

The Regional Director, Employees' State Insurance Corporation Vs. Kidiyoor Janardhana Rao and Ors.

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Court : Karnataka

Decided On : Jan-29-1979

Reported in : AIR1979Kant146; 1979(1)KarLJ356

Judge : D.M. Chandrashekar, C.J. and ;E.S. Venkataramiah, J.

Acts : Employees' State Insurance Act, 1948 - Sections 1(5); [Minimum Wages Act, 1948](#) - Sections 3; [Constitution of India](#) - Article 14

Appeal No. : Writ Appeal No. 634 of 1978

Appellant : The Regional Director, Employees' State Insurance Corporation

Respondent : Kidiyoor Janardhana Rao and Ors.

Judgement :

Venkataramiah, J.

1. This is an appeal filed against the order passed by the learned single Judge in Writ Petition No. 12175 of 1977 allowing the said petition and issuing a writ in the nature of mandamus directing the respondents in the writ petition not to enforce the notification dated 18-2-1976 issued by the State Government under S. 1(5) of the Employees' State Insurance Act, 1948 (hereinafter referred to as the Act.) The petitioner in the writ petition is a partner of a restaurant situate at Dharwar in the State of Karnataka. By the notification referred to above which was impugned in the writ petition the State Government extended the provisions of the Act to restaurants and hotels in Dharwar and some places in the State of Karnataka. The Act was not however extended to other hotels and restaurants situated in other parts of the State even though the Act had been extended to those parts by notifications issued from time to time under S. 1(3) of the Act. The petitioner contended that the impugned notification was invalid as the State Government was not authorised to extend the provisions of the Act to a class of persons situate in a portion of a large area in which the Act had already been brought into force by the Central Government by issuing notifications under section 1(3) of the Act and that he impugned notification was also invalid as the approval of the Central Government had not been obtained immediately before issuing it. The learned single Judge before whom the writ petition came up for hearing, accepted the first contention urged on behalf of the petitioner and quashed the notification on that ground. He however did not express any final opinion on the second contention. Aggrieved by the order of the learned single Judge, respondent-2 in the writ petition the Regional Director, Employees' State Insurance corporation has filed this appeal.

2. The Act received the assent of the Governor General of India on April 19, 1948 S. 1(3) of the Act reads:--

'1. (3). It shall come into force on such date or dates as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and for different States or for different parts thereof.'

Section 1(5) reads:--

'1 (5). The appropriate Government may, in consultation with the Corporation and where the appropriate Government is a State Government, with the approval of the Central Government, after giving six months' notice of its intention of so doing by notification in the Official Gazette, extend the provisions of this Act or any of them, to any other establishment or class of establishments industrial, commercial, agricultural or otherwise.'

The Expression 'appropriate Government' is defined in S. 2(1) as follows:--

'2 (1). ' Appropriate Government' means, in respect of establishment under the control of the Central Government or a railway administration or a major port or a mine or oil-field, the Central Government, and in all other cases, the State Government..'

It is not disputed that by notifications issued from time to time by the Central Government under S. 1(3), the Act has been brought into force in several parts of the State of Karnataka. In para 4 of the judgment of the learned single Judge the particulars thereof are to be found. The impugned notification was issued by the State Government on 18-2-1976 and it was published in the Karnataka Gazette on Feb. 19, 1976. The relevant part of the notification reads as follows:--

'S. O. 536: In exercise of the powers conferred by sub-section (5) of S. 1 of the Employees' State Insurance Act, 1948 (Act 34 of 1948), the Government of Karnataka having already given six months notice as required thereunder, vide the Government Notification No. SWL 124 LSI 74/S. O. 2535, dated 28th July 1975 published in the Gazette dated 31st July 1975 hereby appoints 29th Feb. 1976 as the date on which all provisions of the said Act shall extend to the classes for establishments in areas as specified in the Schedule annexed hereto.

SCHEDULE

In the schedule attached to the notification we find the classes of establishments to which the Act is extended and the areas in which they are situated. It is true that the above notification is not made applicable to all parts of the State to which the Act has been extended under S. 1(3). The question for consideration is whether the notification is void by reason of the fact that it is not so extended to all parts of the State to which the Act has been extended. The learned single Judge has held that the power given to the State Government under sub-section (5) of Section 1 was only to specify the establishment or class of establishments to which the Act should be extended and that no power has been given to extend the provisions of the Act to any class of establishment located in a portion of a State excluding the other areas in the State where the Act was in force. He held that the contention of the Corporation that

it was open to the State Government to confine the notification to certain establishments situated in a particular area or areas of the State excluding other areas where the Act was in force, was untenable. The crucial words in S. 1(5) of the Act which arise for consideration in this case are 'to any other establishment or class of establishments'. Sub-section (4) of Section 1 of the Act applies in the first instance to all factories (including factories belonging to the Government) other than seasonal factories. Under sub-section (5) of S. 1 the appropriate Government is authorised to extend the provisions of the Act to any other establishment or class of establishments, industrial, commercial or otherwise.

