1964

April 21

NAROTTAMDAS

v.

STATE OF MADHYA PRADESH

[P. B. GAJENDRAGADKAR, C. J., K. N. WANCHOO, M. HIDAYATULLAH, K. C. DAS GUPTA AND N. RAJAGOPALA AYYANGAR, JJ.]

Wages—Law passed fixing rates of minimum wages retrospectively—Effect of—Validity—Minimum Wages Act, 1948 (Act 11 of 1948)—Madhya Pradesh Amendment and Validation Act, 1961 (Act 23 of 1961), s. 31A—Madhya Pradesh Ordinance No. 4 of 1962—Madhya Pradesh Minimum Wages Fixation Act, 1962 (Act No. 16 of 1962), ss. 2, 3 and 4—Constitution of India, Art. 19(1)(f) and (g).

The appellant was the manager of a Bidi counting and labelling factory. In 1951, the State of Madhya Pradesh fixed rates of minimum wages payable to workmen in accordance with the provisions of the Minimum Wages Act, 1948. These rates were revised in the year 1956 and new rates were notified by the Government by a notification dated December 30, 1958 directing that these rates would come into force from January 1, 1959. The validity of this notification was successfully challenged by the appellant before the High Court. To meet the situation the Legislature enacted the Minimum Wages Act, 1961 giving effect to the impugned notification. On challenge of this Act by the appellant and other Bidi manufactories, the High Court allowed the applications and restrained the Government from giving effect to the impugned notification. Thereafter, the Madhya Pradesh Ordinance No. 4 of 1962 was passed fixing rates of minimum wages retrospectively. The ordinance was later replaced by an Act, the Madhya Pradesh Minimum Wages Fixation Act, 1962. On challenge of the validity of this Act by the appellant, the High Court held the Act to be valid and disallowed the application. In this Court the validity of the Act was challenged on the ground (1) that in enacting the Act of 1962 the Legislature was not exercising its independent legislative power but only validating the notification dated December 30, 1958 which it was not competent to do, (2) that by giving retrospective effect to the rates of wages fixed by this Act the State had put unreasonable restrictions on the appellant's fundamental rights under Art. 19(1)(f) & (g) and (3) that by making the provisions of ss. 20 and 22 of the Central Act of 1948 applicable to the wages now fixed the Act had contravened Art. 20(1) of the Constitution.

Held: (i) The contention that the Act was not independent legislation cannot be accepted. Section 2 of the Act merely says that the expressions used in this Act shall have the same meaning for the purpose of this Act as defined in the Minimum Wages Act of 1948. The definition of expressions used in an Act with reference to another Act is a well known device in legislative practice generally adopted for the sake of brevity. The definition would remain effective even after the other Act with reference to which the definition was given ceases to exist. This fact of defining expressions in an Act with reference to some other Act cannot therefore have the effect of making this Act dependent on such other Act.

It is clear from s. 3 of the impugned Act that the legislature was fixing for itself the minimum rates of wages in certain scheduled employments. The fact that the rates mentioned in the Table appended to the Act happened to be the same as the rates fixed elsewhere cannot reasonably justify a conclusion that the validation of the old rates was being affected. Independent legislation does not cease to be so, merely because its effect is the same as it would have been if a validating Act had been passed.

(ii) The retrospective operation of legislation is a relevant circumstance in deciding its reasonableness. It is, however, not necessarily a decisive test. Section 3 of the Act does not make the new rates of wages payable on the 1st January 1959. The proviso to s. 4 is a clear statement of the legislature's intention that it is on the 21st June 1962 that the rates which had become enforceable under s. 3 with effect from 1st January 1959 became payable. The appellant's apprehension that he might be made liable for payment of compensation under s. 20(3) or to prosecution under s. 22 of the Minimum Wages Act 1948 as a result of mere passing of the Act must therefore be held to be groundless. The contention therefore that ss. 3 and 4 of the impugned Act impose unreasonable restrictions on the appellant's fundamental rights must be rejected.

