

KERALA PRIVATE HOSPITAL ASSOCIATION

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v.

STATE OF KERALA & ORS.

(Civil Appeal No.18368 of 2017)

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NOVEMBER 09, 2017

[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

Minimum Wages Act, 1948 – s.9 – Employees working in the Private Hospitals, Dispensaries, Pharmacies, Scanning Centers, X-ray Units and other allied institutions – Revision of minimum wages – Committee constituted by State under Section 9 – Constitution of the Committee challenged by respondent nos. 2 to 4 running their private hospitals in the respondent-State contending that proper representation was not given in the Committee to the employers’ representatives as according to them only employers/owners of Hospitals/Organizations could be nominated as Members to represent the interest of employers in the Committee but not their employees working in such Hospitals/Organizations – Writ petition dismissed by High Court – Held: A person nominated to represent the interest of his employer, need not necessarily be the employer himself – Nomination of an employee to represent employer’s interest is in accordance with s.9 – No fault is found in such nomination – More so, when on facts, employer did not object to such nomination – Also, employees nominated were well versed in the subject in question by virtue of the posts held by them – No flaw or illegality in the constitution of the Committee or/and in nominating the members by the State – Constitution of the Committee in question is in accordance with the requirements u/s.9 and hence does not call for any interference – The Minimum Wages (Central) Rules, 1950 – rr. 3, 4A, 7, 8 and 10.

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Dismissing the appeals, the Court

HELD: 1.1 Section 9, Minimum Wages Act, 1948 deals with constitution of various Committees for due performance of several acts specified under the Act. An appropriate Government

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A is empowered to constitute a Committee whose composition consists of members by nomination to represent the employers' and employees' interest in equal numbers. The independent persons are also the members of the Committee whose number should not exceed one third of its total number of the members.

B The Chairman of the Board by the Central Government is empowered to appoint one independent person. The Minimum Wages (Central) Rules, 1950 prescribes, *inter alia*, a term of office of the members of the Committee and the Advisory Committee (Rule 3), Nomination of substitute-members (Rule 4A), eligibility for re-nomination of the members of the Committee, Advisory

C Committee and the Board (Rule 7), resignation of the Chairman and members of the Committee/Board and filling of the casual vacancies (Rule 8) and disqualification (Rule 10). The Rules nowhere provide as to who should be nominated as representative of employer in the Committee. [Paras 23, 24] [952-F-H; 953-A]

D 1.2 A person, who is nominated to represent the interest of his employer, need not necessarily be the employer himself. If on the other hand, his employee is nominated to represent his employer's interest, such nomination is in accordance with the requirement of Section 9 of the Act. It is for the reason that such

E nominee once nominated would defend his employer's interest and not individual interest as an employee in the Committee. In other words, a nominee in such a case does not participate in his individual capacity as an employee in the Committee but participates as a representative of his employer. A representation, by way of nomination, is a well accepted phenomenon. A *fortiori*,

F an employee while in the employment of his employer, when nominated as his employer's representative in the Committee then such employee, who is well-versed with the working of his organization and the subject, is regarded as a competent person(nominee) to represent the interest of his

G master(employer). No fault can thus be found in such nomination when made by the State while constituting the Committee. It is more so when it is found, that in the case at hand the employer did not object to such nomination made by the State of their employee in the Committee. [Paras 26, 27] [953-C-F]

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1.3 In the case at hand, it is further found that equal representation is given to both- employer and employee (13 persons each) in the Committee. So far as the employers' representation is concerned, there exists a nexus between the persons who are nominated and for whom they are nominated. The employees who are nominated, are working as Head of Human Resources Department in their respective organizations, they are thus well-versed in the subject in question by virtue of the posts held by them in their respective employment. [Paras 29, 30] [954-F-H]

1.4 There is no flaw or illegality in the constitution of the Committee or/and in nominating the members by the State. It is in accordance with the requirement of Section 9 of the Act and hence does not call for any interference. It was, therefore, rightly repelled by the Single Judge and Division Bench of the High Court. The constitution of Committee is upheld. [Paras 31, 32] [955-A-C]

Ministry of Labour & Rehabilitation & Anr. v. Tiffin's Barytes Asbestos & Paints Ltd. and Anr. AIR 1985 SC 1391 : [1985] 2 Suppl. SCR 302 – relied on.

