

**(1979) 06 CAL CK 0002**  
**In the Calcutta High Court**  
**Case No : C.R. No. 8264 (W) of 1974**

Anandam (P) Ltd. and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

**Date of Decision :** 01-06-1979

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Minimum Wages Act, 1948 — Section 2, 2(d), 27, 3, 5

**Citation :** 83 CWN 892

**Hon'ble Judges :** S.K. Datta, J

**Bench :** Single Bench

**Advocate :** Debi Pal and Rudrendra Mohan Chatterjee, for the Appellant; F.N. Sanyal, B.N. Ghose, P.K. Chatterjee and Chandra Sekhar Banerjee, for the Respondent

## **Judgement**

Salil Kumar Datta, J.—The petitioners in this Rule are Anandam Private Ltd. an existing company owning two cinema houses while the petitioner No. 3 is The Eastern India Motion Picture Association, an association of the employers of cinema industries of Eastern India Region. By notification issued by the Government of West Bengal under the Labour Department bearing No. 2949 LW/LW/1A-88/60 dated May 16, 1960 the Government of West Bengal fixed, with effect from the date of the notification, the rates of minimum wages payable to the employees in cinema industries in West Bengal. The rates with reference to categories of employees were specified in the schedule attached to the notification. This notification was issued by the Government in exercise of the power conferred by clause (a) of Sub-section (1) of Section 3 read with Sub-section (2) of Section 5 of the Minimum Wages Act, 1948 (hereinafter referred to as the Act). The cinema industry in West Bengal an employment was added to part I of the schedule of the Act by the Government Notification dated May 19, 1969 u/s 27 of the Act and duly gazetted on June 4, 1959. The notification further provided under Clause 5 as follows : 5(a) The rate of dearness allowance shall correspond to the average consumer price index number for the year 1959

as published by the competent authority appointed under clause (c) of Section 2 of the Act. Dearness allowance shall be adjusted both upwards and downwards with change in the consumer price index, (b) Dearness allowance shall not be revised unless there has been a change of 20 points in the consumer price index number and before lapse of one year from the date of notification. (c) The rate of change of dearness allowance shall be at the rate of Rs. 4/- for every 20 points for all categories of workers.

By another notification dated July 177, 1970 bearing reference No. 1021-LAW/LW/2W-5/69 the government having considered the advise of the Committee appointed to enquired into the conditions prevailing in the cinema industry in the state of West Bengal and to advise the Government in making revision of the minimum rates of wages fixed in respect of such employment, revised minimum wages payable to the employees employed in the cinema industry in the State as specified in the schedule thereto appended. This was done in exercise of power conferred by Clause (b) of Sub-section (1) of section (3) read with Sub-section (2) of Section 5 of the Minimum Wages Act, 1948. The dearness allowance was also fixed by the said notification for which further provisions in respect thereof were made as indicated below :--

(a) The rate of dearness allowance shall correspond to the Calcutta Consumer Price Index Number for the working class for the month of November 1969 on base 1960 = 100

(b) The rate of dearness allowance shall be revised every six months in the month of February and August each year on the basis of average working class consumer price index number of the previous half years July to December and January to June respectively at the rate of 75 paise per point of rise or fall when there is a rise or fall of at least 5 points from the Calcutta Consumer Price Index Number of 178 points in November 1969 on base of 1960=100.

But in all cases of rise or fall over 5 points, adjustment in dearness allowance shall be made on the basis of point to point adjustment viz. on the basis the actual points or rise or fall of the index number.

Thereafter on or about October 11, 1974 the Assistant Labour Commissioner of the Government of West Bengal addressed a letter of the Labour Adviser, Eastern India Motion Picture Association on the subject of working class consumer price index number for the Calcutta area. The letter is as follows :--

11.10.74.

Sub : Working class Consumer Price Index Number on base 1967=100/1944=100/1939=100 for Calcutta Area.