3. While construing a statute the Court has to bear in mind the following rule enunciated by the Supreme Court in *Asstt. Collector of Central Excise, Calcutta v. National Tobacco Co. of India Ltd.* : 1978(2)ELT416(SC) :--

.'..... the High Court's view was based on an application of the rule of construction that where a mode of performing a duty is laid down by law it must be performed in that mode or not at all. This rule flows from the maxim: 'Expression unius est exclusio alterius.' But, as was pointed out by Wills, J. In *Colquhoun v. Brooks* (1888) 21 QBD 52 at p. 62, this maxim 'is often a valuable servant, but a dangerous master.....'. The rule is subservient to the basic principle that Courts must endeavour to ascertain the legislative intent and purpose, and then adopt a rule of construction which effectuates rather than one that may defeat these.'

4. The Act is intended to confer certain benefits on the employees working in the factories and establishments. Chap. II of the Act deals with establishment of the Corporation, standing committee, medical benefit council and their constitution; Chap. III deals with the problem of finance and audit; Chap IV makes provision for contribution by the employees and employers; Chap. V deals with the benefits which have to be conferred on the workmen; Chap VA deals with the transitory provisions; Chap VI deals with adjudication of disputes and claims, and Chap. VII prescribes the penalties. Chap. VIII which is the last chapter deals with miscellaneous matters. As observed by the Supreme Court in *Basant Kumar Sarkar v. The Eagle Rolling Mills Ltd.*, : (1964)IILLJ105SC , it is not possible to extend the Act to every establishment throughout India when the appropriate Government is the Union Government and throughout the State when the appropriate Government is the State Government. In that connection the Supreme Court observed as follows (at pp. 1262, 1263):--

'In the very nature of things, it would have been impossible for the legislature to decide in what areas and in respect of which factories the Employees' State Insurance Corporation should be established. It is obvious that a scheme of this kind, though very beneficent, could not be introduced in the whole of the country all at once. Such beneficial measures which need careful experimentation have sometimes to be adopted by stages and in different phases, and so, inevitably, the question of extending the statutory benefits contemplated by the Act has to be left to the discretion of the appropriate Government. 'Appropriate Government' under S. 2(1) means in respect of establishments under the control of the Central Government or a railway administration or a major port or a mine or oil-field, the Central Government. Thus, it is clear that when extending the Act to different establishments, the relevant Government is given the power to constitute a Corporation for the administration of the scheme of Employees' State Insurance. The course adopted by modern legislatures in dealing with welfare scheme has uniformly conformed to the same pattern. The legislature evolves a scheme of socioeconomic welfare, makes elaborate

provisions in respect of it and leaves it to the Government concerned to decide when, how and in what manner the scheme should be introduced. That, in our opinion, cannot amount to excessive delegation.'

The Expression 'any other establishment or class of establishments' to which the appropriate Government intends to extend the Act may be classified either on the basis of the nature of the establishments or on the basis of their geographical situation or on the basis of both of them. To put it in other words, if the State Government proposes to extend the Act to hotels and restaurants, it can extend to hotels and restaurants situated in all parts of the State to which the Act has been extended under S. 1(3) or to hotels and restaurants situated in a specific part or parts of the State. A classification made on geographical basis would not fall outside the scope of the expression 'class of establishments'. While interpreting the Act the Courts should bear in mind the difficulties involved in extending the Act simultaneously to all establishments situated throughout the State. Before extending to all establishments throughout the State, the Corporation has to build the necessary infra-structure by providing the necessary funds, building hospitals and employing the necessary personnel to administer the Act effectively. It may not be possible to visualise before hand the financial and other implications involved before the Corporation gains experience by enforcing the Act in certain areas by treating them as pilot projects. After gaining such experience in administering the Act as pilot projects in certain small areas, it would be possible for the appropriate Government to extend it to other establishments situate in other geographical areas. It would be manifestly unreasonable to construe S. 1(5) of the Act as laying down that the appropriate Government should either extend the Act to all establishments of a specified nature throughout the State at the same time or not extend it to any such establishment at all. We are of the view that the expression 'class of establishments' occurring in S. 1(5) does clothe the appropriate Government with the power to classify establishments to which the appropriate Government wishes to extend the Act on geographical basis also even though the Act may have been brought into force throughout the State by notifications issued under S. 1(3) of the Act.