Case Law Reference

[1985] 2 Suppl. SCR 302 relied on Para 28

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 18368 of 2017.

From the Judgment and Order dated 16.02.2017 of the High Court of Kerala at Ernakulam in W. A. No. 311 of 2017

WITH

Special Leave Petition (Civil) No. 15791 of 2017.

Huzefa Ahmadi, P. V. Surendranath, Jaideep Gupta, Sr. Advs, Zulfiker Ali P. S, Subhash Chandran K. R, Ms. Resmitha R. Chandran, Ms. Yogamaya M. G, Ms. Lekha Sudhakaran, C. K. Sasi, Manukrishnan, Advs for the appearing parties.

A The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J.

IN S.L.P.(C) No.16602 of 2017

1 I.A. seeking impleadment as party respondent is allowed.

B 2. Leave granted.

3. This appeal is filed against the final judgment and order dated 16.02.2017 passed by the High Court of Kerala at Ernakulam in Writ Appeal No.311 of 2017 whereby the High Court dismissed the appeal filed by respondent Nos.2, 3 and 4 herein and upheld the order of the Single Judge dated 01.02.2017 in W.P. (C) No.1054 of 2017 wherein the challenge made to the constitution of the Committee set up by the State of Kerala (respondent No.1) under Section 9 of the Minimum Wages Act, 1948 (hereinafter referred to as “the Act”) for revision of minimum wages payable to the employees working in the private hospitals and other allied institutions was repelled by the Single Judge.

D 4. We herein set out the facts, in brief, to appreciate the issue involved in these appeals.

5. In order to revise the minimum wages for the employees working in the Private Hospitals, Dispensaries, Pharmacies, Scanning Centers, X-ray Units and other allied institutions, the Government of Kerala-Labour & Skills (E) Department issued G.O. (Rt) No.1334/2016/Labour dated 28.10.2016 accorded sanction for constitution of a Committee called “Private Hospital Industrial Relation Committee” under Section 5 read with Section 9 of the Act.

F 6. The Committee was to function under the Chairmanship of Labour Commissioner and it, *inter alia*, consisted of Employers’ Representatives and Employees’ representatives as its Members in equal numbers amongst others. So far as the Employers’ representatives are concerned with which we are concerned herein, the State nominated 13 persons representing Private Medical Hospitals Associations, Medical colleges, and private hospitals of the State. These persons are: (1) Dr. P.K. M. Rasheed, President, Kerala Private Hospital Association, Medical Care Hospital, Kodungalloor-680666 (2) Fr. Tijo Joy Mullakkara, Assistant Director, Jubilee Mission Hospital, Thrissur-680005, (3) Fr. Thomas Vaikkath Parambil, Director, Lisie Hospital, Ernakulam-682018,

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(4) Sri Manoj V.C., Head HR, Aster DM Health Care, South Chittoor P.O. Cheranelloor, Kochi-27, (5) Chairman, Pariyaram Medical College, Kannur, (6) Sri Fazal Gafoor, President, Muslim Education Society, Bank Road, Calicut, (7) Sri Don S.R., General Manager (HR), Kims Hospital, PB No.1, Anayara P.O. Thiruvananthapuram-695 029, (8) Sri Antony Jacob. M, General Manager (HR), Kosmo Politan Pvt. Hospital, Murinjapalam Pattom P.O., Thiruvananthapuram, (9) Sri K.P. Mathew, Personal Manager, Medical Trust Hospital, Pallimukku, Ernakulam South, (10) Sri Saji Mathew, Assistant General Manager, Baby Memorial Hospital, Calicut-673004, (11) Dr. A.M. Anvar, Vice-President, Ayurveda College Management Association, Pooyappallil, Ambedkar Road, Edappally North P.O. Kochi-24, (12) Sri O.P. Paul, Manager(HR), Elite Mission Hospital, Koorkkanchery, Thrissur-680018 and (13) Sri Saidu Muhammad V.M., Administrator, Moulana Hospital, Perinthalmanna, Malappuram.