Rai Ramkrishna v. *State of Bihar,* [1964] 1 S.C.R. 897, applied.

(iii) On a proper construction of ss. 3 and 4 of the impugned Act, the attack on the validity of the section on the ground of a contravention of Art. 20(1) of the Constitution must also fail.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 221 of 1964. Appeal from the judgment and order dated September 5, 1963 of the Madhya Pradesh High Court in Misc. Petition No. 334 of 1962.

M. C. Setalvad, B. V. Shukla, Rameshwar Nath, S. N. Andley, and *P. L. Vohra,* for the appellant.

B. Sen and *I. N. Shroff,* for the respondents.

April 21, 1964. The Judgment of the Court was delivered by

Das Gupta, J.

DAS GUPTA, J.—This appeal raises the question of the validity of the Madhya Pradesh Minimum Wages Fixation Act, 1962 (Act No. 16 of 1962). The appellant is the Manager of a Bidi counting and labelling factory of M/s. Mohanlal Hargovindas, Jabalpur, who are engaged in the trade of purchase and sale of Bidi in the State of Madhya Pradesh and other States of India. In 1951 the State of Madhya Pradesh fixed rates of minimum wages payable to workmen engaged in Bidi making manufactories. This was done in accordance with the provisions of the Minimum Wages Act, 1948 (Central Act 11 of 1948). These rates of minimum wages were revised in the year 1956 by a notification of the Madhya Pradesh Government dated the 23rd February 1956. New rates of minimum

1964

Narottamdas v. State of Madhya Pradesh

Das Gupta, J.

wages for workmen engaged in the Bidi making manufactories were notified by the Madhya Pradesh Government by a notification dated the 30th December 1958. The notification directed that these rates would come into force from January 1, 1959. The validity of this notification was however successfully challenged by the present appellant before the Madhya Pradesh High Court. To meet the situation the Madhya Pradesh Legislature enacted the Minimum Wages (Madhya Pradesh Amendment and Validation) Act, 1961—(Madhya Pradesh Act No. 23 of 1961). Section 31A which was introduced by this Act into the Central Act (No. 11 of 1948) provided that the rates of minimum wages fixed or revised under the notification of the 30th December 1958 "shall be and shall always be deemed to have been validly fixed and revised and shall be deemed to have come into force on the date mentioned in the said notification, notwithstanding any judicial decision to the contrary or any defect or irregularity in the constitution of the Advisory Board under s. 7 of the principal Act read with s. 9 thereof or publication of the notification in the Gazette or non-compliance with any other requirement of law and shall not be called in question in any court merely on the ground that there was failure to comply with the provisions of the principal Act."

The appellant and some other Bidi manufactories of Madhya Pradesh challenged the validity of this Act before the High Court by petitions under Art. 226 of the Constitution. The High Court allowed the applications, struck down s. 31A as invalid and restrained the Government from enforcing the section and from giving effect to the impugned notification dated the 30th December, 1958.

The High Court gave its decision on the 2nd May 1962. On the 21st June 1962 the Madhya Pradesh Ordinance No. 4 of 1962 was passed fixing rates of minimum wages retrospectively. The Ordinance was later replaced by an Act, the Madhya Pradesh Minimum Wages Fixation Act, 1962. On the 5th October 1962, the appellant made an application to the High Court of Madhya Pradesh under Art. 226 and Art. 227 of the Constitution challenging the validity of this Act and praying for a declaration that the Act is ultra vires, void and inoperative and a writ in the nature of *mandamus* restraining the State of Madhya Pradesh and the other respondents from giving effect to or enforcing the provisions of the Act. The High Court has held that the Act is valid and has disallowed his application. Against that decision the present appeal has been preferred.

