
(1985) 01 KAR CK 0002

In the Karnataka High Court

Case No : Writ Petition No. 10480 of 1984 etc.

Aspinwal and Co. Ltd. and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 24-01-1985

Acts Referred:

Constitution of India, 1950 — Article 14, 142, 226

Minimum Wages Act, 1948 — Section 2 (1), 3, 5 (1) (b), 5 (2), 7

Citation : (1985) ILR (Kar) 688

Hon'ble Judges : Rama Jois, J

Bench : Single Bench

Advocate : Bhoopalam, Associates, A.G. Holla, D. Leelakrishnan, M.C.

Narasimhan and H. Neelakanta Rao, C K. Subba Rao and V. Gopala Gowda, S.B.

Swethadri, Harikrishna Holla, A.V. Srinivas, G.K. ShevagoorB.V. Katageri, King

and Patridge, S. Vijayashankar, S.G. Sundarswamy, K.J. Shetty, K.I. Bhatta, V.L.

Narayana Rao, S.N. Murthy, S. Krishnaiah B.C. Prabhakar, G. Kasturi, B. Bhavani

Shankar Rao for Parties, for the Appellant;

Judgement

Rama Jois, J.—In these Writ Petitions, the Petitioners, have questioned the validity of the notifications issued by the State Government u/s 3 of the Minimum Wages Act ("the Act" for short) fixing minimum wages for various employments specified in Part-II of the Schedule to the Act. The first group of these Petitions are by the employers and the second group are by Trade Unions on behalf of workmen in various industries. Both are aggrieved by the impugned notifications, but for different reasons.

2. The facts of the case, in brief, and to the extent necessary for the consideration of general points arising for consideration in these Petitions are as follows : Minimum wages had been fixed for various categories of employees in different schedule employments under the Act by earlier notifications issued in or about the year 3978-79 u/s 3 of the Act. In the year 1981, the State Government proposed to revise the rates of minimum wages by the mode specified in Section 5(1)(b) of the Act. For this purpose the State Government,

as required u/s 5(1)(b) of the Act, published its proposal by notifications in July 1981 inviting representations from persons likely to be affected thereby. The Petitioners and others who are managements of different kinds of scheduled employments, made their representations. Similarly, representations were also made on behalf of the workmen engaged in those employments. The State Government, as required under the proviso to Section 5(2) read with Section 7 of the Act consulted the Advisory Board constituted in terms of Section 9 and issued final notification on 11-2-1982 and other dates fixing minimum wages of different categories of workmen, in various employments. Aggrieved by the said notifications large number of Writ Petitions, namely, W.P. No. 11521 to 11525 of 1982 and connected cases, were presented before this Court. Those Writ Petitions were allowed. The operative portion of the said judgment reads.

"99, For the aforesaid reasons, these Petitions are allowed and the impugned notifications fixing/revising the minimum rates of wages are quashed, with the following direction;-

(1) The Government, in the light of observations made herein shall constitute a new Advisory Board consisting of independent members as provided for u/s 9 of the Act read with Rule 4 of the Karnataka Rules, who would be in a position to discharge their statutory obligations as members of the Board u/s 5(1)(b) read with the proviso.

(2) Their presentations received by the Government pursuant to the draft notifications shall be considered by the Government, and in the case of fixation of minimum rates of wages in the concerned industries, the Government would be at liberty to fix: minimum wages after a consideration of all the relevant factors in the representations made by the affected parties.

(3) In the case of revision of minimum wages, the Government, after considering the relevant factors in the representations of the affected parties, shall consult the Advisory Board as required under the proviso and for a proper consultation with that Board, the considered views of the Government on those representations made to it must be made available to the Board.

(4) The Government shall take expeditious action, and in any event before the 31st of December 1982, and publish the final notifications on or before that date in the interests of thousands of workmen whose day to day necessities of life are protected by the Act.

(5) Till such time, the Petitioners shall continue to pay 50% of the wages enhanced by the impugned notifications in all these cases, subject to adjustment against the wages to be fixed or revised under a fresh notification."

Writ Appeals have been filed against the said judgment which are still pending. However, during the pendency of the said Appeals, the State Government proceeded to constitute a new Advisory Board ("the Board" for short) in terms of Section 9 of the Act, by notification dated 29-8-1983 (Annexure-E in W.P. 10280

of 1984). The Board so constituted was consulted with reference to the representations made by the employers and workmen in reply to the proposals of the State Government. After considering the recommendation made by the Board, the State Government has issued the impugned notifications. Aggrieved by the notifications, the petitioner employers have presented the first group of petitions. The State Government and all the National Trade Unions representing the workmen are respondents to these petitions.

The second group of the petitions is on behalf of the workmen in some of the employments. The petitions have been presented by trade unions on their behalf. Generally their grievance is about ceiling on Dearness Allowance and also about the effective date of enforcement of the notification and in some of them their grievance is also about the rates of wages.

3. Learned Counsel for the petitioners, the learned Advocate General for the State and learned Counsel for respondent-trade unions, addressed elaborate arguments in support of their respective pleas and contentions.

4. Some of the points urged by the learned Counsel for the parties are general and common to all the petitions and some of the points are special in respect of some of the petitions. In the first instance, I shall set out the general points urged by the parties as common to all the petitions and consider them and thereafter I will proceed to consider the special points urged in the petitions presented by managements of each of the employments and the special points urged in the petitions by the workmen.

5. The general points urged in the petitions of the managements in support of their contention that the impugned notification was invalid are-

(1) The constitution of the Board u/s 9 of the Act was invalid for the reason that instead of appointing individual persons as members of the Board, the appointment was made by designation.

(2) Rule 5 of the Rules authorising the nomination of a substitute, by a member of the Board to attend a particular meeting during the former's absence is invalid.

(3) Even assuming that rule 5 was invalid, according to the rule, such nomination could have been made jointly by the State Government and the Member, but as such a procedure had not been followed, the entire proceedings of the Board was invalid due to the participation of such unauthorised substitutes.

(4) The proceedings of the Board and its recommendations were invalid for the reason that one of the members, namely, H.S. Rudrappa, President, Karnataka State Farmers Association had remained absent for more than three consecutive meetings, as a result of which, he ceased to be a member of the Board in view of rule 10(1) of the rules and consequently the Board, thereafter remained not validly constituted.

(5) There was no proper consultation with the Board for the reason that the

State Government had not communicated its opinion with reference to the representation submitted by the parties to the Board and consequently there was disobedience to the mandatory requirement of consultation.

(6) The principles of natural justice demanded that oral, hearing should have been given by the Board to the Petitioners with reference to the representations made by each of the Petitioners or atleast to a representative of each of the employments.

(7) Two members of the Board, who were nominated as independent members, were persons, who were formerly officers of the Labour Department, who had themselves pre-pared the 1981 draft notification and, therefore, they suffered from bias and could not be regarded as independent members and consequently, the recommendation by the Board was bad for violation of rules of natural justice.

(8) The Chairman of the Board had not attended most of the meetings and most of the members had nominated substitutes to attend the meetings which showed that such a serious matter involving fixation of minimum wages was taken very lightly and therefore the advice tendered by the Board was not lawful.

6. I shall now consider the points one by one.

7. Regarding constitution of Board :

Section 9 of the Act reads -

"9. 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".

The Notification issued u/s 9 of the Act appointing the Board reads-

"SOCIAL WELFARE AND LABOUR SECRETARIAT Notification No. SWL 12 LMW 83, Bangalore Dated 29th August, 1983.

In exercise of the powers conferred vide Sections 7 and 9 of the Minimum Wages Act, 1948, (Central Act XI of 1948) read with rule 4 of the Karnataka Minimum Wages Rules, 1958 and in supersession of Government Notification No. SWL 5 LMW 80 dated 5th December 1980, the Government of Karnataka hereby reconstitute the Karnataka State Mini-mum Wages Advisory Board consisting of the following members with effect from the date of publication of this Notification in the Karnataka Gazette :

I Representatives of Employers :

1.

President, Employers" Federation of South India, C/o King and Patridge, No.

26/1, Lavelle Road, Bangalore-1

(MEMBER)

2.

President, Association of Indian Engineering Industry No. 4, L. Block, Unity Buildings, N.R. Square, Bangalore-2

do

3.

Chairman, Karnataka Planners' Association, Chikmagalur

do

4.

President, All India Agarbathi Manufacturers Association, Chamber of Commerce Building, K.G. Road, Bangalore

Member

5.

President, Karnataka Beedi Industries Association, C/o P.V.S. Beedis, Kudmuls Ranga Road, Kodiyalbil Mangalore-53

do

6.

President, Karnataka State Farmers Association, Kuvempu Marga, Shimoga

do

7.

President, Karnataka Pradesh Hotels and Restaurants, Association, No. 11, Kumara Park East, Bangalore-1

do

II Representatives of Employees :

1.

President, Indian National Trade Union Congress (INTUC) 1/4, Maduria Mudaliar Road, Bangalore-2.

Member

2.

President, All India Trade Union Congress, No. 6, Vinayaka Building, Sampige Road. Malleshwaram, Bangalore-3

do

3.

President, Centre of India Trade Union, No. 56, K.V. Temple Street, Bangalore-53

do

4.

General Secretary, Bharatiya Mazdoor Sangh, Subedar Chatram Road, Bangalore-9

do

5.

President, Hind Mazdoor Sabha, B-Street, I Main Road, Seshadripuram, Bangalore-20

do

6.

President, Karnataka Pranth Rytha Sangha, L-56, K.V. Temple Street, Bangalore-53

-do-

7.

General Secretary, Karnataka Beedi Mazdoor Federation, Mysore

-do-

Independent Members :

1.

Sri M.S. Narayana Rao, MLA., No. 53, Gayatridevi Park Extension, Bangalore-3

MEMBER

2.

Sri S. Channabasavaiah, MLC., Bangalore

-do-

3.

Sri B.K. Chandrasekhar, Indian Institute of Management, 3, Long ford Road, Bangalore-27

-do-

4.

Sri M. Abdul Ali, Deputy Labour Commissioner, (Rtd.) No. 8, Police Road, Behind Kalasipalyam Police Station, Bangalore-2.

-do-

5.

Sri S.M. Shankere Gowda, Retired Deputy Labour Commissioner, Q-42, III Cross, Nehru Nagar, Seshadripuram, Bangalore-20

-do-

6.

Prof. S.R. Bijoor, No. 31, Victoria Road, Victoria Lay out, Bangalore-47

Member

7.

Sri P.L. Kumaraswamy, Retired District Judge, Chairman, Bangalore

-do-

The Joint Labour Commissioner II, will be the Secretary of the Board.

T.A. and D.A. to Non-official Members :

The non-official members of the Committee will be eligible to T.A. and D.A. as per Annexure to Annexure-A of Karnataka Civil Service Rules, 1958.

By order and in the Name of the Governor of Karnataka

Sd / N. Venkatanarayana, Desk Officer, Lab. B Social Welfare and Labour Department.

It may be seen from the notification extracted above, the persons appointed to represent employers and employees are the office bearers of organisations of employers and employees, respectively. They are equal in number i.e. eight each. As far as independent members are concerned, they are all appointed by name.

The points raised is that representatives of employers and employees ought to have been appointed by name, but it was done by designation and , therefore, the constitution of the Board itself was invalid. Section 9 which empowers the Government to constitute the Board provides that there should be equal number of persons representing employers and employees , and that the number of independent members should not exceed one third of the membership of the Board. It neither states that persons should be nominated by name nor states that it should be by designation. Therefore, it would be open to Government to appoint either by name or designation, so long the person nominated is a representative of the employer or the employee, as the case may be. I am unable to agree that the word "persons" in the context only means individuals by

name and not office bearers, for the object and purpose of the provision read with Section 7 and proviso to Section 5(1)(b) is to ensure proper consultation with the interests concerned, namely employers and employees, and this could be achieved by nominating the representatives either by name or designation. Obviously the Government considered that to nominate the elected representatives of the organisations as members of the Board is a better course to ensure proper consultation with the interests. If the Government had chosen to appoint the office bearers by name, then the result would have been, even if they cease to be the office bearers, they would continue to be the members. Both having regard to the text, object and context of Section 9, I find no substance in the construction placed on the Section by the Learned Counsel for the Petitioners. The language of Section 9 does not compel the Government to nominate the members of the Board only by name and not by designation. For these reasons, I answer the point against the Petitioners.

8. Validity of Rule 5-Nomination of substitute member:

There is no dispute that on several occasions the persons appointed to be the members of the Board by designation, representing employers as well as employees did not attend the meeting of the Board. Instead, each of them had authorised a substitute to attend the meetings. This was done in view of Rule 5 of the Rules. It reads --

"5. Nomination of substitute member:-

If a member is unable to attend a meeting of the Committee, or the Board, the Government or the Body which nominated him may, by notice in writing, signed on its behalf and by such member and addressed to the Chairman of the said Committee of the Board, nominate a substitute in his place to attend that meeting. Such a substitute member shall have all the rights of a member in respect of that meeting."

The above rule permits the nomination of a substitute member in the place of a member nominated to the Board u/s 9 by the State Government, to attend a particular meeting. The Petitioners contend that the Rule is ultra vires the provisions of the Act. In support of the above submission, Learned Counsel said that when u/s 9 of the Act a person is nominated to be a member of the Board he alone has the right to attend the meeting of the Board. They contended that any rule framed under the Act which empowers the nomination of another person as a substitute, to attend a particular meeting amounts to sub-delegation and that in the absence of a provision in the Act itself to provide for such sub-delegation, Rule 5 was invalid.