7. As far as the Employees' representatives are concerned, the State nominated 13 persons representing various Trade Unions, Medical Colleges, and Private Hospitals. These persons are: (1) Sri A. Madhavan, (CITU), Arunima, Devan Road, Kanhangad, Kasaragod, (2) Sri K.P. Sahadevan, A.K.G. Nagar, Housing Colony, House No.10, Kakkad, Kannur-2, (3) Smt. Bhageerathi K.(CITU), Pranavam, Moonnamkandathil, East Devagiri, Medical College PO, Kozhikode-673 008, (4) Smt. Geetha Viswambharan, (CITU), Pulincherry House, Gramala, Mulankunnathukavu P.O., Trichur-680 581, (5) Sri Velayudhan. K. (CITU), Chinchu, 14/518 A, Chakkerikkaduparambu, Arakkinar P.O. Kozhikode-673 028, (6) Sri Saju Thomas. (INTUC), Kandathara, Perumbadanna, North Paravur P.O., Ernakulam, (7) Sri Vadakkevila Sasi, (INTUC), Kailas, Vadakkevila P.O., Kollam-691010, (8) Sri A.N. Rajan, (AITUC), Ambattumyalil, Kolazhi P.O. Thrussur, (9) Sri Jacob Unma, (HMS), Nadayil Veettil, Chettikulangara PO, Mavelikkara-690 106, (10) Sri T.K. Sulfi, (UTUC), Pandala Veedu, Jonakappuram, Kollam-691006, (11) Sri P.A. Shahul Hameed, (STU), Ponoth House, Near North Juma Masjid, Vadanappally P.O., Thrussur-690 614, (12) Sri Jasmine Shah. M.(UNA), Manthadathil, Vettam P.O., Tirur, Malappuram-676 102 and (13) Sri Libin Thomas (INA), Kunnathettu House, Arabi P.O. Kannur.

8. The Committee was to take evidence and then to submit the proposal to enable the State Government to issue notification under the Act.

A 9. Respondent Nos.2 to 4, who are running their private hospitals
in the State of Kerala, questioned the constitution of the Committee by
filing writ petition in the High Court of Kerala. The constitution of the
Committee was challenged essentially on the ground that it did not satisfy
the requirements/norms prescribed in Section 9 of the Act inasmuch as
B it did not give proper representation so far as the Employers'
representatives are concerned. According to the writ
petitioners(respondent Nos.2 to 4), the nomination of the persons whose
names were appearing at serial Nos.4, 7, 8, 9, 10, 12 and 13 was not
proper and it was against the spirit of Section 9 of the Act.

C 10. It was the case of the writ petitioners that the persons, who
are nominated in the Committee as employers' representatives are actually
employees working in their respective Employers'
Organizations(Hospitals/ Medical colleges etc.) and, therefore, according
to the writ petitioners such persons would not be the proper persons to
be nominated in the Committee. In other words, the contention was that
D only employers/owners of the Hospitals/Organizations could be nominated
as Members to represent the interest of employers in the Committee but
not their employees working in their Hospitals/Organizations.

E 11. The State contested the writ petition and defended the
constitution of the Committee. According to the State, the constitution of
the Committee was made in accordance with the requirement of Section
9 of the Act and, therefore, no flaw could be found in its constitution on
any ground much less on the ground raised by the writ petitioners.

F 12. The Single Judge dismissed the writ petition and upheld the
constitution of Committee. The writ petitioners (respondent Nos.2-4)
filed intra court appeal before the Division Bench against the order of
Single Judge. By impugned judgment, the Division Bench of the High
Court dismissed the appeal and affirmed the order of the Single Judge.