The challenge to the validity of the Act is based on three principal grounds. The first is that in enacting Act No. 16

of 1962 the Madhya Pradesh Legislature was really not exercising its independent legislative power but only validating the notification dated the 30th December 1958 which it was not competent to do. The second ground is that by giving retrospective effect to the rates of wages fixed by this Act the State has put unreasonable restrictions on the appellant's fundamental rights under Art. 19(1)(f) & (g) of the Constitution. The last ground on which the Act was challenged as invalid is that by making provisions of s. 20 and s. 22 of the Central Act No. 11 of 1948 applicable to the wages now fixed the Act has contravened Art. 20(1) of the Constitution.

The impugned Act is a short Act of five sections only. The first section gives the title of the Act and the fifth section repeals the Ordinance to replace which this Act was passed. Three remaining sections are in the following words:—

"2. The expression used in this Act and defined in the minimum Wages Act, 1948 (XI of 1948), in its application to the State of Madhya Pradesh shall have the meanings assigned to them in the said Act.

3. Notwithstanding anything contained in s. 5 of the Minimum Wages Act, 1948 (XI of 1948), in its application to the State of Madhya Pradesh (hereinafter referred to as the said Act) or any other provisions contained therein relating to the fixation or revision of minimum rates of wages in scheduled employments and any judgment, decree or order of any court to the contrary, the minimum rates of wages in respect of employments in items 2, 3, 5, 6, 7, 8 and 11 in Part I and in respect of employment in Part II of the Schedule to the said Act shall be and shall always, in respect of each employment, be deemed to be as specified in Table appended hereto and it is hereby enacted that the said minimum rates of wages shall be payable by the employer in the said scheduled employments and be enforceable against him with effect from the 1st January 1959, as if the provisions herein contained have been in force at all material times.

4. The provisions of section 4-A, section 5A, in so far as they relate to revision of minimum rates of wages, and of sections 12 to 30-A of the said Act, and the rules made thereunder shall apply to minimum rates of wages specified in section 3 as they apply to minimum wages in respect of scheduled employments fixed in accordance with the said Act;

1964

Narottamdas
v.
State of Madhya Pradesh

Das Gupta, J.

Provided that with respect to claims arising out of payment of minimum rates of wages specified in section 3 pertaining to a period prior to the publication of the Madhya Pradesh Minimum Wages Fixation Ordinance, 1962 (4 of 1962) in the Gazette, the period of one year referred to in the first proviso to sub-section (2) of section 20 of the said Act shall be counted with effect from the 21st June, 1962, the date of the publication of the said Ordinance in the Gazette."

It is not disputed that the Madhya Pradesh legislature had the legislative competence to make a law as regards minimum wages under Entry 24 of List III (Sch. Seventh). Mr. Setalvad contends that this power of independent legislation was not really exercised by the legislature and that in the guise of independent legislation it has in substance passed a validating Act, after an attempt to validate the notification of the 30th December, 1958, had failed. In support of his argument that it is not independent legislation Mr. Setalvad laid stress on the language of s. 2. That section merely says that the expressions used in this Act shall have the same meaning for the purpose of this Act as defined in the Minimum Wages Act of 1948. According to the learned counsel, this shows that this was really a dependent and not independent legislation. We can find no substance in this argument. The definition of expressions used in an Act with reference to other Act is a well known device in legislative practice generally adopted for the sake of brevity. The definition would remain effective even after the other Act with reference to which the definition was given ceases to exist. This fact of defining expressions in an Act with reference to some other Act cannot therefore have the effect of making this Act dependent on such other Act.

Mr. Setalved next urged that quite clearly the object of s. 3 was to validate the minimum rates of wages as fixed by the notification dated the 30th December 1958 and nothing more. As we read the section we find that it merely fixed wages in respect of certain employments at the rates mentioned in the Table appended to the Act. We are informed that the rates mentioned in the Table are identical with the rates mentioned in the notification dated the 30th December, 1958. The effect of enactment of s. 3 would therefore be the same as if the notification of 1958 had been validated. To say that, however, is not to say that this Act has validated or that even it seeks to validate the 30th December 1958 notification. On the face of it the legislature was fixing for itself the minimum rates of wages in certain scheduled employments. That is stated in the preamble and is plain from s. 3 itself. The fact

that rates mentioned in the Table appended to the Act happened to be the same as rates fixed elsewhere cannot reasonably justify a conclusion that the validation of the old rates was being affected. Independent legislation does not cease to be so, merely because its effect is the same as it would have been if a validating Act had been passed. The contention that this Act was not independent legislation cannot therefore be accepted.