The above submission over-looks the express provision in Section 30(2) of the Act. Clause (a) of sub-section (2) of Section 30, inter alia, provides that the State Government may by rules prescribe the manner of filling casual vacancies in membership. Rule 5 of the Rules is meant to fill up a casual vacancy and, therefore, it is expressly authorised by Section 30(2)(a). Learned Counsel for the

Petitioners on being confronted with the above provision contended that the inability of a member to attend a particular meeting or meetings of the Board cannot be regarded as casual vacancy. I am unable to agree. If a member nominated to the Board resigns or gets permanently disabled or dies, then there would be a permanent vacancy. In contra distinction to this, a casual vacancy is one during which period a member is not in a position to attend one or more meetings, whatever be the reason. Such a situation is regarded as casual vacancy Just as leave vacancy, well known in service parlance. This rule provides for nomination of a substitute to attend meetings on those days in the place of an absentee member. The rule is therefore intravires. Apart from this, I fail to appreciate how the Petitioners are aggrieved by the Rule. In fact it is favourable to them. As pointed out earlier, Section 9 of the Act requires the State Government to nominate equal number of representatives representing employers and employees on the Board. If one or more representatives of employers are unable to attend a meeting or a series of meetings under circumstances beyond their control, in the absence of Rule 5, they would be unable to send substitutes in their places and as a result there would be reduction of number of representatives of the employers at those meetings and as a result the employers themselves would be in a disadvantageous position. Therefore, far from causing any prejudice to the Petitioners Rule 5 is advantageous to them. Rule 5 is not only within the power given by Section 30(2) (a) but also within the general powers of framing rules for the purposes of the Act to ensure full representation of the employers or the employees, as the case may be, in each of the meetings on the Board. Therefore, I find no substance in the contention that Rule 5 is ultra vires the provisions of the Act.

9. Invalid appointment of substitutes :

(i) An alternative contention was urged for the Petitioners, namely, that even assuming that Rule 5 was valid, according to Rule 5, the substitute could be nominated jointly by the State Government which nominated the member and the member concerned and not by the member alone. As a matter of fact, there was no dispute that in all cases where the members of the committee appointed u/s 9 nominated the substitutes to attend the meetings as permitted by rule 5 of the Rules, such nomination was done only by the member concerned. The question for consideration is, whether the nomination of a substitute member provided by Rule 5 could have been done only by the member.

(ii) The wording of the Rule, extracted earlier is clear. According to the said rule, if a member is unable to attend a meeting of the Board, a substitute could be nominated under the signature of the member concerned and the Govt. or the body which nominated him. Learned Advocate General contended that according to the above rule, the employers or employees organisation could be regarded as the body which nominated the member and therefore such body and the member could jointly nominate a substitute to attend a meeting and, therefore, it was not necessary for the Government also to authorise the nomination of a substitute.

On this basis, he submitted that the member of the Board being a representative of a body by designation, the nomination of a substitute by that member amounted to authorisation by the body which nominated him as well as the member.

(iii) I find no substance in the construction suggested by the learned Advocate General. The wording of the Rule is clear. The Government alone had the power to nominate the members of the Board and in fact the Government had nominated all the members of the Board. The members were not nominated by any other body. Therefore the substitutes for attending a particular meeting on his behalf, could be nominated in writing signed both on behalf of the Government and by the member concerned.

(iv) For the above reasons, I hold that the nomination of a substitute under the signature of the concerned member alone to attend the meetings, which procedure has been adopted, is contrary to Rules and the contention urged for the Petitioners is well founded. Whether this defect constitutes the basis for declaring the impugned notification invalid is a separate question, which I shall consider later.

10. The Board became defective in its constitution in view of a vacancy:

(i) The above contention is based on the following facts. Sri H.S. Rudrappa, as the President of the State Farmers Association, was a member of the Board. He had not attended any of the meetings of the Board. In view of Rule 10(1) of the Rules, he ceased to be a member of the Board after he failed to attend three consecutive meetings. Though sub-rule (2) of Rule 10 provides that if such a member showed sufficient cause for his absence and desired restoration of his membership, within 30 days from the date of the issue of notice, which the Board is required to issue, and the Board is satisfied by the reasons given, the member shall stand restored to his membership, no such action was taken. As a result the constitution of the Board itself became defective as it did not thereafter satisfy the requirement of Section 9 of the Act.

(ii) There is no dispute about the factual basis on which the point is raised. But the question is, whether it can be said that the Board ceased to be validly constituted, owing to the vacancy so caused and consequently the recommendation made by the said Board was not in accordance with law and further whether the final notification based on the advice tendered by such Board was invalid. I shall consider this aspect a little later.

11. Consultation - procedure

(i) The submission made with reference to this point by the Learned Counsel for the Petitioners was as follows : The consultation in order to be a valid one must be full and complete. A proper and full consultation requires that the Government should, in the first instance, consider the re-presentations made with reference to the notification issued u/s 5(1)(b) of the Act and should have made known its

views on the representations to the Board. The State Government without doing so, simply sent the re-presentations to the Board. Therefore, there was no proper consultation.

(ii) In support of the above submission, reliance was placed on the following decisions :

- 1) Bijay Cotton Mills Ltd. Vs. The State of Ajmer,
- 2) Chandra Mohan -v.- State of U.P. AIR 1966 S.C. 1987 and
- 3) S.P. Gupta Vs. President of India and Others,

The Petitioners also relied on paragraph 99(3) of the judgment of Bopanna, J. in the earlier batch of Writ Petitions.

(iii) In reply, the Learned Advocate General made two alternative submissions -

(A) It is not necessary that the Government must express its opinion on the representation and forward the same to the Advisory Board in order to constitute valid consultation and that if the Government sends its proposal published u/s 5(1)(b) and the representations received thereto to the Board and seek its advice it would be valid consultation.

(B) In fact the State Government had expressed its opinion on the representations and had sought the advice of the Advisory Board.

(iv) I see considerable force in the first submission made by the Learned Advocate General. In my opinion, what should be the procedure for consultation, must necessarily depend upon the object and the language of the statute requiring consultation. Section 5(2) provides that the Government before revising the wages, after its proposal to revise the wages is published as required under clause (b) of Section 5(1), it should consider all the representations received before the prescribed date. The proviso to Section 5(2) imposes another condition before revising the wages namely consultation with the Board. Therefore, if the State Government forwards its proposal to revise the wages and the representations received within the time, specified, to the Board and seeks its advice in that behalf and considers the representations and the advice tendered, it would satisfy the requirements of Section 5(2) proviso. The Government if it so desires might also express its views on the representations received and send them along with the proposals published to the Board and seek its advice and take a decision in the light of the advice tendered. Both these procedures, in my opinion, constitute valid consultation. The decision in Bijoy Cotton Mills only holds that consultation provided under the Act is a safeguard. The decisions in Chandra Mohan's case and Gupta's case explain the procedure for consultation under Article 233 regarding appointment of District Judges and Article 222 regarding transfer of High Court Judges. These decisions do not substantiate the contention of the Petitioners, regarding the manner of consultation. However, it is unnecessary for me to express final opinion on the

point for the reason that with reference to the records the Learned Advocate General pointed out that the State Government had extracted the substance of the representations made by each set of employers and had also expressed its views on the representation before sending them to the Board in obedience to the direction given in the earlier judgment of Bopanna, J.

(v) After going through the records, I am satisfied that the State Government had expressed its views on the representations received by it with reference to its proposals and had sent them to the Board Constituted for the purpose for its advice. Therefore, I find no substance in the above point.

12 Oral Hearing:

(i) Learned Counsel for the Petitioners submitted that when the State Government sends its proposal to revise the minimum wages notified u/s 5(1)(b) of the Act and the representation received from the affected persons to such proposal, to the Board and seeks its advice, the Board before furnishing its views to the State Government must give an oral hearing to all the parties or at any rate to such of the parties who demand oral hearing. In support of the above submission, Learned Counsel relied on Rule 19 of the Rules, which empowers the Board to summon any person to appear as a witness and also to call upon a person to produce documents in his possession. Learned Counsel contended that even on the basis that Rule 19 does not make it obligatory for the Board to give an oral hearing to the representations or atleast to such representations, who sought oral hearing, the principles of natural justice demand that oral hearing must be given. They maintained that if oral hearing was not given the advice tendered by the Board stands vitiated by the violation of rules of natural justice and consequently the final notification issued by the Government would be invalid for the same reason. Learned Counsel relied on the following decisions in support of the above submission:

(i) A.K. Kraipak and Others Vs. Union of India (UOI) and Others,

(ii) Chandra Bhavan Boarding and Lodging, Bangalore Vs. The State of Mysore and Another,

(iii) Swadeshi Cotton Mills Vs. Union of India (UOI),

(iv) Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others,

(v) Laxmi Khandsari and Others Vs. State of U.P. and Others,

(vi) Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another,

The above decisions undoubtedly establish that the principles of natural justice apply even to administrative decisions and further that even if a statutory provision does not provide for giving an opportunity of hearing, if administrative decision taken under the provision were to result in civil consequences to the persons concerned, the principles of natural justice, namely, the rule of audi

alterm partem must be regarded as super added to it. These decisions also establish the following two principles regarding the application of the rule -

(i) What should be the nature of hearing must depend upon the nature of the power conferred and the object and purposes of the Statute.

(ii) If either the giving of hearing is expressly or impliedly excluded or if the type of hearing which should be given is regulated by the Statute, the Statute alone governs the field. In other words rules of natural justice do not supplant the law, but supplement it.

In the present case, rules of natural justice regarding hearing the persons likely to be affected by the final decision is incorporated in the statute itself i.e., in Section 5(1) and (2).

The requirement of the law is-

(i) Proposal to revise the minimum wages should be published and opportunity should be given to the persons likely to be affected by the revision to make representation against the said proposal. The time given for making representation should not be less than two months.

(ii) The representation so received should be considered by the Government in consultation with the Board constituted u/s 9 in taking a final decision to revise the wages.

This is the content of natural justice incorporated in the statute itself. Rule 19 which empowers the Board to summon a person to appear as a witness does not alter the position.

There is no scope to insist on oral hearing in addition to the consideration of representation, though nothing prevents the Board if it considers expedient to do so, either by calling the representations to give oral evidence as a witness in support of his representation in exercise of its powers under Rule 19 or by calling upon him to appear before it and make oral submissions.

In fact similar question was also canvassed before Bopanna, J. and at paragraph 85 of the judgment, in W.P. 11521/83 the contention was rejected. I respectfully agree with the view expressed by Bopanna, J. on the above point. For these reasons, I find no substance in the above contention.

13. Bias of Members :

(1) On this point, Learned Counsel for the Petitioners, submitted that two of the independent members on the committee, namely, Abdul Ali and Shankar Gowda, formerly officers of the Labour Department of the State Government , who had themselves prepared the 1981 draft notification. On this basis, they contended that they cannot be regarded as independent members and, therefore, the constitution of the Board itself was in contravention of Section 9 of the Act.

(ii) As against this point, Learned Counsel for the respondents submitted that an

officer of the Government could not be regarded as not independent. Learned Advocates General submitted that it was also not true that the aforesaid two officers had anything to do with the preparation of the draft notification in the year 1981. In support of the submission. Learned Counsel for the respondents, relied on the following decisions:

(a) State of Rajasthan and Another Vs. Shri Hari Ram Nathwani and Others,

(b) Ramkrishna Ramnath and Another Vs. The State of Maharashtra and Another,

Learned Counsel also submitted that it was the State Government which took the final decision applying its independent mind and it had not mechanically accepted the recommendation of the Board.

(iii) I fail to see how the two persons nominated on the Board could be regarded as not independent, even assuming that they had prepared that draft notification, for, a draft notification only contains a proposal which is required to be considered in the light of the representations received against it and in the light of the advice tendered by the Board constituted u/s 9 of the Act. The above decisions also establish that officers of the Government could be appointed under the category of independent members on the Board. Further, in the present case, it is not disputed that both of them had retired from service when they were nominated on the Board. If the State Government considered that, being experienced officers of the Labour Department they would be of assistance in the discharge of the function of the Board and nominated them as independent members of the Committee, I fail to see any reason for the Petitioners to state that they suffered from any bias. For these reasons, I find no substance in the above point urged for the Petitioners.

14. Absence of Chairman and several members at the meeting of the Board :

The submission made for the Petitioners on the point was as follows : Consultation with the Board before revising the wages is a valuable safeguard, provided under the Act as held by the Supreme Court in Bijoy Cotton Mills. The absence of chairman at most of the meetings and nomination of substituted members at most of the meetings, had the effect rendering the valuable safeguard farcical. Therefore there was no consultation or advice, as required by the provisions of the Act.

The facts on the basis of which the above plea has been raised are not disputed. Learned Counsel for the State and workmen, however, relied on Rule 5 providing for nomination of substitutes and Rule 15, which provided for quorum, in support of the validity of the proceedings of the Board. I am considering the validity of this defence in the next paragraph.

15. Validity of the Proceedings of the Board :

The discussion on the general points considered above indicates that there has been the following defects in the deliberations of the Board :

(i) The substitutes nominated to represent the members at most of the meetings of the Board were not nominated complying with the requirements of Rule 5, namely, that such nomination was not made under the joint signature of the State Government and the member concerned, but it was made under the signature of only the members concerned.