Sir,

With reference to your letter No. .... dated.....on the above subject I am to inform you that the consumer price index numbers for Calcutta Area on base

1960=100 for the month of.... is/are has furnished below :--

Base 1960 = 100 Year 1974 Janu. Feb March April May 240 241 255 264 272  
June July Augt Sept to Dec 276 282 295..... Average--258

It appears that the Inspector Minimum Wages, Calcutta wrote two letters in connection with the payment of increased D. A. due to rise in consumer price index number in 1974 for the employees of cinema industry. The letters are as follows :--

Government of West Bengal. Office of the Labour Commissioner West Bengal. 6, Church Lane, 3rd Floor, Calcutta-1. No. 600/MW/LC

Dated 11.4.1974.

To

The Secretary,

Eastern India Motion Picture Association,

98/E, Chowringhee Square, Calcutta-13,

Sir,

Re : Increased D. A. due to rise of Consumer Price Index Number for the employees of cinema industry.

As per provision of notification No. 1021-LW dated July 17, 1970 the employees employed in Cinema Industry are entitled to receive increased Dearness Allowances due to rise in C.P.I. Number by Rs. 19.50 per month with effect from February 1974 (that is total increased D. A. of Rs. 38.25 per month) You are requested to implement the above rate and inform compliance.

Yours faithfully, D. K. Roy Chowdhury 11.4.74. Inspector, Minimum Wages, Cal.

The other letter is as follows :--

No. 1005/30/74/MW/LC

Dated August 28, 1974.

To

M/s. Jawhar Cinema, 22, Keshab Chandra Sen Street.

Calcutta-9.

Sir,

Re : Increased D.A. due to rise in Consumer Price Index Number for the employees.

As per provision of the notification No. 1021/LW dated. 17.7.70 the employees employed in cinema industry are entitled to receive increased D.A. due to rise in

C.P.I. Number by Rs. 21.75 per month with effect from August, 1974 (i.e. total increased D.A. is Rs. 60/- per month). You are requested to implement the above rate and inform compliance.

2. It appears that the petitioners through their lawyer issued a letter of demand on the Government stating that the competent authority under the Minimum Wages Act made no declaration in the official gazette in accordance with law declaring the cost of living Index number applicable for cinema industry in West Bengal. Accordingly the notices referred to above should be rescinded and withdrawn.

3. On the above allegations and contentions the petitioners on December 23, 1974 moved this Court by an application under Article 226 of the Constitution calling upon the respondents to show cause why a writ in the nature of Mandamus should not issue commanding the respondent state and its concerned officer to recall, rescind, cancel, withdraw and forbear from giving effect or further effect to the impugned demands dated April 11, 1974 and August 28, 1974 set out above and also why a writ in the nature of certiorari should not issue quashing the said demands. On this application this Court issued a rule on the same date on the respondents to show cause why appropriate writs should not issue in terms of prayers indicated above. An interim order was also passed restraining the respondents from starting any prosecution for non-compliance of the above directions or from taking any further steps in respect of prosecutions already started and this interim order is still continuing. The Rule was heard in part on March 23, and 26, 1974 April 6, 27 and May 4, 1979 and in course of hearing Mr. Sanyal as directed by the Court produced publications the Calcutta Gazette in respect of Consumer Price Index Number in Industrial workers during the relevant period that is 1974.

4. The only point that has been urged before me in support of the petition is that there was never any declaration of cost of living index number in official gazette and in absence of such declaration the demands for increased dearness allowance are unwarranted in law and as such legally unenforceable. In this connection we may refer to certain provisions of the Minimum Wages Act, 1948 relevant for our purpose :

Section 2. Interpretation : In this act unless there is anything repugnant in the subject or context :

(a).....

(d) "cost of living index number" in relation to employees in any scheduled employment in respect of which minimum rates of wages have been fixed, means the index number ascertained and declared by the competent authority by notification in the Official Gazette to be the cost of living index number applicable to employees in such employment.