G 13. The appellant herein is the Association of the employers/
owners of the Hospitals and Medical Organizations. The appellant was
neither a party to the original writ petition nor the intra court appeal
in the High Court. The appellant, however, sought permission from this
Court to file special leave to appeal to challenge the impugned judgment
on the ground that they have an interest in the subject matter of the *Lis*
arising in the case and since their interest is adversely affected due to
improper constitution of the Committee though upheld by the High Court,
H they have felt aggrieved of the impugned judgment and, therefore, they

may be allowed to file SLP to question the legality and correctness of the impugned judgment. Accordingly, this Court granted permission to the appellant as prayed. This is how, the appellant has filed this appeal by way of special leave against the impugned judgment before this Court.

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14. Heard Mr. Huzefa Ahmadi, learned senior counsel for the appellant and Mr. C.K. Sasi, learned counsel for the respondents.

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15. Mr. Huzefa Ahamdi, learned senior counsel while assailing the legality and correctness of the impugned judgment reiterated the same submissions that were urged before the High Court in the writ petition and writ appeal by the writ petitioners/appellants (respondent Nos.2 to 4 herein) as noted above.

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16. In substance, his submission was that the constitution of the Committee made by the State vide order dated 28.10.2016 cannot be said to be in conformity with the requirement of Section 9 of the Act inasmuch as there was no proper representation given to the employers engaged in the medical activities.

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17. Learned counsel pointed out that the persons, who are nominated to represent each employer (Hospitals/Medical Organizations), whose names are at S.Nos.4,7,8,9,10,12 and 13 (Sri Manoj V.C., Head HR, Aster DM Health Care, South Chittoor P.O. Cheranelloor, Kochi-27, Sri Don S.R., General Manager (HR), Kims Hospital, PB No.1, Anayara P.O. Thiruvananthapuram-695 029, Sri Antony Jacob. M, General Manager (HR), Kosmo Politan Pvt. Hospital, Murinjapalam Pattom P.O., Thiruvananthapuram, Sri K.P. Mathew, Personal Manager, Medical Trust Hospital, Pallimukku, Ernakulam South, Sri Saji Mathew, Assistant General Manager, Baby Memorial Hospital, Calicut-673004, Sri O.P. Paul, Manager (HR), Elite Mission Hospital, Koorkkanchery, Thrissur-680018 and Sri Saidu Muhammad V.M., Administrator, Moulana Hospital, Perinthalmanna, Malappuram) are the employees working in the Hospitals/Nursing Homes etc..

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18. According to learned counsel, the proper person, who should have been nominated to represent the employers' interest, was the "employer" himself of the Hospital/Organization but not their employees working under them.

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19. Learned counsel submitted that if the employee is nominated to represent the interest of his employer then such nominee (employee)

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A would be more interested in his(employee) own financial interest while making recommendation for revision of minimum wages rather than to take care of his master's (employer's) interest in recommending the wages. But if the employer is nominated personally in the Committee, he would be in a better position to safeguard his interest. Such nominations, according to learned counsel, would be regarded as having been made in keeping the real object of Section 9 of the Act in mind.

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20. In reply, learned counsel for the respondent (State) supported the impugned judgment including the constitution of the Committee made by the State and contended that it is in accordance with Section 9 of the Act and hence the submissions urged by learned counsel for the appellant are totally misconceived and deserve rejection.

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21. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in the appeal.

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22. Section 9 of the Act, which is relevant for this case, reads as under:

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“9. Composition of Committees, etc. - Each of the committees, sub-committees and the Advisory Board shall consist of persons to be nominated by the appropriate Government representing employers and employees in the scheduled employments, who shall be equal in number, and independent persons not exceeding one-third of its total number of members; one of such independent persons shall be appointed the Chairman by the appropriate Government.”

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23. Section 9 deals with constitution of various Committees for due performance of several acts specified under the Act. An appropriate Government is empowered to constitute a Committee whose composition consists of members by nomination to represent the employers' and employees' interest in equal numbers. The independent persons are also the members of the Committee whose number should not exceed one third of its total number of the members. The Chairman of the Board by the Central Government is empowered to appoint one independent person.