(ii) Though H.S. Rudrappa, one of the members, ceased to be a member as a result of not attending three consecutive meetings, no steps, were taken under sub-rule (2) of Rule 10 for restoration of his membership or to appoint another member in his place, as required under rule 9(3) read with Section 9 of the Act.

Learned Counsel for the Petitioners contended that in view of the aforesaid two defects in the proceedings of the Board its advice cannot be regarded as valid and consequently the final notification of the State Government must be declared invalid. In support of the submission. Learned-Counsel relied on the judgment of the Supreme Court in Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, Relevant passage reads -

"A century ago, in Taylor vs. Taylor (1975) 1 Ch.D. 426 Jessel M.R. adopted the rule that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. This rule has stood the test of time."

The rule will be attracted with full force in the present case, because non-verification of the surrender in the requisite manner would frustrate the very purpose of this provision. Intention of the legislature to prohibit the verification of the surrender in a manner other than the one prescribed is implied in these provisions. Failure to comply with these mandatory provisions, therefore, had vitiated the surrender and rendered it non est for the purpose of Section 5(3)(b)."

In that case the Supreme Court held that the requirement of law to record the satisfaction of the mamlatdar as to the voluntary surrender of tenancy of agricultural land was mandatory and that if it was not recorded in the manner provided in the statute it was invalid.

As against the above submission, the Learned Advocate General and Counsel for the respondents submitted as follows: The Board constituted u/s 9 had no power to take any final decision. Its advice is only recommendatory in character. The final decision has to be and was taken by the State Government, which is competent to take the decision u/s 5 of the Act.

In support of the above submission, they relied on the relevant part of the judgments of the Supreme Court in The Edward Mills Co. Ltd., Beawar and Others Vs. The State of Ajmer and Another, and Hariram's case. In the Edward Mill's case, the committee appointed u/s 5 of the Act had made its recommendation after its term had come to an end. The point urged was the decision taken on consideration of such recommendation was invalid. Rejecting the contention, the Supreme Court said thus.

"Quite apart from this, it is to be noted that a committee appointed u/s 5 of the Act is only an advisory body and that the Government is not bound to accept any of its recommendations. Consequently, procedural irregularities of this character could not vitiate the final report which fixed the minimum wages."

In Hariram's case the Advisory Board had nominated a sub-committee consisting of even persons who were not members of the Board and the opinion of such committee was considered by the Board before tendering the advice, Rejecting the contention that such a defect rendered the final decision illegal, the Supreme Court said thus -

"It must be remembered the procedure followed in this case was the one provided in Section 5(1)(a) in which case it was not mandatory for the Government to take the opinion of the Advisory Board. After all, the recommendations, made by the Board even on consideration of the report of the Sub-Committee along with that of the Committee was the advice of the Board. The Government did accept it but accepted it after some modification. In such a situation we do not think that the notification dated 31-7-1965 deserves invalidation. It follows as a corollary that the proceedings started pursuant to the notification cannot also be quashed,"

Learned Counsel pointed out that in those decisions, the Supreme Court had held, that as ultimate decision making authority was the State Government, a mere defect in the procedure of the committee constituted u/s 9 of the Act, was no basis to declare the final notification invalid. (See also State of Tamil Nadu and Others Vs. M.N. Sundararajan,

In my opinion, the submission made on behalf of the Respondents, is well founded. The power to revise the minimum wages is conferred on the State Government under Sections of the Act. In revising and fixing the wages, the State Government is no doubt required to consult the Board. Undoubtedly, when a Board is constituted u/s 9, it must consist of equal number of persons representing employers" and employees" interest and independent members not exceeding one third of the members. The Board so constituted has to carry out its functions in accordance with the provisions of the Act and the rules framed thereunder. But the question which arises is, for any reason the vacancy occurred in the membership of the Board or there had been some defect in the procedure adopted by the Board, whether the final decision is rendered invalid. The answer to the question in my opinion, must certainly be in the negative, in the light of the pronouncements of the Supreme Court on which the Learned Counsel for the Respondents relied. In the present case, one of the defect was, cessation of the membership of H. S. Rudrappa as a result of not attending three consecutive meetings. In my opinion, it constitutes no defect at all for the reason that in view of Rule 15, the Board is entitled to transact the business so long the quorum fixed under the rule is satisfied. According to Rule 15, quorum fixed for the meeting of the Board is one third of its members and for a meeting adjourned for want of quorum, no quorum is prescribed. It is not the case of the Petitioners

that the Board had transacted business in any of the meetings without quorum. A vacancy caused in the membership of the Board, subsequent to its valid constitution u/s 9, is no ground to say that on and after the said date the Board is not validly constituted. Any such view would render the functioning of the Board impossible for, between the date of occurrence of every vacancy and its filling up, there would be no validly constituted Board at all and such a situation could be created by resignation of a member also.

It is true, when a vacancy occurs, it is the duty of the , Government to fill up the vacancy in view of Rule 9(3) of the Rules. The Petitioners could have at that stage asked the Government to fill up the vacancy and if it failed to do so, could have sought for the issue of a Writ of Mandamus to the Government to fill up the vacancy.

The other defect was in the nomination of substitute members. It is undoubtedly a defect which arose on account of wrong understanding of Rule 5 of the Rules. All along, Rule 5 has been understood as providing for authorisation by the member although it is not actually so. If the intention of the Government was to authorise the member concerned only to nominate a substitute member for any meeting , the rule should have been worded like that, but as the wording of the rule stands as held earlier , authorisation must be both by the Government and the member concerned ,which has not been done. But the fact remains that the substitute member who attended most of the meetings had been expressly authorised in writing by the member concerned. Though this constitutes a defect, as held above, it cannot constitute the basis for striking down the final notification issued by the State Government. Learned Counsel for the Petitioners, however, submitted that a Division Bench of the Madras High Court in *Sri Ram & Co -v.-State of Tamil Nadu* 1979 LIC 640 at paragraphs 11 to 13 had on consideration of the judgments of the Supreme Court in *EDWARD MILLS* and *HARIRAM* held that any defect in the functioning of the Board affects the validity of the final decision of the Government. With great respect to Their Lordships, I find it difficult to agree with the view. I am in respectful agreement with the view taken by the Kerala High Court in *P. Gangadharan Pillai Vs. State of Kerala and Others*, with which the Division Bench of the Madras High Court disagreed. The answer to the point raised on the basis of absence of Chairman at most of the meetings is found in Rule 14, which provides for electing by majority an independent member of the Board to preside over the meeting at which the Chairman is absent. As regards the absence of members themselves, and their representation by substitution, at most of the meetings also stands answered by Rules 5 and 15 of the Rules. The dictum in *Ramachandra's* case is not apposite to this case. If the Government had failed to comply with the statutory requirements of publication of proposal and giving the prescribed time for making representations or the Board had not been constituted as required u/s 9, and had not been consulted at all, the Petitioners could have invoked the law laid down in that decision. No such non-compliance with the statute is alleged in this case.

However, I am constrained to observe that the absence of the Chairman and members nominated at large number of meetings is unfortunate and this situation has given room for the severe criticism about the functioning of the Board. The State Government and those nominated to the Board should take note of this criticism and should ensure that such lapses which are not complimentary to the functioning of the Board are not repeated.

16. Dearness Allowance :

(ii) Challenge to the rate of dearness allowance on the ground that it was highly excessive and therefore invalid was one other point urged in most of the Petitions. It is common ground that the dearness allowance fixed is similar to all the employments except. for, Coffee Plantations and two other employments. To appreciate the contention of the Petitioners, it is sufficient to set out the relevant portion in one of the notifications directing payment of dearness allowance. It reads-

"In addition to the basic wage mentioned in the schedule, the employee shall be paid a Cost of Living Allowance at the following rates for every increase of five points over and above 600 points of rise/increase in the Consumer Price Index figures for industrial workers on the basis of State Average in the series, of 1960-100 base.

Classification of Employees :

Rate of Cost of Living Allowance :

1.

Employees getting Rs. 10/- or less than Rs. 10-00 per day or Rs. 300-00 or less than Rs. 300 00 per month.

0-25 paise for every increase of. 5points in Consumer Price Index per day.

2.

Employees getting more than Rs. 10-00 per day or Rs. 15-00 or less than Rs. 15-00 per day or Rs. 301.00 to Rs. 450-00 per month .

0-35 paise for every increase of 5 points in Consumer Price Index per day.

3.

Employees getting more than Rs. 15-00 per day or above Rs. 451-00 per month.

0-45 paise for every increase of 5 points in Consumer Price Index per day.

The rates of cost of living allowance will be subject to a ceiling of Rs. 11-25, Rs. 14-25 and Rs. 20-25 per month respectively , for the three slabs. The calculation of the variable D.A, rate will be once in a year. The D.A. shall be calculated every year on the 1st of April on the basis of the average of the indices preceding 12 months i.e., January to December. It may further be noted that the D.A. will be

calculated on a sliding basis going higher or lower depending on the cost of living."

(ii) Learned Counsel for the Petitioners contended that the rate of D. A. fixed amount to 300 per cent or more neutralisation and, therefore was without authority of law. In support of the above submission, learned Counsel made the calculations as follows :

Rate of wages upto 600 points per day

Rate of wages per point as fixed at 600 points per day

Increase provided per day

Percentage of neutraliation

Rs. 10/-

1.66 paise per point

5 paise per point on every 5 points increase

300%

Rs. 15/-

2.5 paise per point

7 paise per point on every 5 points increase

300%

Rs. 20/-

3 paise per point

9 paise per point on every 5 points increase

300%

Though learned Counsel for the Petitioners contended that neutralisation through dearness allowance should always be less than cent per cent, as the decisions of Supreme Court on which they relied, referred to later, indicate that there would have to be cent per cent neutralisation for employees at the lowest level and also in view of the express provision of Section 4(1)(i) of the Act, they submitted that at the highest, cent per cent neutralisation could be provided for, but not more. The rates fixed in the impugned notification, they pointed out as indicated above, amount to 300 per cent neutralisation and, therefore, impermissible in law.

As against the above submission, learned Counsel for the employees submitted that the calculation made by the Petitioners was wrong. Learned Counsel for the workmen in W. P. Nos. 11759 to 11763 of 1984, has filed a statement of calculation adopting a different method. It reads :

Category

C.P.I. No. and rate

C.P.I. No. and rate

Percentage of Cols. 3 and 2

1

2

3

4

600

605

100.83

Unskilled

9.50

9.75

102.63

Remi skilled or skilled

15.00

15.35

102.33

Highly skilled

20.00

20.45

102.24

600

610

101.36

Unskilled

9.50

10.00

105.26

(with ceiling)

9.50

9.875

103.4

Skilled

15.00

15.70

104.66

Skilled (with ceiling on D.A.)

15.00

15.475

103.76

High Skilled

20.02

20.90

104.5

(D.A. ceiling)

20.00

20.675

103.00

In W. P. No. 13064/1984 filed by workmen, to show that the rates of D. A. fixed in the impugned notification does not amount 300 per cent neutralisation as contended for the Petitioners, they have stated as follows :

"4. That the cost of living index is arrived at on the basis of prayer's formula

i.e., C.P.I. No. (Bare 1960)

= Cost of Goods of consumer basket on current date mores 100

Cost of Goods of the same basket in 1960

5. That 100% neutralisation means increase in wages by the same percentage by which C.P.I. No. increases. For 600 C.P.I. number the lowest wage rate of wages in 1960 should have been Rs. 47.50 is fixed at Rs. 285.00 under the impugned notifications. That means, in 1960 the lowest wage should have been Rs. 47.50 p.m. In fact the lowest wage in 1960 was Rs. 45.50

6. That therefore for 100% neutralisation, the lowest wage fixed is Rs. 285.00 per month in comparison to 1960 wage and base. That means for every point of increase, the wages should be increased by Rs. 2.85 per point. Actually in the impugned notification Rs. 1.30 per point of raise in C.P.C. No. if fixed. That means there is neutralisation at 45.61% rate. That is there is no 100% neutralisation even.

7. That to illustrate the case of application of 100% neutralisation a reference can be made to the modalities applied in L.I.C. of India, here 100 % neutralisation is provided to the Class IV employees for rise in C.P.I. No. (1960 base).

Basic pay

D.A. paid for every 4 Pts. or rise.

Rate

Rs. 215.00

Rs. 8.60

Rs. 2.15 per point i.e., 1% of pay per point

Similarly Rs. 285.00

Rs. 11.40

Rs. 2.85 per point on 1% of pay per point.

8. In view of the illustration above, it can be seen that variable Dearness Allowance at the rate of Rs. 1.30 per point is nothing but only 45.61% of wages of Rs. 285.00 per month.

If calculated as above, the learned Counsel maintained, there was not even cent per cent neutralisation. Learned Counsel for the workmen relied on the following decisions of the Supreme Court, in support of their submission that increase of dearness allowance at the rate of 5 paise per point was not at all excessive :

(i) Workmen of Hindustan Motors -v.- Hindustan Motors 1962 II LLJ 352 in which increase or decrease of dearness allowance at the rate of Re. 1/- for every 5 points rise or fall, respectively, from C.P.I. No. 364, was approved.

