1. The notifications dated 23.01.2001 and 15.12.2001 have been issued under the Minimum Wages Act, 1948 (hereinafter referred to as "the Act", for short). It is submitted that vide notification dated 23.01.2001, in exercise of the powers conferred under Section 30 of the Act, the State Government notified the Gujarat Hotel Workers' Wages in Kind (Computation of Cash Value) Rules, 1998 (hereinafter referred to as 'the Rules'). The said Rules were brought into effect on 01.02.2001, wherein at the schedule it was provided that the cash value of a monthly wage would be 33.3% of total wages, when residential accommodation, two meals, two teas, two *nasta* (breakfast), is served daily. She has submitted that thereafter, by way of notification dated 15.12.2001, the State Government purportedly, in exercise of power under Section 30 of the Act, amended the notification dated 23.01.2001 and amongst the other amendments, the cash value of the total wage was reduced from 33.3% to 19%.

2.1 It is submitted that initially, the State Government had published a Draft Notification, in the Official Gazette, as required by the Act, by stating *inter alia* that the Government is proposing to issue the said notification containing the Rules and, therefore, the same is being published for the

information of all the persons likely to be affected thereby and that notice given with the said Draft Notification would be taken into consideration by the Government of Gujarat on or after the expiry of two months from the date of its publication in the Official Gazette. She has submitted that the said time limit of two months appears to have been adopted from the provisions of Section 5(1)(b) of the Act. It is submitted that it may be noted that the said Draft Notification suggested for allowing the deduction at the rate of 25% of total wages towards the cash value of benefits and/or facilities, i.e. (1) residential accommodation, (2) two meals, (3) two teas, and (4) two *nastas* (breakfast) being served daily and ultimately, the aforesaid Draft Notification was finalized and a final notification bearing No.KHR-30-MWA-1097-833-M(2) was issued on 23.01.2001 effective on and from 01.02.2001, wherein deduction was provided at the rate of 33.3% of total wages towards the cash value of the aforesaid benefits and/or facilities. It is further submitted that thereafter, vide notification dated 15.12.2001, the State Government notified an amendment, by which deduction was allowed at the rate of 19% of total wages towards the cash value of two meals, two teas and one *nasta* (breakfast) being served daily. It is submitted that the draft of the said notification was never published, as required under the provisions of the Act, and no notice was given to

the affected parties for providing their objections and/or suggestions, as was done at the time of issuing and publishing the draft notification dated 25.05.1999, which had ultimately culminated in issuance of final notification dated 23.01.2001.

2.2 Learned advocate for the petitioners has submitted that the Act makes it clear that in respect of the scheduled employments mentioned in Part-I or Part-II of the Schedule to the Act, the appropriate Government is authorized to fix minimum rates of wages, which can be reviewed at such intervals as considered appropriate but not exceeding five years and such prescribed minimum wages would consist of (i) basic wages, and (ii) special allowance, which may be adjusted at intervals as per variation in cost of living index number and for fixing or revising the rates of minimum wages, the appropriate Government is required to either appoint committees to advise with respect of fixation or revision in the rates of minimum wages or publish notification about its proposal or to invite objections/suggestions from persons likely to be affected within the prescribed time.

2.3 It is further submitted that the provisions of Section 5 of the Act permit the appropriate Government to fix or revise the rates of minimum wages either by following the procedure prescribed,

under section 5(1)(a) or by following the procedure under the provisions of section 5(1)(b) of the Act, while the notification dated 15.12.2001 is only in respect of computation of the cash value of wages in kind by effecting amendment in the earlier notification dated 23.01.2001. She has submitted that a change in the method of computation of the cash value of wages in kind would ultimately relate to revision in the rates of minimum wages and, therefore, a notification making any change or revision already prescribed method of computation of cash value of wages in kind shall have to comply with the requirements of Sections 3 to 5 and 11 and 30 of the Act and also the provisions of Rule 20 of the Gujarat Minimum Wages Rules, 1961. It is submitted by her that even otherwise, Section 30(1) of the Act refers to the condition precedent of previous publication of the notification proposing to make rules for carrying out the purposes of the Act. The expression "previous publication" occurring in the said Section 30(1) of the Act though not defined under the Act, has a special meaning, which can be appreciated by taking recourse of Sections 23 and 21 of General Clauses Act, 1897.