Nor is it possible to accept the argument that the Act is an unreasonable restriction on the appellant's fundamental rights under Art. 19(1)(f) and (g) of the Constitution. Restriction there undoubtedly is, but we are not satisfied that the restriction is unreasonable. Section 3 of the Act makes the new rates of wages effective from January 1, 1959. Section 4 makes the various provisions of the Central Act No. 11 of 1948 available for revision and enforcement of the rates as specified in s. 3. The consequence is that if an employer does not pay the rates as specified, an application may be made under s. 20 of Act 11 of 1948 to enforce such payment. He will be liable also to prosecution and penalties under s. 22 of the Act. What according to the learned counsel makes the Act unreasonable is that such application can be made and such prosecution and penalties can be imposed even in respect of the past period—from 1st January 1959 upto the date of the Act. How is it possible for the employer, it is urged, to pay such arrears which might amount in many cases to considerable sums of money when the accounts for the past years had been closed, profits had been distributed and the available surplus had either been spent or invested in other ways?

We have no hesitation in agreeing to the proposition that the retrospective operation of legislation is a relevant circumstance in deciding its reasonableness. It is, however, clearly established by a long series of decisions of this Court that this is not necessarily a decisive test. We may mention in this connection the decision of this Court in *Rai Ramkrishna* v. *State of Bihar*[1]. There the Court had to consider the question whether the retrospective operation of the Bihar Taxation of Passengers and Goods (Carried by Public Service Motor Vehicles) Act, 1961 put such an unreasonable restriction on the fundamental rights guaranteed under Art. 19(1)(f) and (g) of the Constitution as to make the Act invalid to the extent of its retrospective operation. The Bihar Finance Act, 1950 (Bihar Act XVII of 1950) had imposed a tax on passengers and goods carried by public service motor vehicles in Bihar. In an appeal arising out of a suit filed by the passengers and owners of goods, this Court struck down Part III of the said Act as unconstitutional. This judgment was pronounced on the 12th

(1) [1964] 1 S.C.R. 897.

1964

Narottamdas
v.
State of Madhya Pradesh

Das Gupta, J.

December 1960. Then an Ordinance, viz., Bihar Ordinance No. 11 of 1961 was issued on August 1, 1961. By this Ordinance the material provisions of the earlier Act of 1950 were validated and brought into force retrospectively from the date when the earlier Act had purported to come into force. Subsequently, the provisions of this Ordinance were incorporated in the Bihar Taxation on Passengers and Goods (Carried by Public Service Motor Vehicles) Act, 1961. Section 23 of the Act provided that any amount paid, collected or recovered or purported to have been paid, collected or recovered as tax or penalty under the provisions of Part III of the Bihar Finance Act, 1950 or rules made thereunder during the period beginning with the first day of April 1950 and ending on the thirtyfirst day of July 1961, shall be deemed to have been validly levied, paid, collected or recovered under the provisions of this Act. It was urged that this retrospective operation for such a long period like 10 years itself made the provisions unconstitutional. In repelling this contention, Gajendragadkar, J. (as he then was) speaking for the Court observed thus:—

> "If a statute passed by the legislature is challenged in proceedings before a court and the challenge is ultimately sustained and the statute is struck down, it is not unlikely that the judicial proceedings may occupy a fairly long period and the Legislature may well decide to await the final decision in said proceedings before it uses its legislative power to cure the alleged infirmity in the earlier Act. In such a case, if after the final judicial verdict is pronounced in the matter the legislature passes a validating Act, it may well cover a long period taken by the judicial proceedings in court and yet it would be inappropriate to hold that because the retrospective operation covers a long period, therefore, the restriction imposed by it is unreasonable."