(ii) The Hindustan Times Ltd., New Delhi Vs. Their Workmen, in which the rate of increase or decrease of dearness allowance approved was Re.1/- for every 10 points rise or fall, respectively from the base figure 400 C.P.I. number.

(iii) Greaves Cotton and Co. and Others Vs. Their Workmen, in which the rate of increase or decrease of dearness allowance approved, for every 10 point rise or fall, respectively, was 5% or Rs. 5/- (per point 40 paise).

(iv) Kamani Metals and Alloys Ltd. Vs. Their Workmen, in which rise of dearness

allowance at the rate of 50 paise per point at every 10 point rise of C.P.I. number was approved.

(v) Bengal Chemical and Pharmaceutical Works Ltd. Vs. Its Workmen, in which dearness allowance at the rate of Re.10/-per 5 point rise above C.P.I. number 425 was approved.

All the above cases arose out of industrial dispute raised by the concerned workmen and not under the Minimum Wages Act. While the general principles laid down in the said decisions are relevant subject to the specific provision of the Act, the rates of dearness allowance fixed or approved in those cases are not apposite to fixation of "minimum wages" under the Act. The rate of increase provided for the lowest category in the impugned notification at 5 paise per point per day is required to be given effect to at every 5 points. For 26 days in a month it comes to Rs. 6.50 or Rs. 1.30 per point. The next higher rate of 35 paise per five points per day works out to Rs. 9.10 per month for 5 points or Rs. 1.82 per point per month. The next higher rate of 45 paise per five points per day works out to Rs. 11.70 per month or Rs. 2.34 per point per month. As the basic wages together with dearness allowance constitute minimum wages the point raised has to be decided having due regard to the provisions of the Act. It reads:

"4. Minimum Rate of Wages ;

1) Any minimum rate of wages fixed or revised by the appropriate Government in respect of scheduled employments u/s 3 may consist of -

(i) a basic rate of wages a special allowances at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct, to accord as nearly as practicable with variation in the cost of living index number applicable to such workers (hereinafter referred to) as the cost of living allowance or

(ii) a basic rate of wages with or without the cost of living allowance and the cash value of the concessions in respect of the supplies of essential commodities at concession rates, where so authorised: or

(iii) an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any."

Clause (i) of sub-section (1) of Section 4 provides that the Government may fix a basic rate of wages and a special allowance, at a rate to be adjusted at such intervals in such manner as the appropriate Government may direct to accord as nearly as practicable, with the variation in the cost of living index number. The special allowance, described in the provision as cost of living allowance is the same as "dearness allowance" provided for in the impugned notification. Thus Section 4(1)(i) expressly requires the providing of cent per cent neutralisation of increased cost of living by way of fixing the appropriate rate of dearness allowance.

(iii) Clauses (ii) and (iii) provide two different methods of fixation of Minimum Wages as indicated therein. The contents of the impugned notification indicates that the Government has fixed the minimum wages u/s 4(1)(i) of the Act.

At this stage it is appropriate to set out the general principles governing fixation of rates of dearness allowance to workmen under Industrial Disputes Act, laid down in the series of decisions of the Supreme Court which have been summed up in the case of the Bengal Chemical and Pharmaceutical Works . They are -

"23. The following principles broadly emerge from the above decisions :

1. Full neutralisation is not normally given, except to the very lowest class of employees.
2. The purpose of dearness allowance being to neutralise a portion of the increase in the cost of living, it should ordinarily be on a sliding scale and provide for an increase on the rise in the cost of living and a decrease on a fall in the cost of living.
3. The basis of fixation of wages and dearness allowance is industry -cum-region.
4. Employees getting the same wages should get the same dearness allowance, irrespective of whether they are working as clerks or members of subordinate staff or factory workmen.
5. The additional financial burden which a revision of the wage structure or dearness allowance would impose upon an employer, and his ability to bear such burden, are very material and relevant factors to be taken into account."

Out of the five principles, the exception set out to the first principle is applicable to whom the minimum wages are fixed under the Act for, under the Act wages are fixed for the lowest strata of employees (See: Killick Nixon Ltd. -v.-K & A Co., Employees Union 1073 LIC 1315 at para 37. The rates of Minimum Wages fixed are necessary for their subsistence. With the increase of cost of living, they would be unable to subsist- Unlike persons drawing higher salary, they will have no surplus money to make any adjustment, i.e., by cutting down expenses, other than those required for food and clothing and other non-essential expenses. Therefore cent per cent neutralisation is a must and that is what is required to be provided by Section 4(1)(i). As far as principles 2 and 4 are concerned, they are also relevant to the fixation of rates of dearness allowance under the Minimum Wages Act. The impugned notification shows that the said bases have been adopted in fixing the rates of dearness allowance. The third principle is also relevant, but it goes with the fourth principle and the minimum wages have to be fixed, having due regard to the nature of the employment and its location wherever relevant as has been done in the impugned notification, as a result of which employees who get similar rate of basic minimum wages, would also be getting similar rate of dearness allowance.

Question however is whether the fifth principle is also relevant to the fixation of

the rates of dearness allowance as part of statutory minimum wages for there is a distinction between bare minimum wages and statutory minimum wages as is evident from the judgement of the Supreme Court in the Case of Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others, Relevant portion reads.

"There is also a distinction between a bare subsistence or minimum wage and a statutory minimum wage. The former is a wage which would be sufficient to cover the bare physical needs of a worker and his family, that is, a rate which has got to be paid to the worker irrespective of the capacity of the industry to pay. If an industry is unable to pay to its workmen at least a bare minimum wage, it has no right to exist. As was observed by us in Civil Appeal No, 235 of 1956- Crown Aluminium Works Vs. Their Workmen,

It is quite likely that in underdeveloped countries, where un-employment prevails on a very large scale., unorganized labour may be available on starvation wages, but the employment of labour on starvation wages cannot be encouraged or favoured in a modern democratic welfare State. If an employer cannot maintain his enterprises without cutting down the wages of his employees below even a bare subsistence or minimum wage, he would have no right to . conduct his enterprise on such terms.

The statutory minimum wage however is the minimum which is prescribed by the statute and it may be higher than bare subsistence or minimum wage, providing for some measure of education, medical requirements and amenities, as contemplated above, (of also the con-notation of "minimum rate of wages" in Section 4 of the Minimum Wages Act XI of 1948)."

In U. Unichoyi and Others Vs. The State of Kerala, the Supreme Court reiterated the ratio in the Express Newspapers" case and observed that hardship caused to an individual employer to meet the liability was not a relevant consideration. The judgement of the Supreme Court in Hydro (Engineers) Pvt. Ltd. Vs. The Workmen, however indicates that for fixing statutory minimum wages also the financial capacity of the industry may not be a relevant consideration. However, what is authorised to be fixed u/s 3 read with Section 4 of the Act as statutory minimum wages should be such as would be sufficient not merely for the subsistence of the life of the employee but also for preservation of the worker and so must provide for some measure of education, medical expenses and amenities. It is settled Law that in fixing minimum wages, a family of three members has to be taken as the basis. (Chandra Bhavan -v.- State of Mysore).

Even on the basis that financial capacity of an industry is not relevant for fixation of statutory minimum wages also there can be no doubt that the capacity of an industry to pay more than statutory minimum wages is not a relevant consideration for fixing such higher wages as minimum wages. Higher than minimum wages could be secured from such employers by way of settlement or by raising an industrial dispute. In the light of these principles, the validity of the

submissions made for the Petitioners has to be examined.

As basic wages plus the dearness allowance fixed under the Act together constitutes "minimum Wages" they have to be fixed in conformity with the Act. The Petitioners have calculated the percentage of neutralisation provided by the rate of dearness allowance fixed in impugned notification as indicated earlier, and say that it works out to 300 per cent on the ground that the basic wages fixed in the impugned notification, is "minimum wages" legitimately payable, if the cost of living index does not cross 600. Therefore, they submit that the extent of neutralisation provided for, has to be calculated by comparing the wages per point as fixed in the impugned notification, with the extent of increase provided for.

The calculation made for the employees, however, is on the basis that the increased wages payable including dearness allowance at C.P.I. Points 605 or 610 as the case maybe, should be divided by 605 or 610, as the case may be, and on the said basis the percentage of neutralisation should be arrived at as indicated in the statement furnished by them, extracted earlier, which shows that neutralisation was approximately cent per cent only and not more. One other method of calculation furnished, which is said to have been adopted in the L.I.C. was to calculate on the basis of minimum wage base of 1960 when the C.P.I. was 100, which is extracted earlier. On the basis, the learned Counsel for workmen maintained that neutralisation, provided for did not even work out to 50 per cent as indicated in that statement.

It appears to me that the method adopted by the employees to show that the rate of dearness allowance fixed provided was less than 100 per cent neutralisation or at any rate not more than 100 per cent neutralisation, relying on the bases level of 100 points in 1960, is really an attack against the basic rate of minimum wages fixed in the impugned notification. When the basic wages fixed are "minimum wages" at or upto 600 points, the contention of the Petitioners that the extent of neutralisation provided for, has to be found out by the proportion of increase for every point or five points in comparison to the rate which works out to per point or per five points if the basic pay fixed in the impugned notification is divided by 600 points is well founded. Learned Counsel for the workmen did not dispute that if the consumer index does not cross 60 points at all, there would be no scope for the increase of wages. For these reasons, the contention of the Petitioners that the rate of increase of dearness allowance provided for in the impugned notification amounts to 300 per cent neutralisation and contravenes Section 4(1)[i] of the Act has to be upheld [See : Management of Shri Chalthan Vibhag Khand Udyog Sahakari Mandli Ltd. Vs. G.S. Barot, Member, Industrial Court and Another,

There is intrinsic material also to demonstrate that the rate of dearness allowance fixed is excessive as contended for the Petitioners. On the recommendation of the Board, the State Government has issued notification fixing minimum wages in or about the same time in respect of employees of

coffee plantations. The relevant portion of it reads.

"In addition to the basic wage mentioned in the schedule, the employee shall be paid Cost of Living allowance at O 2 paise per point per day over and above 600 points of rise / increase in the Consumer Price Index figure for Industrial workers on the basis of State Average in the series of 1960-100 base.

The calculation of variable D. A. rate will be once in a year. The D.A. shall be calculated every year on the 1st April on the basis of the average of the indexes proceeding 12 months i.e., January to December. It may further be noted that the D.A. will be calculated on a sliding basis going higher or lower depending on the cost of living."

It may be seen, the rate of dearness allowance provided for in the above notification is two paise per point, whereas it is five paise per point in the case of all other employments. If two paise per point constitutes cent per cent neutralisation, it follows that five paise per point would constitute 250 per cent neutralisation. This is an additional ground to hold that the rate of dearness allowance fixed in the impugned notification is arbitrary and contravenes Section 4[1][i] of the Act.

Learned Counsel for the employees challenged the validity of the proviso which imposes the ceiling on the dearness allowance, which is extracted earlier. The proviso indicates that if the consumer price index crosses 609 points, there will be no further increase in the dearness allowance at all. Further, as the rise is permitted for increase of every five points in C.P.I. number, no neutralisation is provided for 610 points and above. Whether the method of calculations made by employers is correct or the one made by the employees is correct, the fixation of maximum would be in contravention of Section 3 read with Section 4[1][i] of the Act, for, u/s 3, the Government is under an obligation to fix minimum wages for the employees in scheduled employment in any one of the methods u/s 4 and once it chooses to adopt the method provided u/s 4[1][i], the fixation of rate of dearness allowance in proportion to the increase in the cost of living index over and above the basic wages is a must. According to the impugned notification in view of the ceiling, if the consumer price index goes beyond 609, there would be no increase of dearness allowance at all. The ceiling therefore contravenes Section 4(1)(i) of the Act. Thus the challenge by the Petitioner-employers to the validity of rate of dearness allowance as also the challenge by the employees to the validity of ceiling on dearness allowance, has to be upheld.

17. Having disposed of the general contentions urged in all the Petitions, I shall now proceed to consider the special points urged in each batch of Writ Petitions presented by the managements in similar employments.

18. Coffee Curing Industry (W.P. Nos. 10480 to 10498 of 1984).

In this batch of Writ Petitions, the following special points are urged :

(A) Inclusion of category of persons, who are not employees as defined under

the Act, is illegal.

(B) Fixation of wages in respect of different categories of employees is arbitrary and, therefore, ultra vires the power conferred under the Act and also violative of Article 14.

(C) The rates fixed for garblers is incentive and, therefore, invalid.

(D) Fixation of fall-back wages to garblers is unreasonable and arbitrary.

A. Fixation of minimum wages for supervisory posts :

Learned Counsel for the Petitioners submitted that fixation of minimum wages to such of the employees whose duties were supervisory was ultra vires the power of the Government u/s 3 of the Act. To substantiate this point, he relied on the definition of the word employee, given in Section 2(i) of the Act. It reads :

"employee" means any person who is employed for hire, reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out-worker to whom any articles or materials are given out by another person to be made up cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for shall for the purposes of the trade or business, of that other person where process is to be carried out either in the home of the out - worker or in some other premises not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of the Armed Forces of the Union."