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24. The Minimum Wages (Central) Rules, 1950 (hereinafter referred to as “the Rules”) prescribes, *inter alia*, a term of office of the members of the Committee and the Advisory Committee(Rule 3),

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Nomination of substitute-members (Rule 4A), eligibility for re-nomination of the members of the Committee, Advisory Committee and the Board (Rule 7), resignation of the Chairman and members of the Committee/Board and filling of the casual vacancies (Rule 8) and disqualification (Rule 10). The Rules nowhere provide as to who should be nominated as representative of employer in the Committee.

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25. Now coming to the facts of the case on hand, there lies a fallacy in the submissions urged by the learned counsel for the appellant.

26. A person, who is nominated to represent the interest of his employer, in our considered opinion, need not necessarily be the employer himself. If on the other hand, his employee is nominated to represent his employer's interest, such nomination is in accordance with the requirement of Section 9 of the Act. It is for the reason that such nominee once nominated would defend his employer's interest and not individual interest as an employee in the Committee. In other words, a nominee in such a case does not participate in his individual capacity as an employee in the Committee but participates as a representative of his employer.

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27. A representation, by way of nomination, is a well accepted phenomenon. *A fortiori*, an employee while in the employment of his employer, when nominated as his employer's representative in the Committee then such employee, who is well-versed with the working of his organization and the subject, is regarded as a competent person (nominee) to represent the interest of his master (employer). No fault can thus be found in such nomination when made by the State while constituting the Committee. It is more so when we find that the employer did not object to such nomination made by the State of their employee in the Committee.

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28. We consider it apposite to refer here a three- Judge Bench decision of this Court in **Ministry of Labour & Rehabilitation & Anr. vs. Tiffin's Barytes Asbestos & Paints Ltd. and Anr.**, AIR 1985 SC 1391 wherein the challenge laid to constitution of Committee and the resultant notification issued under Section 5(1) read with Section 9 of the Act fixing minimum wages for the workers working in Manganese, Gypsum, Barytes and Bauxite Mines was repelled by upholding the constitution of the Committee and the notification with following pertinent observation. The learned Judge, Chinnappa Reddy, J. succinctly observed as under:

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A **“3.....We are afraid that the approach of**
the High Court was entirely wrong. For the purpose of
appointing the committee to represent the employers in a
scheduled employment, it was not necessary that the person
appointed should be engaged for profit in the particular
B **employment. It is enough if a nexus exists between the**
persons so appointed to represent the employers in the
particular employment and the particular employment
concerned. For example it may be absurd to appoint persons
engaged in the newspaper industry to a committee
to represent employers concerned in the
C **employment of Barytes mines or Bauxite**
mines.....We
also wish to emphasise that notifications fixing minimum
wages are not to be lightly interfered with under Art.226 of
the Constitution on the ground of some irregularities in
D **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
E **be interfered with under Art.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.”

F 29. In the case at hand, we find that equal representation is given
to both - employer and employee (13 persons each) in the Committee.

G 30. So far as the employers' representation is concerned, we find
that there exists a nexus between the persons who are nominated and
for whom they are nominated. We also find that the employees who are
nominated, are working as Head of Human Resources Department in
their respective organizations (see at serial Nos. 4, 7, 8 and 9), they are
thus well-versed in the subject in question by virtue of the posts held by
them in their respective employment.

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31. In our opinion, we have not been able to notice any flaw or illegality in the constitution of the Committee or/and in nominating the members by the State. It is in accordance with the requirement of Section 9 of the Act and hence does not call for any interference. It was, therefore, rightly repelled by the Single Judge and Division Bench of the High Court. A

32. There is no challenge to the constitution of Committee on any other ground except the one which we have dealt with supra. In this view of the matter, the impugned judgment deserves to be upheld. It is accordingly upheld. B

In the light of foregoing discussion, we find no merit in the appeal, which fails and is accordingly dismissed. C

In SLP (C) No.15791 of 2017

In view of the judgment rendered above in appeal arising out of S.L.P.(C) No.16602 of 2017, the special leave petition is, accordingly, dismissed. D