The Labour Directorate on being directed to produce relevant declarations in

regard to cost of living index produced before the Court several notifications published in the Calcutta Gazette Extraordinary containing consumer price index number for industrial workers on the base of 1960=100 of different centres of the State of West Bengal. These notifications published in Calcutta Gazette Extraordinary produced before me are for the year 1974 of April 10, June 7, June 19, August 13 September 13, October 19, and December 4. It is thus obvious that there has been due publication in the official gazette of consumer price index number for industrial workers for months of 1974 on the base of 1960=100 in respect of different centres of West Bengal. The petitioners' contention that there was never any publication by the Government in official gazette of the price index number for industrial workmen thus appears to be without foundation.

5. Dr. Pal however contended that this publication did not satisfy the requirement of law as under the provision of Section 2(d) of the Act, the Government has to publish the Cost of Living Index Number and not Consumer Price Index Number as has been done in the declaration. Reliance was placed on the decision in Ahmedabad Mill Owners' Association Etc. Vs. The Textile Labour Association, where in the Court noticed recommendation made in the Second Five Year Plan and the following extract thereof was quoted : --

that the consumer price index number measures nothing but changes in prices, as they effect a particular population group and so, it is really a price index number as distinct from a cost of living index number. In fact, these indices used to be termed as costs of living index numbers in the past, but in order to make their meaning clear, it was decided by the Government to change the name to consumer price index numbers in accordance with international recommendations and growing practice in other countries. Most of the State Governments compiled such index numbers have also adopted this usage (vide "A Guide to Consumer Price Index Numbers issued by the Labour Bureau, Ministry of Labour and Employment, Page 5).

The Court observed :

This index number is intended to show over a period of time the average percentage change in the prices paid by the consumers belonging to the population group proposed to be covered by the index for a fixed list of goods and services consumed by them. The average percentage change, measured by the index, as calculated month after month with reference to a fixed period. This fixed period is known as the "base-period" of the index ; and since the object of the index is to measure the effect of price-changes only, the price-changes have to be determined with reference to a fixed list of goods and services of consumption which is known as a fixed "basket" of goods and services.

This index, the Court observes, does not purport to measure the absolute level of prices but only the average percentage change of a fixed basket of goods and services at different periods of time.

Mr. Sanyal referred to a notice issued by the Labour Directorate on January 24, 1956 published in the supplement to the Calcutta Gazette of February 23, 1956 which is as follows :--

Supplement to the Calcutta Gazette February 23, 1956.

LABOUR DIRECTORATE NOTICE.

Calcutta, 24th January, 1965.

The term "Working Class Cost of Living Index Numbers" is changed to "Consumer Price Index Number for Working Class" in respect of all such index numbers prepared in the office of the Labour Commissioner West Bengal. The change of the name does not indicate any change in the index numbers or method of preparation and consumer price index number may be used in the same manner and for the same purpose for which the cost of living index numbers were being used. The name is being changed in order to indicate the correct significance of those index numbers which measure change of cost of living of the appropriate section of the people due to changes in the price of consumers goods only.

R.N. Bose, Labour Commissioner, West Bengal.

6. It would thus appear, as also noticed by the Supreme Court, that the change in the nomenclature of "cost of living index number" in regard to employees in any scheduled employment to "consumer price index number" for working class is merely one of form only and does not materially or to any extent affect the provisions of clause (d) of Section 2 of the Act. This change has been made in accordance with international recommendation and growing practice in other countries. The method of preparation are the same covering change of price of selected articles of use of the working class in particular centres on periodic basis. Accordingly there is no illegality in respect of declaration of consumer price index as representing the cost of living index and such declaration is well within the ambit of clause (d) of Section 2 of the Minimum Wages Act, 1948. As the only point urged before me fails this rule is discharged and all interim orders are vacated. There will be no order for costs in the circumstances.

Mr. Chatterjee prays for stay of operation of this order. The prayer is refused.