Learned Counsel relied on the following decisions in support of the submission --

(i) Management of May and Baker (India) Ltd. Vs. Their Workmen,

(ii) Burmah Shell Oil Storage and Distribution Company of India Ltd. Vs. The Burma Shell Management Staff Association and Others, and

(iii) Ved Prakash Gupta Vs. Delton Cable India (P) Ltd.,

In the first case, a pharmaceutical representative was held to be not a workman as defined in Section 2(s) of the I.D. Act. In the second case a person filling the job involving supervisory duties was held to be not an employee under the I.D. Act. In the third case, a watchman security, was held to be a workman, under the I.D. Act. In the light of the above decisions, Learned Counsel contended that fixation of mini-mum wages under the impugned notifications to employees in the following categories, namely, Garbling Maistry, Yard Maistry, Canteen Supervisors, whose duties were all supervisory in nature was without the authority of law.

The decisions on which the learned Counsel relies are all those in which the definition of the word "workman" as defined u/s 2[s] of the I.D. Act was interpreted. The definition of the word "employee" in the Act is not in pan

materia with the definition of the word "workman" in the I.D. Act. They, however, pointed out that though the definition of the word "employee" is differently worded in the Act the definition given is that employees means skilled and unskilled, manual or clerical employees.

Firstly, it is difficult to appreciate why, a skilled supervisor cannot be regarded as a skilled employee. Whatever that may be, if that was all the definition, there might have been some force in the contention of the Petitioners. But, the penultimate part of the definition says the word "employee" includes an employee declared as an employee by the appropriate Government. This means that, it is for the Government to decide, as to who are the classes of employees to whom minimum wages should be fixed. Therefore once minimum wages are fixed to any category of employees in a scheduled employment, they fall within the definition. Further it is also pertinent to note that, under the Act the Government could only fix minimum wages. Thus, it is only lower-strata of employees in respect of whom fixation of minimum wages becomes necessary. The fact that some of them are called Supervisors or Maistry, is no ground to deny them minimum wages. If a person is really employed in supervisory or managerial capacity, it is difficult to postulate that he would be receiving wages which is less than minimum wages and requires the protection of the Act or fixation of minimum wages. I find no substance in the point.

B. Rate fixed is Incentive and not MinimumWages:

In the impugned notification, in particular, for the categories of Garblers, piece rate of Wages is fixed per ticket, which is said to consist of 40 Kgs. of coffee. Relevant part of the notification reads -

"Rs. 2-80 per ticket/task of 40 Kgs.

A fall back wage of Rs. 2-80 per day and in addition an incentive wage for a task/ticket of 40 Kgs grade-wise as below in paise per task."

The incentive rate indicated below the above general rate is Rs. 1 -10, Rs. 1 -20, Rs. 1 -30 per ticket, in respect of the variety of coffee seeds specified. Counsel for the Petitioners states, as defined in the notification itself, this is an incentive wage over and above the minimum wage which is Rs. 2-80 per ticket and, therefore, it is not authorised by the Act. The submission though at first sight appears to have some sub-stance, is wholly not tenable. u/s 3(2) of the Act, the State Government is empowered to fix a minimum rate of wages in the case of employees employed on piece work either on piece rate or time rate basis or both, for the purpose of securing to such employees a minimum rate of wages. This is what has been done in the case of Garblers, who are employed by coffee curing works in view of the nature of their work. The basis of wages is a general piece rate per ticket and a special piece rate at Rs. 1-10 or Rs. 1-20 or Rs. 1-30, as the case may be, which depends upon the quality of the coffee seeds sorted by the Garbler concerned. Both together works out to Rs. 3-90 or Rs. 4-00 or Rs. 4-10 per ticket. Learned Counsel for the Petitioners did not dispute that normally

an employee could complete only two and a half tickets per day. Thus taking the, total figure, the minimum wage which a Garbler would earn per day comes to about Rs. 9-75 to Rs. 10-25. Thus wages calculated at both the rates together constitute the minimum wages and the rates have been fixed having due regard to the nature of the work carried out by Garblers and also having due regard to the prevailing practice and the object of ensuring a minimum wage for each Garbler. The contention that the special piece rate which is described as incentive rate constituted more than the minimum wages is untenable. I find no substance in this point also.

C. Fixing of Minimum Wages Higher than Settlement.

One other point urged for the Petitioners was that the rates of wages had been fixed in the settlements entered into between the workmen and managements and certainly the workmen would not have agreed to the rates of wages unless they were fair wages and, thereof, the impugned notification which fixes wages higher than the wages fixed in the settlement could not be regarded as minimum wages and, therefore, not authorized by the Act.

Section 3 of the Act inter alia provides that whenever there is difference in the rate of minimum wages fixed under the Act and the wages fixed under settlement, the workmen are entitled to the rates of wages, whichever is higher. Hence this point also has to be rejected. (See also *Malayalam Plantations -v.- Kerala State* 976 I LLJ 114)

D. Fall-back Wages Fixed Amounts Discrimination and is Arbitrary:

As can be seen from the impugned notification extracted earlier, for Garblers employed in the coffee curing industry, fall back wages of Rs. 2-80 is fixed. Learned Counsel for the Petitioners submitted that if fall-back wages is required to be paid over and above the wages earned by a Garbler on each day, as is being contended for workmen, it would be arbitrary and amounts to unreasonable restriction on the Petitioners right to carry on industry guaranteed under Article 19(I)(g) of the Constitution. Learned Counsel for the Petitioners submitted that the workmen were interpreting the provision as entitling them to get Rs. 2-80, per day over and above the wages payable for the work done as indicated earlier.

Learned Counsel for the Petitioners, however, submitted that the expression "fall-back wages" has to be understood as ensuring a minimum payment of Rs. 2-85 per day to a workman on all the dates on which he attends to duty during the season during which the industry is carried on, if the employee concerned is unable complete at least one ticket for want of work or was unable to do any work in cases where no work was provided by the employer, they had no grievance. They also submitted that was how it was understood all along. I asked the learned Advocate General to clarify which of the two views is intended by the notification. Learned Advocate General submitted that fall-back wages was only meant to ensure a minimum payment to a Garbler the event of the employer

being not in a position to provide work or to provide work sufficient for completing at least one ticket. I am satisfied that the clarification, given by the learned Advocate General which is in conformity with the practice prevailing as contended by the petitioners constitutes the correct interpretation of fall-back wages: Learned Counsel for the Workmen also did not seriously contest the correctness of this clarification. In view of this, the grievance on this aspect of the matter does not exist.

E. Arbitrariness in Fixation of Wages :

In support of the above submission, learned Counsel for the Petitioners have filed a statement. It reads-

Category

Wages as per 1982 Notfn.

Wages as per settlement

Wages as per 1984 Notfn.

Type of workers

Skilled

Percentage of increase

Sorters

9.62

11.50

13.46

Female

unskilled

39.9

Mukaddamas

lied

Machine-room

9.62

11.50

10.00

Male

”

3.95

Workers

Canteen Cook

9.00

11.50

11.50

''

''

66.67

Garbling

Maistry

12.02

12.02

14.42

''

''

19.97

Yard Maistry

12.02

12.02

18.27

?

?

52.00

Canteen

10.00

12.02

17.00

''

''

70.00

Supervisor

Learned Counsel for the Petitioners pointed out that a mere perusal of the above statement would establish how arbitrary has been the fixation of minimum wages.

It may be seen from the above statement that Sorters and Mukaddamas, Machine - room Workers and Canteen Cooks, were all given wages at Rs. 9.62 per day according to 1982 notification. Before the issue of the impugned notification, there had been settlements and even at those settlements, the workmen themselves had agreed for the fixation of wages at the rate of Rs. 11-50 per day for all of them. But according to the impugned notification, whereas for sorters who are mostly female unskilled workmen, the wages fixed per day is Rs. 13-46, for male workers, who are also unskilled workmen, employed as machine room Workers-Canteen Cooks etc., the wage fixed per day is Rs 10/- Similarly for the Garbling Maistry and Yard Maistry, the wages fixed in the 1982 notification was Rs. 12-02. Even according to the settlement entered into immediately prior to the issue of the 19:4 notification, the agreement was for payment of Rs. 12-02 as wages per day for all these categories of work-men. Under the impugned notification, while the wages fixed for Garbling. Maistry is Rs. 14-42, for a Yard Maistry, it is, Rs. 18-27 per day. Further, according to 1982 notification the wages fixed for a canteen supervisor was Rs. 10/- per day and it was Rs. 12-02 according to the settlement. Under the impugned notification, the wages fixed for canteen supervisor is Rs. 17/- as against Rs. 14-42 fixed for a Garbling Maistry. On the face of it, the wages fixed appears to be discriminatory as among the different classes of workmen in the industry. No basis is discernible for creation of higher and lower category among unskilled workmen by way of fixing higher wages to some and lower to others. (See : Greaves Cotton & Co. - v.- Workmen.) Learned Counsel for the Petitioners submitted that no valid reason has been assigned for such disparity and that such disparity in wages among those who were getting similar wages was resulting in intra workmen conflict leading to unrest in the industry.

Learned Advocate General, however, submitted that wherever such disparity is pointed out by the Petitioners and the Court is satisfied that the matter requires reconsideration, the State Government was agreeable to reconsider the matter. As I am convinced that no valid basis is shown to exist for the disparity in the wages fixed in respect of various categories of the workmen for the reasons stated earlier, an appropriate order has to be issued to the State Government to reconsider the workmen working under the Coffee Curing Industry, giving due consideration to the points raised by the Petitioners.

I.

By Managements:

W.P. Nos. 10893 to 10902, 10924 to 10927, 11067, 11266 to 11273, 12085 to

12106 and 14902/84.

II.

By Workmen:

W.P. Nos. 13005, 13070 and 14839 of 1984:

I. The facts of the case, in brief, are as follows : On 24-7-1981, a notification was issued by the State Government under clause (b) of sub-section (1) of Section 5 of the Act proposing to revise the rates of wages of the persons employed in hotels and eating houses at the rates specified in the schedule. Another notification was also issued on the same date under the same provision proposing to revise the rates of wages of various other categories of workmen in the same employment. Representations were invited from persons who would be affected by revision of wages as proposed. Thereafter on consideration of the representations received, the State Government issued final notifications. The validity of those notifications were challenged in the earlier batch of Writ Petitions. This Court struck down the notification and directed the State Government to constitute an Advisory Board ("the Board " for short) in terms of Section 9 of the Act and decide the matter afresh in consultation with the Board. Thereafter the State Government constituted the Board and in consultation with the Board with reference to the representation made by all the persons to the proposals published on 24-7-1981, issued the final notification on 3-6-1984. The Petitioners in the fresh batch of Writ Petitions are the managements of hotels. The Petitioners in the second batch of Writ Petitions are the trade-unions representing the work-men. They have presented the respective batch of Writ Petitions aggrieved by the impugned final notifications, but for different reasons.

The plea of the managements as regards the validity of the notifications are as follows : Two notifications have been issued in respect of hotel industry without indicating as to which of the notifications applies to which of the hotels and, therefore both the notifications are liable to be struck down. The categorisation of workmen is arbitrary and as a result the Petitioners would be compelled to pay to the same workman wages at different rates, the fixation of which is impermissible under the provisions of the Act. The introduction of Dearness Allowance as an element of minimum wages was illegal as the hotels provide food, clothing and shelter to the workmen and, therefore, there was no question of making a provision for increase of wages in proportion to the increase in the cost of living index. In any event, the rate of Dearness Allowance fixed is excessive and arbitrary.

In the second batch of Petitions presented by the workmen, the plea of the workmen is as follows : The rates of wages fixed for the workmen was patently arbitrary. A comparison of the rates fixed, in the provisional notification issued u/s 5(1)(b) of the Act on 24-7-1981, in the final notification issued in the year 1982, which was set aside in the earlier batch of Writ Petitions, and in the impugned notification, at once indicates arbitrariness. While the rates of wages

fixed for various categories of workmen is the same in all the three notifications in respect of the workmen except Cook, Asst. Cook and Clerk, the deductions provided in respect of Food and Shelter which was Rs- 90/- in the first two notifications for Zone-A has been increased to Rs. 120/- in the impugned notification. Similarly the deduction which was Rs.80/- in Zone-B was increased to Rs. 100/- and the deduction which was Rs. 75/- in Zone-C was increased to Rs. 85/-. In doing so, the Government had acted in an arbitrary manner and on collateral considerations. The Government had accepted the advice of the Board that deduction in respect of Food and Shelter should be Rs. 90/-, Rs. 80/- and Rs. 75/- per month for Zone-A, B and C, respectively. This was also incorporated in the final notification, on 26-5-1984 when the Govt. had sent 14 notifications to the Govt. Central Press for publication which included the notifications pertaining to hotels. At that stage, the notifications in respect of hotels were withdrawn and after increasing the deduction from Rs. 90/- to Rs. 120/-per month for Zone-A and from Rs. 80/- to Rs. 100 in Zone-B and from Rs. 75/- to Rs. 80/- in Zone-C, the notifications were sent back to the Government Central Press for the purpose of printing. This increase in the deductions, reversing the earlier decision taken on the advice of the Board, was arbitrary and illegal.

On the basis of the plea of the Petitioners, the following special questions arise for consideration in so far it relates to Hotel Industry :

- (i) Whether the publication of two notifications are in-valid and if one of them is invalid, which of the notifications is invalid and to what extent ?
- (ii) Whether the categorisation of employees made in the two impugned notifications is invalid ?
- (iii) Whether the rates of wages fixed for the employees in the two notifications is arbitrary ?
- (iv) Whether provision for D.A. is illegal for the reason hotels provide food, clothing and shelter to the employees ?
- (v) Whether the rate of deduction provided for, in the notification in respect of food and shelter is invalid ?