2.4 Learned advocate Ms.Reddy has further submitted that in the present case, prior to the issuance of the notification dated 15.12.2001, no draft notification was issued, no objections/

suggestions were invited from the persons likely to be affected, and no recommendations were received from the Minimum Wages Advisory Board and in view of this, some discussion regarding the question of deduction concerning cash value of some of the benefits, i.e. wages in kind in the meetings held on 17.02.2001 and 01.08.2001, as indicated in the additional affidavit-in-reply by the State Government, has no significance and the same cannot substitute the mandatory requirement of previous publication of notification as submitted herein.

2.5 Learned advocate Ms.Reddy further relies upon the Rule 20(1) of the Gujarat Minimum Wages Rules, 1961, wherein it is provided that in order to compute the cash value of wages in kind, the retail prices at the nearest market shall be taken into account in computing the cash value of wages paid in kind. It is submitted that when the Government had deducted the cash value of wages to 19%, it did not consider the nearest market price as provided for in the said Rule and the same is similar to Rule 20 of the Minimum Wages (Central) Rules, 1950, which also provides for the mode of computation of the cash value of the wages. Further, it is submitted that the petitioners also rely upon the orders of the Bombay High Court dated 17.10.2013 and dated 12.04.2018 passed in Writ Petition No.5542 of 2013, whereby the cash value of the wages was fixed at 30% of the monthly wage for

hotel/restaurant workers in the State of Maharashtra.

2.6 Finally, the learned advocate for the petitioners has submitted that a statutorily enacted mandatory requirement relating to the publication in the Official Gazette is directory and the State Government, by importing reasons at this stage to justify the consideration of the representations made etc., cannot side-step the specific and unambiguous mandatory requirement under the Act and in light of the abovementioned submissions, she has requested to quash and set aside the notification dated 15.12.2001.

3. In response to the submissions advanced by the learned advocate for the petitioners, learned Assistant Government Pleader Mr.Rohan Shah, while placing reliance on the affidavits filed by the authority has submitted that the notification pertaining to cash value of the wages paid in kind for the workers of Hotel Industry came to be issued in accordance with law and provisions of the Minimum Wages Act and Rules framed thereunder. He has submitted that as per Section 5 of the Act, the department was required to hear the representatives of the employers and employees and accordingly, both the parties were heard at length and after scrutinizing the facts of the case and prevailing rates of the essential commodities and food

articles, Minimum Wages notification is issued by the department. He has submitted that the draft notification/Provisional Notification, which came to be issued by the Government on 25.05.1999, wherein 33% deduction is shown to be appropriate. It is submitted that after receiving the objections/ suggestions from the societies and recommendations of the Minimum Wages Advisory Board vide its letter dated 14.10.1998, the Government issued a new draft notification, in which 1/4th deduction of Special Allowance instead of 1/3rd Allowance was recommended and thereafter, the Government issued a final notification and fixed the deduction rates as 33.3% equally from the basic pay and special allowance. He has submitted that the Hotel Federation made a representation before the Government and raised certain objections with regard to computation of deductions and the same was considered by the Government and afforded personal hearings to the Hotel Federation on 17.02.2001 and 01.08.2001.

3.1 Learned AGP has submitted that two times the meetings were held on 17.02.2001 and 01.08.2001 for considering their suggestions/objections and, therefore, the answering respondent, after considering the representation of the Hotel Federation, has proposed 19% deduction. It is submitted that a contention is raised by the petitioners that subject matter of considering

their objections before the amended notification dated 15.12.2001 was for the purpose of discussion of certain apparent anomalies in the arithmetic calculation between the specified rates on one hand and quantified amount on other hand is not correct but it was for the main purpose of deduction towards the cash values of wages in kind. It is submitted that despite the best effort of the authority, they are unable to find the record of the meetings or any other documents. It is also submitted that even otherwise the discussion of issue with the committee will amount to disputed question of fact, and this Court may not interfere with the impugned notification.

3.2 Learned AGP has submitted that the Commissioner of Labour, Gujarat State, sent a proposal dated 14.06.2001 regarding representation of Hotel Federation for proposed 19% deduction. He has submitted that the said proposal was considered and hence, the Government issued an amendment dated 15.12.2001. He has submitted that for the purpose of determining the rates of minimum wages, the important components are to be considered by the Government i.e. the definition of "family". It is submitted that the "family" consists of three units comprising of husband, wife and two children, out of which only worker gets facilities of meal, *nasta* (breakfast) and tea and, therefore, it was appropriate to compute deduction only for the

worker and not other two units, which do not get any of these facilities and looking to the weightage for the food, which is 57% and it is divided into three units and hence, for the worker, it comes to 19%. Therefore, the Government decided to make necessary amendment and reduced this rate to 19%, which is just and proper.