These observations which were made in respect of a validating Act apply fully to a legislation as in the Act now under consideration.

It is not also possible to accept the picture presented by Mr. Setalvad of the employers' financial difficulties in making payment for the past period as a fair representation of the true facts. For practically the entire period from the 1st April 1959 to the date of the present Act the employers had before them the provisions of what purported to be a good law requiring them to pay at these very rates. As good businessmen they are expected to have made provisions

for payments on these very rates, even though they intended to challenge the validity of the previous Act and ultimately succeeded in that attempt. We are not prepared to believe that such provisions are not generally made. The hardship which according to Mr. Setalvad the employers would have to face in making the payments for the past periods is, in our judgment, more imaginary than real.

But, urges the learned counsel, s. 3 of the Act while giving to the rates of wages fixed by the Act retrospective effect from the 1st January 1959 has also made wages at these new rates payable on January 1, 1959 for the past period. The result of this, according to the learned counsel, is that as soon as an application is made under s. 20 of Act 11 of 1948 the employer would be liable not only to pay the arrears of wages but also compensation as provided in sub-s. 3 of s. 20. Sub-section 3 of s. 20 of Act 11 of 1948 provides, *inter alia*, that the minimum wage authority may direct:

> "In the case of a claim arising out of payment of less than minimum rates of wages, the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid, together with the payment of such compensation as the Authority may think fit, not exceeding ten times the amount of such excess."

It has further provided that the authority may direct payment of such compensation in cases where the excess or the amount due is paid by the employer to the employee before the disposal of the application.

If the legal position were as urged by the learned counsel, that s. 3 made the new rates of wages for the past period payable on January 1, 1959 or the apprehension that the employer might be made to pay heavy compensation may well be true. Another consequence of that legal position would be that the employer would also be liable to prosecution under s. 22 of the Act for his omission to pay on January 1, 1959 the rates which were fixed first by the Ordinance and then by the impugned Act. We are satisfied however that s. 3 of the impugned Act does not make the new rates of wages payable on the 1st January 1959. The words used are...... "and it is hereby enacted that the said minimum rates of wages shall be payable by the employer in the said scheduled employments and be enforceable against him with effect from the 1st January 1959, as if the provisions herein contained have been in force at all material times." By these words, it is urged on behalf of the appellant, the legislature not only made the minimum wages effective from the 1st January 1959 but also made them payable on that date for the past period. In other words, the sentence is sought to be read as saying:—

1964

Narottamdas v. State of Madhya Pradesh

Das Gupta, J.

"the said minimum rates of wages shall be payable by the employer in the said scheduled employments with effect from 1st January 1959 and shall be enforceable against him with effcet from 1st January 1959." If that had been the intention of the legislature the appropriate words to use would have been "the said minimum rates of wages shall be payable by the employer in the said scheduled employments and enforceable against him with effect from 1st January 1959." No purpose would be served by the word "be" before the word "enforceable" if the phrase "with effect from the 1st January 1959" was intended to apply both to "payable" and to "enforceable". The very fact that the legislature took care to say "be enforceable" in the latter part of the sentence shows clearly that while it was intended that the new rates would be enforceable against the employer with effect from the 1st January 1959 no date was being prescribed by s. 3 as regards the date on which it became payable.