A perusal of the contents of the impugned notifications (Annexure A and B) shows that by these notifications the Government fixed the wages of the various class of employees in the employment namely "Residential Hotels and Eating Houses" throughout the Karnataka State. It is for this reason, it is contended on behalf of the Petitioner managements that the Government could not have issued two notifications fixing wages in respect of same employment.

Learned Advocate General appearing for the State explained that the first notification was intended to cover only restaurants and the 2nd notification was intended to cover such of the hotels which had boarding, restaurant and lodging facilities. As regards the similarity of the description of the employment in both the notifications , he explained that it was so done as that was how the

employment was described in the schedule to the Act. He pointed out that the specification of classes of employment in the two notifications would indicate that there was no overlapping in respect of any class of employees except the category of "Store Keeper" and, therefore, there was no practical difficulty in applying the two notifications, even assuming, the categories of persons specified in both the notifications are employed in a restaurant or hotel.

It is true, in both the notifications, the Government has purported to fix the wages for different classes of employees indicated in the schedule to the impugned notifications, in residential hotels and eating houses. However, a reading of the different classes of employees would indicate that except for the category of Store Keeper, the classes of employment covered by the first notification which are only six, are not covered by the 19 out of the 20 employees specified in the second notification.

The Learned Counsel for the Petitioners pointed out that Item 20 in the schedule to the 2nd notification is "Store Keeper" and the pay fixed in respect of the said employees in the 2nd notification is, for Zone "A" Rs. 370, for Zone "B" Rs. 362/- and for Zone "C" it is Rs. 346/-, whereas the pay fixed for the said class of employees in the first notification is Rs. 400/- in Zone "A" Rs. 350/- in Zone "B" and Rs. 325/- in Zone "C" which is higher than the rate fixed in the second notification. If the two notifications remained, the Petitioners pointed out that a Store Keeper in a hotel in Zone "A" would claim that the wages payable to him is Rs.400/- p.m- whereas the employer would rely on the another notification and say that the wages payable would be Rs.370/- per month.

On consideration of the contents of the two notifications, I am of the opinion that the Government could and should have issued one notification and there was no necessity to issue two notifications. However, the mere fact that two notifications have been issued constitutes no ground to strike down one of them as both the notifications together could be treated as one notification and that the point made out with reference to the two rates of wages for Store Keeper, justifies the striking down of the entry relating to Store Keeper in one of the notifications which is disadvantageous to the Petitioners with a direction to the State Government to decide. afresh, the wages to be fixed for the said class of employees.

The Second point urged on behalf of the Petitioner-managements is as follows:

As can be seen from the classes of employment , extracted earlier, wages are fixed for various categories of employment. No hotel employs an individual exclusively, as coffee maker or tea maker or a server or dosa maker or chapati maker or idli maker etc., but employs a person to do all or any or these kinds of works, but in the impugned notification each of those items have been mentioned separately and wages have been fixed, as a result, it would be impossible for the managements to conform to the impugned notifications.

In my opinion, the contention overlooks the specific provision incorporated in

Section 16 of the Act. The said Section reads -

16. WAGES FOR TWO OR MORE CLASSES OF WORK-

Where an employee does two or more classes of work to each of which a different minimum rate of wages is applicable, the employer shall pay to such employee in respect of the time respectively occupied in each such class of work, wages at not less than the minimum rate in force in respect of each such class."

In view of the provision, the managements have the liberty to calculate the daily wages of an employee who does more than one class of work in proportion to the hours of work during which he discharges such work on the basis of the rates applicable to each such class of work. Even assuming that such a calculation is impracticable for the reason that the employee is required to discharge number of categories of work as specified in the impugned notification, and that it is impracticable to quantify the hours during which different kinds of work is performed by an employee, all that the management would be required to pay the workmen would be the highest rate of wages applicable to any-one of those categories and not the total wages applicable to all categories as the wages fixed is on the basis of day's work. To illustrate, the wages fixed for dli maker or Dosa maker or Chapati maker is Rs. 315/- per month in Zone "A", the wages fixed for the Vegetable Cutter is Rs. 285/- per month in Zone "A". If in a hotel the same person is required to work both as Vegetable Cutter and Dosa maker or Idli maker or Chapati maker; indeed there is no bar for engaging the services of the same employee for doing different kinds of work; if it is impracticable to calculate his wages on the basis of hours of work, the management would have the option to pay the highest of the wages applicable, namely, the wages fixed for Dosa maker which is Rs. 375/-p.m. and the management is not required to pay Rs. 375/-plus Rs. 285/-per month for the same workmen.

The Learned Advocate General appearing for the State as also the Counsel for the workmen, submitted that that was the correct position in law.

For these reasons, I find no substance in this contention.

The only other plea of the Petitioner-managements which requires consideration is about Dearness Allowance. I have already discussed this question in greater detail while dealing with the general question regarding the challenge to the rates of the Dearness Allowance raise in all the Writ Petitions. The additional point raised by "the management of hotel industry was that the hotels provided food and shelter and, therefore, even if there had been an increase in the cost of living index, it constituted no valid basis for increasing the Dearness allowance. If the Dearness Allowance was meant only to cover food, clothing and shelter and only for one employee, the plea of the Petitioners would have been unexceptionable. However, it is well settled that while fixing the minimum wages, it is not only mere food, clothing and shelter that has to be taken into account, but the minimum requirements of education and health of the employees also has to be taken into account. Apart from this, while fixing minimum wages it is

not the requirement of one individual that has to be taken into account, but it is the requirement of three individuals which has to be taken into account as pointed out earlier. Therefore, all that can be said in respect of this point is, in fixing the rates of Dearness allowance the fact that atleast in respect of the employees concerned, food, clothing and shelter are being provided for by the employees must also be taken into account. This is also evident from the decisions of the Supreme Court in The Management of Marina Hotel Vs. The Workmen, and in Management of Wenger and Co. Vs. Their Workmen, As I have come to the conclusion that the notification in so far it relates to the fixing of dearness allowance, has to be redone by the Government, it is sufficient to state that while refixing the rates of dearness allowance these aspects should also be taken into account by the State Government.

II Writ Petition by Workmen of Hotels :

The plea of the workmen is that apart from the arbitrary increase in the deduction effected in the manner alleged, the fixation of wages of workmen has also been done arbitrarily. In support of this plea the workmen have filed a statement setting out the wages fixed in the 1981 proposal, 1982 final notification, as recommended by the Board and the impugned final notification of 1984, which is marked Annexure-D in W.P. No. 13070/84. The figure furnished in the statement for Zone A are as follows :

Sl. No

Category

Wages as per 1981 proposal

Wages as per 1982 final notfn.

Wages as recommended by Board

Wages as per impugned 1984 notification

Basic D.A. Total Rs.

Deduction Rs.

Cash payable Rs.

Basic D.A. Total Rs.

Deduction Rs.

Cash payable Rs.

Basic D.A. Total Rs.

Deduction Rs.

Cash payable Rs.

Basic Rs.

Deduction Rs.

Cash payable Rs.

1.

Cook

370

90

469

370-00

90

319-52

500

90

599

500

120

380

189

39-52

189

559

409-52

689

2.

Asst. Cook

362

90

461

362-00

90

311-52

375

90

474

375

120

255

189

39-52

189

551

401-52

564

3.

Suppliers

346

90

445

346-04

90

295-52

346

90

445

346

120

226

189

39-52

189

535

409-52

535

4.

Clerks

370

90

469

370-00

90

319-52

400

90

449

400

120

280

189

39-52

189

559

409-52

589

5

Mazdoor and Cleaners

285

90

330

285-00

90

234-52

285

90

330

285

120

165

135

39-52

135

420

324-52

420

A comparison of the above figures would at once show that excluding the dearness allowance earlier provided for the basic wages fixed for the bulk of the employees falling under the category of Suppliers, Cleaners and Mazdoors is the same in the 1981 draft notification, 1982 final notification, and in the impugned 1984 notification, only in respect of Cooks there is an appreciable increase and in respect of Assistant Cooks and Clerks there is only a small increase. As can be seen from the statement above, while Rs. 370/- was the basic pay fixed for the Cook in the 1981 draft notification and the 1982 final notification, the basic wage recommended by the Advisory Board for Cook was Rs. 500/- i.e., an increase of Rs. 130/-, and the same rate has been fixed in the final notification. Similarly for the post of Clerks, while Rs. 380/- was the wages fixed per month according to the 1981 proposal and 1982 final notification the wages recommended by the Advisory Board for them was Rs. 400/- p.m. i.e., an increase of Rs. 30/- only and the same was fixed in the 1984 final notification. In respect of Assistant Cooks, it was Rs. 362/- in the 1982 notification and there is only a slight increase, namely, to Rs. 375/- p.m. i.e., an increase of Rs. 13/- only in the 1984 final notification.

But in the case of all other employees there has been no increase at all in wages, but the increase is only in the deduction. For instance, for Suppliers the basic wage in 1981 draft notification was Rs. 346/- and the same was fixed in the 1982 final notification and again the same rate was recommended by the Advisory Board and the same rate is fixed in the final notification. So also in respect of Cleaners it was Rs. 285/- in the 1981 proposal, the same wages was fixed in the 1982 notification and again the same rate of wages had been recommended by

the Advisory Board and the same was fixed in the final notification. So also in the case of Mazdoors in all the four notifications, the rates of wages fixed is Rs.285/- But when it comes to the question of deduction for food, shelter, clothing etc., it may be seen that while Rs. 90/- was the deduction fixed per month in Zone A, the same is increased to Rs. 120/-. This increase has been attacked not only on the ground that it was arbitrary but also on the ground that it was illegal as it was changed to Rs. 120/- after the final notification fixing deduction at Rs. 90/- per month had been issued, withdrawing the notification from the Government Press. The same is the illegality in respect of increase of deduction in other Zones. No basis or valid reason has been given as why only the pay of Cooks, Asst. Cooks, and Clerks had to be increased and that no increase was necessary for others and as to how and why the deduction was increased from Rs- 90/- to Rs. 120/- etc. It is true that the 1981 rates were proposals and the wages fixed in the 1982 notification were quashed and the Government was directed to refix the wages. Even so, the refixation has to be done having due regard to the criteria for fixation of minimum wages which has to be done on relevant basis. No explanation is forthcoming as to why the rates of wages as recommended by the Board are retained in respect of these employees alone and not the rate of deduction or Rs. 90/- and also as to why it was increased to Rs. 120/- that too after the final notification had actually been issued and before it was published in the Official Gazette.

It appears to me that the contention of the workmen that non-revision of wages of suppliers and other large number of employees, while revising the wages of only Cooks, Asst. Cooks and Clerks by increasing their wages by Rs. 130/-, Rs. 30/- and Rs. 13/-, respectively, betrays arbitrariness, in deciding rates of wages, is well founded. The above view is strengthened by the increase in the deduction. Even assuming that increase in the rates of article of food, clothing and shelter, constituted the basis for increasing the deduction, that itself would ipso facto constitute the basis for increasing the wages also. Therefore, the workmen are not only entitled to the issue of a direction to the State Government to reconsider the rates of wages, but also to an order setting aside the rate of deduction with a further direction that till rates of deduction are decided the deduction should be only as indicated in 1981 proposal as the wages fixed in the final notification for all of them is the same as in the 1981 proposal.

20. Tailoring Industry (W.R Nos. 10289 to 10314 of 1984)

Two special points are urged in this batch of Writ Petitions and they are --

- (i) Arbitrariness in fixation of wages, and
- (ii) Arbitrariness in defining the different categories of tailors.

In support of the submission, learned Counsel for the Petitioners have produced a Statement marked as Annexure-K along with the Writ Petitions showing the rates of wages fixed in respect of employees to prove that there has been arbitrariness in fixing the wages of persons employed to do similar work in

different scheduled employments. It is sufficient to set out only a few instances in respect of Zone-A i.e., City Corporation areas. They are -

Industry

Unskilled

Office boy

W/ward watchman

Helper

Typist/Clerk

Accountant Cashier

1

2

3

4

5

6

7

Tailoring

390-00

416.00

416.00

390.00

468.00

520.00

(15.00)

(16.00)

(16.00)

(15.00)

(18.00)

(20.00)

Rice & Floor Mills

247.00

?

247.00

?

?

?

(9.50)

?

(9.50)

?

?

?

Cotton Ginning

247.00

247.00

247.00

247.00

360.00

362.00

Stone breaking or crushing

247.00

?

247.00

?

?

?

Ceramics Store ware and

Potteries

247.00

247.00

247.00

247.00

390.00

420.00

Printing Press

286.00 (11.00)

286.00

286.00

289.00

360.00

420.00

Khandasari Sugar

247.00

?

247.00

247.00

362.00

362.00

Relying on the figures the learned Counsel submitted as follows : While the wages fixed for a Typist in the Tailoring Industry is Rs. 18/- per day or Rs. 468/- per month the wages fixed for the Typists in Cotton Ginning Industry and Printing Press is Rs. 360/- per month and in respect of Rice Flour or Dhall Mills, Public Motor Transport, Ceramics, Stone Ware, Potteries Works, the wages fixed is Rs. 390/- per month and in respect of Khandasari Sugar Factories the rate fixed is Rs. 368/- per month. The work of Typists, having regard to the nature of duties of the post, are common in whatever office or industry they works. In fact it is a matter of common knowledge that in the services of the State, the posts of Typists and Clerks are generally treated as posts common to all departments and uniform pay-scale is fixed. There-fore the wages fixed for Typists in all the employments must, be the same, unless there is special reason for fixing the wages at a higher rate in respect of any particular employment. There was no basis at all to fix wages of typists in Tailoring industry at Rs. 468/- p.m. i.e., at more than Rs. 100/-compared to the wages fixed for Typists in respect of some other employments.