3.3 In support of the above submissions, learned AGP has placed reliance on the judgements of the Apex Court in the cases of State of Jharkhand and Ors. Vs. Ashok Kumar Dangl and Ors., (2011) 13 S.C.C. 383 and Parisons Agrotech (P) Ltd. and Anr. Vs. Union of India and Ors., (2015) 9 S.C.C. 657.

4. Heard the learned advocates for the respective parties and also perused the documents as pointed out by them.

CONCLUSION

5. Since the prayer made in the writ petition is confined to quashing and setting aside the notification dated 15.12.2001, which was issued after notification dated 25.05.1999, there is no need to refer to the earlier notifications. Both, the learned advocates appearing for the respective parties are *ad idem*, that the rates specified in the notification dated 15.12.2001 have remained unaltered.

6. Initially, the State Government, in exercise of powers under section 30 of the Act, issued a draft Notification dated 25.05.1999 for framing of the Gujarat Hotel Workers, Wages in Kind (Computation of Cash Value) Rules, 1998 inviting objections and suggestions from all persons likely to be affected. After receiving the suggestions and objections from the public, a final Notification dated 23.01.2001 was issued framing the Gujarat Hotel Workers, Wages in Kind (Computation of Cash Value) Rules, 1998, wherein the cash value of residential accommodation, meal *nasta* or tea served during a month was fixed at 33.3% of total wages (basic rates of wages plus special allowance). The petitioners do not have objection to such fixation of 33.3% of cash value.

7. Subsequent to the issuance of Notification dated 23.01.2001, the State government issued another Notification dated 15.12.2001 reducing the cash value of the total wages from 33.3% to 19%. Being aggrieved by such reduction, the petitioner-Federation has challenged the same.

8. The kernel of issue involved in the present writ petition, is that whether it is mandatory for the State Government to follow the procedure envisaged under the provisions of sections 3 to 5, 11 and 30 of the Act, or in the alternative the same procedure, which was followed before issuing the Notification dated 23.01.2001.

9. For appreciating the controversy raised in the present writ petition, it will be apposite to incorporate the afore-noted provision of the Act:

"SECTION 5 : Procedure for fixing and revising minimum wages

(1) 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) appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision, as the case may be, or

(b) by notification in the Official Gazette, publish 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.

(2) 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 schedule 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.

SECTION 11 : Wages in kind

(1) Minimum wages payable under this Act shall be paid in cash.

(2) Where it has been the custom to pay wages wholly or partly in kind, the appropriate Government being of the opinion that it is necessary in the circumstances of the case may, by notification in the Official Gazette, authorize the payment of minimum wages either wholly or partly in kind.

(3) If the appropriate Government is of the opinion that provision should be made for the supply of essential commodities at concession rates, the appropriate Government may, by notification in the Official Gazette, authorize the provision of such supplies at concession rates.

(4) The cash value of wages in kind and of concession in respect of supplies of essential commodities at concession rates

authorized under sub-sections (2) and (3) shall be estimated in the prescribed manner.

SECTION 30 : Power of appropriate Government to make rules

(1) The appropriate Government may, subject to the condition of previous publication, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may-

(a) xxx xxx xxx;

(b) xxx xxx xxx;

(c) prescribe the mode of computation of the cash value of wages in kind and of concessions in respect of supplies of essential commodities at concessional rates;

(d) xxx xxx xxx;

(e) xxx xxx xxx;

(f) xxx xxx xxx;

(g) xxx xxx xxx;

(h) xxx xxx xxx;

(i) xxx xxx xxx;

(j) xxx xxx xxx;

(k) xxx xxx xxx;

(l) xxx xxx xxx;

(m) xxx xxx xxx; and

(n) xxx xxx xxx."

10. The payment of fixation of cash value of wages in kind is stipulated in section 11 of the Act. Such fixation of cash value in kind can only be done after following the procedure under Section 5 of the Act, which prescribes the procedure for fixing and revising minimum wages such as formation of Advisory Committee for undertaking necessary inquiry, publication of notification in the Official Gazette for its proposal and inviting opinion of persons who are likely to be affected.