An examination of s. 4 of the Act further makes it clear beyond any reasonable doubt that it was the intention of the legislature that new rates became payable only on the 21st June 1962, the date of the publication of the Ordinance which was later replaced by the Act. Section 4 makes applicable to the minimum rates of wages as fixed by s. 3, the provisions of s. 4A and s. 5 of the Minimum Wages Act (Act 11 of 1948), that is, the provisions as regards the revision in future of the rates fixed by the impugned Act, and of sections 12 to 30A. Among the sections thus included is therefore s. 20 which prescribes the procedure for claims arising out of payment of less than the minimum rates of wages. The first proviso to sub-section 2 of s. 20 prescribes a period of limitation within which an application on such claims has to be made. The period prescribed is one year from the date on which the minimum wages became payable. It was thus necessary for the legislature when giving retrospective effect to the rates fixed by s. 3 of the impugned Act to indicate the date on which the new rates would become payable. This indication is clearly given by the proviso to s. 4. The proviso (which has already been set out) is in these words:—

> "Provided that with respect to claims arising out of payment of minimum rates of wages specified in s. 3 pertaining to a period prior to the publication of the Madhya Pradesh Minimum Wages Fixation Ordinance 1962 (4 of 1962) in the Gazette, the period of one year referred to in the first proviso to sub-section (2) of section 20 of the said Act shall be counted with effect from the 21st June 1962, the date of publication of the said Ordinance in the Gazette."

The above provision that "the period of one year referred to in the first proviso to sub-section (2) of s. 20 of the said Act shall be counted with effect from the 21st June 1962" is a clear statement of the legislature's intention that it is on the 21st June 1962 that the rates which had become enforceable under s. 3 with effect from 1st January 1959 became payable. That is how the High Court has construed the section and in our judgment that construction is correct. The appellant's apprehension that he might be made liable for payment of compensation under s. 20(3) or to prosecution under s. 22 of the Minimum Wages Act, 1948 (Act 11 of 1948) as a result of the mere passing of the Act is therefore groundless.

It is clear that the duty to pay at these rates arose only on and from the 21st June 1962 and no liability to pay compensation under s. 20(3) or to prosecution under s. 22 of the Minimum Wages Act, 1948 would arise if payment was made on the 21st June 1962.

It was then urged that it would be unreasonable to expect the employer to be able to make such payment on the 21st June 1962, the date of publication of the Ordinance. Some time would elapse, it is pointed out, before the employer could acquaint himself with the detailed provisions of the Act and some further time in making arrangements for payment; there was thus the risk of an application being made against him under s. 20 of the Minimum Wages Act, 1948, and an order directing him to pay compensation. While there is no doubt a theoretical possibility of such a thing happening, the risk appears to us practically non-existent. It is to be noticed that it is discretionary with the minimum wage authority to make an order for payment of compensation. It is very unlikely that the authority will in the use of his discretion make an order for payment of compensation when he finds that the employer has made the payment within a few days after the 21st June 1962. The risk of prosecution under s. 22 because of failure to pay exactly on the 21st June 1962 is even less. But such prosecution, it may be pointed out, will be entertained by courts only after an application under s. 20 as regards the facts had been made and partly succeeded and the appropriate Government or an officer authorised by it has sanctioned the making of a complaint. It does not appear to us likely that prosecution will be launched because of failure to pay exactly on the 21st June 1962. The contention that s. 3 and s. 4 of the impugned Act impose unreasonable restrictions on the appellant's fundamental rights must therefore be rejected.

The last ground urged in support of the appeal, viz., that the impugned Act contravenes Art. 20(1) of the Constitution, is based on the assumption that the new rates of wages became payable on the 1st January 1959 even as regards the

1964

Narottamdas
v.
State of Madhya Pradesh

Das Gupta, J.

past period. If that assumption were correct it would no doubt be also correct to say that the combined effect of ss. 3 and 4 of the impugned Act was to make the employer liable to conviction for offences for violation of a law which was not in force at the time of the commission of the act charged. We have already held however that on a proper construction of ss. 3 and 4, the new rates of wages for the past period became payable not on the 1st January 1959 but on the 21st June 1962. The attack on the validity of the sections on the ground of Art. 20(1) of the Constitution therefore fails.

All the points raised in the appeal fail. The appeal is accordingly dismissed with costs.

Appeal dismissed.