Similarly for an unskilled worker like a person employed for stone breaking or

crushing, the wages fixed is Rs. 247/- per month, whereas for unskilled worker under a Tailoring industry whose duties and responsibilities are less hazardous, the wages fixed is Rs. 390/- per month. A stone breaker and crusher has to do a very hard work and in open-air subject to vagaries of weather, but an unskilled worker in a Tailoring industry has to do a light job in-door. For instance the duties of trimmer who is an unskilled workman in Tailoring industry is only to cut extra threads, in stitched garments, a light work compared to stone breaking. The wages fixed for an Office boy in Tailoring industry is Rs. 416/- much more than a Typist/Clerk in other industries, while the wages fixed for an Office boy in other industries is Rs. 247/- Therefore the wages fixed for an unskilled labourer in Tailoring industry at Rs. 390/- per month is patently arbitrary. Similarly wages fixed for an unskilled workman in Rice and Flour Mill is Rs. 247/- per month as against Rs. 390/- for an unskilled worker in tailoring industry. It is also a matter of common knowledge that the nature of the work of an unskilled worker in a flour mill is hazardous.

There is on the face of it marked disparity in the wages fixed for typist, unskilled workmen and others employed in the Tailoring industry compared to similar employees in other industries as pointed out by the Petitioner was not and could not be disputed by the Counsel for the respondents, Learned Counsel for the respondents however relied on the judgment of the Division Bench of this Court in Chandra bhavan -v.- State of Mysore AIR 1968 Mys 156 and submitted that Section 3 empowers the Government to fix different rates of wages for different categories of employments. The relevant portion of the judgment on which they rely reads-

"109. The concept of minimum wage does not imply that there should be an absolute uniform rate of wage for all workmen. There can be variation in the rate of minimum wage according to diverse factors like the nature of work, the degree of education, training and skill required for the job. The degree of responsibility and onerous ness of the job the conditions under which the workman works and the hazards of the occupation, which, in addition to being relevant facts, have also a bearing on the efficiency of the workman. What may be an appropriate rate of minimum wage for an unskilled worker may not be one appropriate for a skilled worker ; what may be an appropriate rate of minimum wage for a manual labourer may not be appropriate for the category of employees like Clerks, Typists, Cashiers and Storekeepers"".

This Court in the above paragraph held that "minimum wages" cannot be a flat rate for all types of employees in all types of employment irrespective of the nature and type of work, skilled or unskilled, ministerial or non-ministerial and the conditions in which they work. It can hardly be suggested that fixation of wages must not be made having due regard to the nature and duties of a particular type of work, working condition and various other relevant factors. It is for this reason Section 3 does empower the Government to fix different rates of wages to different kinds of employments and employees and in different

localities. It must be so because by and large the nature of work in one employment differs from another, and in the employment, nature of work, of one class of employees differ from the other. The cost of living also may vary from locality to locality. But there are certain kinds of work whose nature is similar, irrespective of the employments in which they are employed. For instance, the Typists. Normally Typists do similar kind of work irrespective of the industry or establishment in which they are employed. If they are in the same locality also, minimum wages for all such Typists would have to be the same. Section 3, in my opinion, does not empower the fixation of arbitrary rates of wages for persons employed in similar kind of work, but in different industries and in the same Zone, unless some special reason exists. The view expressed by this Court in Chandra Bhavan's case does not support the proposition that even in respect of similar type of work, in different employments there could be such disparity in wages as has happened in the present case. The statement extracted earlier is in respect of wages fixed in Zone I consisting of Corporation areas. In the same zone, as pointed out earlier, while, the Tailoring industry is asked to pay Rs. 468/- per month to a Typist a few other industries are required to pay only Rs. 360/- per month. The wages fixed for an office boy in Tailoring industry is Rs. 416/- p.m. i.e. Rs. 56/- more than a Typist in other industries and for an office boy in other industries wages fixed is-only Rs. 247/-

Learned Counsel for Respondents submitted that whatever be the difference in fixation of the wages, it is not a matter of interference by the Court. I am not impressed by the submission. There can be no doubt that it is competent for the Government to fix different rates of wages for the employees employed in different employment in the same zone. In doing so it is possible that some slight disparity in the rates of wages even in respect of employees doing similar kind of work might occur. Certainly it is not open for the Court to say that the wages must be uniform for all such employees. But I am unable to agree with the extreme pro-position put forward for the Respondents that even if the fixation of wages for employees doing similar work, in different establishments, in the same zone as demarcated by the Government itself for purposes of fixation of wages, there were to be great disparity, the employers or employees have no remedy and the Court has no jurisdiction to interfere. The power given u/s 3, it should be remembered is only to fix minimum wages and the criteria for fixing minimum wages are also well settled (See : Express News Paper's case). Therefore, the power conferred u/s 3 being the power to fix statutory minimum wages the criteria for fixing such minimum wages being the same for all the employees there cannot be great disparity in respect of employees doing same kind of work in the same Zone though in different employments"

Now it is well settled that any arbitrary action legislative executive or administrative, would be hit by the right to equality guaranteed under Article 14 of the Constitution. This aspect is clear from the following decisions of the Supreme Court on which Learned Counsel for the Petitioners relied :

1. E.P. Royappa Vs. State of Tamil Nadu and Another, Relevant portion of the judgment reads :

"Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith , to use the words of Bose,.....away of life", and it must not be subjected to narrow pedantic or lexicographic approach, XXX XXX XXXXXX From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14 and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment."

2. Maneka Gandhi's case. At paragraph 56 of the judgment, the Supreme Court said :

"Article 14 strikes at arbitrariness in State action and ensures fair-ness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence."

These decisions lay down that an action, to be in conformity with Article 14, must be reasonable and cannot be capricious or arbitrary. Therefore, while exercising the power u/s 3 of the Act also the Government cannot act arbitrarily. If it does, it would be hit by Article 14. It is true that all employments are not similarly situated, even so, certain types of employees in different employments are similarly situated and more so when all of them are employed in the same Zone. Typists are one such so also Office boys. In the absence of any rational basis which can be gathered from the proceedings leading to the fixation of higher rates of wages or otherwise brought to the notice of the Court, it cannot be presumed there is some undisclosed rational basis, justifying fixation of Rs.468/- per month as wages for a Typist - in a Tailoring industry and Rs. 360/- to a Typist in all other employments and in the same Zone. The same reasoning would apply to the wages in respect of a few other types of employees employed in Tailoring Industry as could be seen from the statement extracted earlier.

I repeatedly asked the Learned Counsel for the Respondents to give one valid reason in support of such higher wages fixed for Typists, Office boys and other unskilled employees in the Tailoring Industry, but they could not. The only oft-repeated submission was, that the Court cannot interfere with the fixation, which, in my opinion is untenable in view of both the facets of right to equality flowing from Art. 14, i.e., a guarantee against discrimination as also arbitrary

State action. Learned Counsel for the Petitioners,said that the reason for disparity was, the representative of workmen in Tailoring Industry wanted higher wages to be fixed for Tailoring Industry on the ground that they were making huge profits and it was accepted by the Board and the Government. They however submitted that it was not true that the Petitioners were making huge profit and in any event that was not a relevant consideration.

It is difficult to say, whether such a plea was the sole basis for fixing higher wages for employees in Tailoring Industry, compared to the employees in other Industries. However there can be no doubt that if that reason weighed with the Board and the Government, it was irrelevant. The Supreme Court in the case Express Newspapers and Unnichoyi held, financial capacity of the industry is a relevant consideration for fixing statutory minimum wages as against bare minimum wages. The judgment of the Supreme Court in the case of Hydro Engineers however indicates (see paragraph 8 of the Judgment) that financial capacity is not relevant for fixing statutory minimum wages. Whatever that may be, there can be no doubt that what the Government is empowered to fix u/s 3 is minimum wages i.e., statutory minimum wages and for that purpose the capacity of an industry to pay more than statutory minimum wages is not a relevant factor. The workmen, certainly are entitled to raise a dispute for wages higher than statutory minimum wages and the Industrial tribunal/labour Court on reference could decide disputes having due regard to the financial resources of the industry concerned. This is a different matter.

Learned Advocate General submitted that if the Court is convinced that the disparity is such as would call for re-consideration, the Government had no objection to re-consider the matter.

On the facts and circumstances of the case, I am convinced that disparity in fixation of wages of the employees in Tailoring Industry compared to similar employees in other Industries is writ large and therefore the Petitioners are entitled to the issue of a Writ to the State Government to reconsider the rates of wages fixed for the employees in Tailoring Industry.

Arbitrariness in defining different categories of Tailors.

According to the impugned notification, there are four kinds of Tailors. Wages fixed for four kinds of tailors in different zones are as follows :

Category

I Group Corporation areas per day

II Group City Municipal areas per day

III Group Town Municipal areas per day

IV Group Rural areas per day

Highly skilled Tailor

20-00

18-00

16-00

15-00

Skilled Tailor

Grade I

18-00

16-00

15-00

14-00

Semi-Skilled Tailor

Grade II

16-00

15-00

14-00

13-00

Unskilled Tailor

Grade III

15-00

13-00

12-00

11-00

As far as rates of wages fixed for these Tailors are concerned, though the contention had been that the rate fixed for unskilled and semiskilled tailors are concerned it was arbitrary and higher; the Petitioners were unable to Substantiate that the rates fixed were arbitrary amounting to violation of Art. 14.

However, as regards the definition of these categories, the Petitioners made the following points. In 1982 notification, these grades were defined as follows ;

(i) "Grade I Tailor" is one who is capable of stitching an entire garment to a high degree of finishing.

(ii) "Grade II Tailor" is one who is capable of stitching an entire garment to a fair degree of finishing;

(iii) "Grade III Tailor" is a learner tailor who needs guidance for cutting, stitching and finishing a garment.

(iv) "Highly skilled Tailor" is one who is capable of designing, cutting and stitching the entire garments independently and without guidance. He should be capable of directive and guiding a group of skilled tailors."

The definition of these categories was similar in the proposal contained in the 1981 notification and in the earlier notification of 1978. However, in the impugned notification, these categories are defined as follows :

(i) Grade-I. One who is capable of cutting and stitching an entire garment or any portion of the garment with experience of 5 years or above.

(ii) Grade-II: One who is capable of cutting and stitching an entire garment or any portion with experience of 1 to 5 years.

(iii) Grade-III Tailor : is a learner tailor who needs guidance for cutting, stitching and finishing a garment.

(iv) "Highly Skilled Tailor" is one who is capable of designing, cutting and stitching the entire garments independently and without guidance. He should be capable of directive and guiding a group of skilled tailors."

(Underlined by me)

There is no grievance as regards the definition of Highly Skilled Tailor and Grade-III Tailor. The grievance is in respect of Tailor Grade-I (Skilled Tailor) and Tailor Grade-II (Semi-skilled Tailor). According to the earlier definition, a person would fall into two respective categories if he was able to stitch a complete garment, but according to the definition in the impugned notification, a tailor would fall under the skilled (Grade-I) or semi-skilled (Grade II) category even if he is capable of stitching only a part of the garment. It is difficult to appreciate as to how a person who is able to stitch only a part of the garment can be regarded as a skilled tailor or semi-skilled tailor, as the case may be. On the face of it, the definition is arbitrary. It is not possible to appreciate as to why the earlier definition which was on a rational basis was given a go-bye and the impugned definition has been given. No explanation is also forthcoming in support of such definition.

Learned Counsel for the Petitioners pointed out that if the definition were to stand, if a person is capable of stitching only a pocket or a collar and he had no capacity to stitch a whole garment, he would have to be treated as a skilled tailor Grade I or semi-skilled tailor Grade II, as the case may be and he would have to be paid the same rate of wages payable to a tailor falling under the two categories, who is capable of stitching the entire garment. I am satisfied that the contention urged for the Petitioners that the definition of, the skilled tailor (Grade I) and semi-skilled tailor (Grade-II) is arbitrary is well founded.

The Petitioners are also entitled to the issue of a direction to the State

Government for reconsideration of the matter.

21. Ply-wood Industries (W.P. Nos. 14333 to 14344/84)

In these Writ Petitions, the following special points are raised -

- (i) Categorisation was, arbitrary,
- (ii) The State-wide rate has been fixed instead of making zones.

As far as this industry is concerned, the first fixation of the minimum wages was u/s 5(l)(a) of the Act with the assistance of the Committee appointed for the purpose. It was done on 16-5-1978 (Annexure-A). A revised notification was published on 26-1-1982 which was the subject matter of earlier W.P. No. 7573/78.

As for as the question of categorisation is concerned, I have dealt with this matter in the Writ Petitions concerning the hotel industry. From the said discussion it is clear that whenever a workman is employed to do more than one kind of work and he falls under more than one category, the employer concerned has got options :

- (i) to pay proportionate wages as permitted u/s 16 of the Act having due regard to the hours of work in which the workman is employed to do different kind of work ; or
- (ii) to pay highest of the wages fixed for different kinds of work. Therefore, I find no substance in the contention.