After the advice of the committee or committees and the representations received by it, a final notification in the Official Gazette is published fixing the minimum wages. Clause(b) to the sub-section (1) to section 5 of the Act, prescribes the publication of the proposals for the information of persons, who are likely to be affected by revision or fixation of wages. It is not disputed by the respondent authority that before publication of final notification dated 23.01.2001 fixing the cash value at 33.3%, the procedure prescribed under section 5 was followed and Draft Notification dated 25.05.1999 was published.

11. Section 30 of the Act mandates "previous publication" of the Notification for framing of Rules for carrying out the purpose of the Act. Clause(c) to sub-section (2) of section 30 of the Act stipulates of framing of rules with regard to mode of computation of the cash value of wages in kind and of concessions in respect of supplies of essential commodities at concessional rates. As noted hereinabove, before publication of final Notification in the Official Gazette, recommending the mode of computation of the cash value of wages in kind, it is mandatory to follow the procedure prescribed under section 5 of the Act.

12. In the present case, though the State Government has followed the procedure stipulated under section 5 of the Act before issuing the final notification dated 27.05.1999 prescribing the mode

of computation of the cash value in kind of 33.3% of total wages, however, while issuing the subsequent notification dated 15.12.2001, fixing the reduced cash value at 19%, such procedure is not followed. The State Government has introduced fresh computation of the cash value by substituting the relevant clauses/items stipulated in the former notification dated 23.01.2001. Thus, a fresh computation of the cash value has been stipulated in the notification dated 15.12.2001. It is the case of the State Government that twice the meetings were held on 17.02.2001 and 01.08.2001 for considering their suggestions/objections of the petitioner-Federation, and after considering their suggestions and considering a 'family' of three Units, and when only the worker gets the facility *vis-a-vis* the weightage of food at 57%, divided into three Units, the cash value of 19% was fixed. This Court was not apprised of any material with regard to such computation. Be that as it may, there are disputed questions with regard to the subject and the issue on which the petitioner-Federation was heard in the aforesaid meetings. The Court need not delve into such disputed questions of fact, however, the State Government is unable to dispute the fact that before issuing the notification dated 15.12.2001 reducing the cash value from 33.3% to 19%, there was no prior publication of such proposal through a Notification in the Official Gazette, or in other words no draft notification was published.

13. It was mandatory for the State Government to follow the procedure prescribed under section 5 of the Act before issuing the Notification dated 15.12.2001, pursuant to which the cash value is reduced to 19%. The same being a substantive notification fixing a fresh computation of wages under section 30 of the Act, the procedure of publishing the proposals through a draft notification in the Official Gazette as per section 5(1)(b) of the Act was mandatory. The State Government, before issuing the notification dated 23.01.2001 had issued the draft notification dated 27.05.1999 before fixing the cash value at 33.3%, hence the same recourse was required to be adopted before issuing the notification dated 15.12.2001. Assuming that the petitioner-Federation was heard with regard to the fixation of cash value at 19%, the same will not authorize the State Government to by-pass the statutory provision of publication of proposed cash value through publication of notification. There may be other stake-holders, who would have come forward raising their grievance, if the notification was published in the Official Gazette stipulating 19% cash value. The lacuna occurred before the publication of the final notification cannot be filled up through subsequent action after publication of such notification. It is cardinal rule of interpretation, that if a statute explicitly mentions a particular process or method, the same has to be stringently and mandatorily followed, and the Courts cannot

interpret the same in any other manner when the words of the statute are precise and unambiguous. Thus, the impugned notification dated 15.12.2001 suffers from the vice of ignoring the provision of section 5(1)(b) of the Act. Reliance placed by the learned AGP on the decisions of the Apex Court in the cases of *Ashok Kumar Dangi and Ors. (supra)* and *Parisons Agrotech (P) Ltd. and Anr. (supra)* cannot come to the rescue of the State Government since the judgment do not in any manner deal with the issue raised in the writ petition.

14. On the substratum of the foregoing reasons and analysis, the impugned notification dated 15.12.2001 issued by respondent No.1 is quashed and set aside. However, it will be open for the State Government to issue a fresh notification, after following the procedure prescribed under section 5 of the Act.

15. The writ petition is allowed in part. RULE made absolute to the aforesaid extent.

NVMEWADA

Sd/-
(A. S. SUPEHIA, J)

WEB COPY