5. Sri T. S. Ramachandra, learned counsel for the writ petitioner however depending upon the decision of this Court in *K. T. Appannah v. State of Mysore* (AIR 1962 Mys 157). Contended that the impugned notification was invalid. In the above decision, the Act which came up for consideration before this Court was the [Minimum Wages Act, 1948](#). The question before the Court was whether under Section 3 of that Act it was possible for the State Government to fix minimum wages in respect of certain hotels and eating houses situate in certain parts only of the State. The relevant part of S. 3 of the [Minimum Wages Act, 1948](#) on which the decision in that case rested read, at the time when the notification impugned in that case was brought into force, as follows (at p. 158):-

'3. 'Fixing of minimum rates of wages-

(1) The appropriate Government shall, in the manner hereinafter provided-

(a) fix the minimum rates of wages payable to employees employed-

(i) in an employment specified in Part I of the Schedule at the commencement of this Act before the 31st day of Dec. 1959:

(ii) in an employment specified in Part II of the Schedule at the commencement of this Act, before the 31st day of Dec. 1959:

Provided that the appropriate Government may, instead of fixing minimum rates of wages under this sub-clause for the whole State, fix such rates for a part of the State or for any specified class or classes of such employment in the whole State or part thereof; and

(iii) in an employment added to Part I or a Part II of the schedule by notification under S. 27, before the expiry of one year from the date of the Notification.'

The Court upheld the contention of the petitioner having regard to the language of S. 3 of the Minimum Wages Act as it stood then with these observations (at p. 159):-

'The position therefore is that it is only in respect of an employment specified in Part II of the Schedule as it stood at the commencement of the Act that minimum rates of wages could be fixed by the Government for a part of the State. In respect of every other employment, whether specified in Part I at the commencement of the Act or later included in it, or whether it is added to Part II of the Schedule under Section 27, minimum rates of wages could be fixed only for the entire State and not for a part of it.'

In reaching that conclusion, the Court placed emphasis on the provision in S. 3 of that Act.

6. Shri Ramachandra however argued that by applying the notification only to some establishments situated in some parts of the State, Art. 14 of the Constitution had been violated. In *Bahadur Singh v. Union of India* (Petns. Nos. 111, 148 and 162 of 1955 decided on 17-2-1956) (SC) a similar submission was rejected by the Supreme Court observing, 'it was settled law that in order to give effect to the policy of the Government clearly indicated in the statute in question, it is open to the executive authority to make a geographical classification so as to apply the law to selected areas with a view ultimately to cover the whole territory for which the law was enacted' vide para 16 in *Balley Singh v. State of U. P.* : AIR1967All341 . Any transitional inequality between different geographical areas of State, due to the application of the provisions of the Act, by stages to such areas, would not therefore be violative of Article 14 of the Constitution. It is significant that there is no prohibition, express or implied, preventing such classification. As mentioned earlier, it is necessary to classify establishments on geographical basis for purposes of enforcing the act by stages because if we had otherwise, the implementation of the Act itself would become extremely difficult, if not impossible.

7. We, therefore, find that by classifying hotels on geographical basis the State Government has neither violated S. 1(5) of the Act nor Art. 14 of the Constitution.

8. It was next argued by Shri Ramachandra that the State Government should have taken the previous approval of the Central Government to the proposed notifications after it considered the objections filed by the affected parties. S. 1(5) of the Act does not require the State Government to seek the approval of the Central Government after the objections filed by the affected parties are considered. A fair reading of that provision suggests that such approval should be obtained before the appropriate Government publishes the notice of its intention to extend the provisions of the Act to

any establishment or class of establishments. In the instant case, in the course of the statement of objections filed on behalf of the Corporation, it is stated that previous approval of the Central Government had been obtained before giving notice of the intention of the State Government to extend the provisions of the Act to the establishments in question. Hence, there is no violation of S. 1(5) of the Act in that regard also.

9. In the result, we allow the appeal, reverse the order passed by the learned single Judge and dismiss the writ petition out of which this appeal arises. The parties shall bear their own costs.

10. Appeal allowed.

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