As far as the fixation of rates on State-wide basis and various other points urged in the Writ Petitions, all of them were urged by these Petitioners in W. P. No. 7573/78 and had been rejected by Bopanna, J. Learned Counsel for the Petitioners, submitted that the judgment was under appeal before the Division Bench. Even so, the fact remains that all the contentions have been rejected by another single Judge which is binding on me. For the reasons set out in the said judgment with which I respectfully agree, I reject all other contentions.

Printing Industry : (W.P Nos. 11563 to 11580/84)

In these Petitions the only special point urged was about categorisation. What I have said in the preceding paragraph regarding Ply-wood industry holds goods for these Petitions also. The contention is therefore rejected.

22. Small Coffee Planters (W. P. Nos. 11592 to 11597/84: and W.P.13071 / 84 ; By their workmen W.P. 13239/84)

In addition to the general points urged, the special points urged in the Writ Petitions Nos. 11592 to 11597 of 1984 and W. P. No. 13071 of 1984 presented by small planters is that the compulsory expenditure required to be incurred by the management for the benefit of workmen have not been considered in fixing the minimum wages. Relevant portion of the averments in the Petition reads -

"As submitted earlier, the workers in the coffee plantations are entitled to several fringe benefits in the form of Housing, Medical Aid, Firewood, Protected Water Supply, etc, These benefits can be computed in terms of money. On what basis, the real wages that they are receiving at present are as follows :

Rs. Ps. Daily Wages 7-25 Provident Fund per day 0-58 National & Festival Holidays with wages per day 0-36 Leave with wages 0-36 Blankets 0-16 Way expenses 0-10 Bonus per day 0-65 Gratuity 0-75 Medical Expenses 0-22 Water charges 0-33 House Rent Allowance 0.67 Fire wood 1-00 ----- 12-15 ----- "As against the above amount of Rs. 12.15 which the labourers are now getting, by the revision of wage rates, they will have to be paid Rs. 16.24 per day including D.A. The increase will thus be to the extent of 25% over what is being now paid. This is an undue burden on the small farmers, who are already groaning under several kinds of taxes. In the Coffee industry the growers cannot pass on the additional cost to the consumers unlike in other industries".

The grievance of the Petitioner is that these relevant facts have been ignored in fixing minimum wages.

W.P. No. 13239/84 is by the workmen in coffee plantations. According to them the wages fixed are too low, that in fixing minimum wages, the requirements of food, clothing, education and medical facilities of three persons ought to have been taken into account. But the same had not been done. In support of the plea they rely on their representation made by the coffee planters themselves, (Annexure-N) Learned Advocate General submitted that it was after considering all the above aspects which were incorporated in the representation made on behalf of the planters dated 28.9.1981 (Annexure-N in W. P. 13239/84) decision had been taken to fix the wages. Similarly his submission was the representation of the workmen had also been considered by the Board, before giving its advice, and the State Government has taken a decision on consideration of all the relevant material.

As I have held earlier, in fixing the wages, prescribed procedure has been followed. All the relevant materials were considered by the Government. The Court cannot sit in appeal and review the rates (See : Malayam Plantations). No case is made out that the wages fixed, is arbitrary or discriminatory and violates any of their fundamental rights. Hence, I find no substance in the points raised in the Petitions presented by small planters as also by their workmen.

23. Petitions by workmen in various employments :

There are number of Writ Petitions presented by Trade Unions representing workmen, other than those considered earlier. W.P. No. 12946/84 is on behalf of workmen in Seri-culture industry, W.P.No. 12430/84 is on behalf of workmen in Rice and Flour Industry, W. P. 13069/84 is on behalf of workmen in Ceramic industry, W.P. 13243 and 13873 of 1984 are on behalf of workmen in Agarbathi Industry, W.P. No. 13250/84 is on behalf of the workmen in Plywood industry, W.P.No. 12431/84 is on behalf of workmen in Film Industry and W.P.No.

12261/84 is on behalf of workmen in Tailoring Industry.

In all the Petitions, the Petitioners have raised the following two points :

(i) The method of fixing dearness allowance adopted in the impugned notification is wrong and, therefore, the provision should be struck down and a direction should be issued to adopt the method incorporated in the 1981 draft notification; and

(ii) The effective date of implementation of the impugned notification should be the same as that of 1982 notification.

In my view both these grounds are not open for consideration in view of the judgment in earlier batch of Writ Petitions. As regards the first point, in the earlier judgment, Bopanna, J. held that dearness allowance, in view of Section 4(l)(i) of the Act must be a variable one having due regard to the increase or decrease in the cost of living index. As regards the 2nd point, the 1982 notification was quashed and the Government was directed to appoint a Board u/s 9, refer the representations to it, and to take final decision on consideration of the representations and the advice tendered by the Board. No direction to give the final notification a retrospective effective date was sought for or granted. Hence both the contentions have to be and are rejected.

In W. P. 12261/84, the workmen in Tailoring Industry have also prayed for a direction to revise their wages on the ground that they have not been fixed on relevant basis. On the Petitions of the managements, I have held that wages fixed In Tailoring Industry requires reconsideration for which the State Government has agreed and an appropriate direction is being issued in that behalf. The workmen are at liberty to-represent their views before the Government or the Board, as the case may be.

24. Summary of Conclusions

. I. On General Points

(1) Appointment of persons representing, employers and employees by designation, i.e., by appointing office bearers of the associations of the employers and employees, as members of the Advisory Board u/s 9 of the Act is valid.

(2) Rule 5 of the Rules which authorises a member nominated on the Advisory Board constituted u/s 9 of the Act to nominate a substitute to attend a meeting in the place of a member unable to attend the meeting is valid.

(3) The nomination of substitute in the place of a member of the Advisory Board constituted u/s 9 of the Act, in view of the wording of Rule 5, has to be made both by the Government which nominated the member and the member. The authorisation by the member alone was not in accordance with Rule 5 of the Rules. But this defect is no ground to set aside the final decision of the Government.

(4) Sri H. S. Rudrappa, President of the Farmers Forum who was nominated as a Member of the Advisory Board constituted u/s 9 of the Act ceased to be a member of the Board after he failed to attend three consecutive meetings of the Board. But as a result, of the vacancy, so caused it could not be said that on and after that date the Board was not validly constituted. The existence of a vacancy in the membership of the Board which tendered the advice is no ground to declare that the final decision of the Government is invalid.

(5) There has been proper consultation as required under the proviso to sub-section (2) of Section 5 of the Act before issuing the impugned notification as the Government had expressed its views on the representations made and had sought the advice of the Board.

(6) The manner of hearing the persons to be affected by the revision of minimum wages prescribed by the statute is the giving of opportunity to all the persons likely to be affected by the revision of wages, to make written representation, by giving not less than two months time from the date of publication of the proposals of State Government to revise the wages. Hence oral hearing is by necessary implication excluded, though nothing prevents the Board or the Government to give oral hearing to all or any of the representations. Therefore, the impugned notifications are not invalid on the ground of not giving oral hearing to the Petitioners.

(7) The nomination of retired officers of the Government to be independent members of the Board even assuming they had participated in the drafting of the proposal to revise the wages, is not invalid. The plea that because they were officers of the State Government and had drafted the proposals, they suffered from bias is untenable.

(8) The absence of Chairman and members of the Board. themselves at most of the meetings of the Board does not constitute a defect in the proceedings of the Board as, Rule 14 of the Rules provided for electing an independent member to be the Chairman for a meeting of the Board at which the Chairman was not present and Rule 15 of the Rules prescribed the quorum of 1/3rd of the membership of the Board.

(9) (a) The rate of dearness allowance prescribed at 0.05 paise per day per point increase above 600 C.P.I. is bad for the reasons set out in paragraph 16 and therefore requires re-consideration.

(b) The maximum amount of dearness allowance fixed in respect of all the employments is invalid as it contravenes Section 4(l)(i) of the Act.

II. ON SPECIAL POINTS

(I) On Petitions by Managements of Tailoring Industry:

The rates of minimum wages fixed for some of the employees in the Tailoring industry compared to the rate of wages of similar employees in other industries

in the same zone are irrational and arbitrary. Therefore the matter requires reconsideration by the State Government. In doing so the State Government will be at liberty to consult the Advisory Board once again.

The definition of the expression "skilled" (Grade-I) and semi-skilled" (Grade-II) Tailors to the effect that a person, who has the capacity of stitching only a part of a garment . falls under those categories, is arbitrary and, therefore, invalid.

(2) On Petitions by the Managements of Coffee Curing Industry:

The disparity brought about in the rates of wages as among workmen who were all along in identical pay-scale, is irrational and arbitrary. Therefore, it requires reconsideration.

(3) On Petitions by the Managements of Hotel Industry :

(i) One of the Notifications, namely, Notification No. SWL 96 LMW 83, dated 5th June 1984 (No. 365) in so far it relates to the fixation of wages for Store Keepers is bad and is liable to be struck down for the reason that wages for Store Keepers has been fixed in the other Notification No. 367 which is less than the fixed wages in Notification No. 3,65, as there cannot be two rates of wages for the same category of employees.

(ii) The categorisation of employees of hotels into various categories is not bad. The employers have the liberty of paying wages to such of the employees who are employed to do more than once category of work in proportion to the hours of work during which different kinds of work are performed or at the highest rate applicable to any-one of those categories. Therefore, there is no infirmity in the categorisation of workers.

(4) On Petitions by the Managements of Coffee Plantation Industry :

The rates of wages fixed for various categories of workers is, after considering the representation of the Planters as to the various types of facilities which the Planters are liable to extend to the plantation employees under the law and the advice tendered by the Advisory Board. The rates of wages so fixed after following the prescribed procedure cannot be a subject matter of interference by the Court as under Article 226, in the absence of any plea and proof that such fixation is violative of any of the fundamental rights of the Petitioners, the High Court cannot sit in appeal against the decision of the Board fixing the minimum wages.

(5) On Petitions by the managements of Ply-wood, and Printing Industries:

One common point urged in these Petitions is the validity of categorisation of employees. There is no substance in the contention. There is also no substance in the contention raised by managements of Ply-wood industry against the treating of entire State as one unit.

(6) On the Petitions of the Employees :

General : Section 4(1)(i) requires the State Government to fix the rate of variable allowance by providing the increase in dearness allowance or decrease in dearness allowance, as the case may be, proportionate to the decrease or increase in consumer price index, from the point at which basic wages are fixed. Therefore, the maximum of dearness allowance fixed as a result of which after a particular point of consumer price index, there would be no increase of dearness allowance is invalid and violative of Section 4(1)(i) of the Act.

(7) On Special Points reg. Hotel Industry :

(i) The rates of wages fixed are arbitrary for the reasons set out at paragraph 19 of this order. The State Government has to re-fix the wages. It shall be at liberty to consult the Advisory Board once again.

(ii) The rate of deduction fixed in lieu of food, clothing and shelter provided by hotels is arbitrary and, therefore, liable to be struck down and a direction has to issue that till the amount of deduction is decided afresh that the rate of deduction fixed in the proposal shall prevail, for the reasons set out in paragraph 20 of this order,

(8) In all other Petitions: The rates of wages fixed by the State Government u/s 5(1)(b) of the Act is after following the prescribed procedure. This Court cannot interfere with the decision of the Government in fixing the minimum wages after following the prescribed procedure unless it is shown that it is violative of any of the Fundamental Rights. No such case is made out.

25. REGARDING RELIEF:

The last point for consideration is, whether some of the impugned notifications found to be invalid to some extent should be struck down leaving liberty for the Government to issue a fresh final notification or it is appropriate only to issue, a direction to revise the impugned notifications in the light of the conclusions. Learned Counsel for the Petitioners strenuously maintained that if in respect of any of the impugned notification, all or any of the grounds of challenge is accepted, the only course open to this Court is to strike down such notification.

Learned Advocate General appearing for the State Government, however, has submitted, as recorded earlier that if this Court were to come to the conclusion that in respect of any aspect any of the impugned notifications is not in accordance with law, the State Government was agreeable for reconsidering the matter in the light of the views expressed by this Court. He submitted that an appropriate Writ could be issued to the State Government to reconsider the matter and to issue a fresh notification in supersession of the impugned notification. He pointed out that striking down of any of the notifications would mean that there would be no minimum wages payable to the employees covered by such notification until fresh notification is issued.

On consideration of the rival arguments , I am convinced that in a matter like this, this Court can mould the relief to be granted under Article 226 of the

Constitution in such manner as this Court considers expedient and it is not necessary to strike down the entire notifications.

In this behalf there, is clear guidance available from the recent judgment of the Supreme Court in *Indian Express -v.-Union of India*, W.P. No. 2656 of 1984 and other connected Cases, D.D. 6-12-1984. In Part VIII of the Judgment the Supreme Court considered the question of the nature of relief to be granted in that case after having come to the conclusion that the notification impugned in that case was liable to be quashed. The Court observed that the quashing of the notification would lead to disastrous result as exemptions granted under them would cease. The Court took the view that the relief could be moulded in the manner considered expedient. Relevant part of the Judgment reads :

"Now arises the question relating to the nature of relief that maybe granted in these petitions. These cases present a peculiar difficulty which arises out of the pattern of legislation under consideration. If the impugned notifications are merely quashed, they being notifications granting exemptions, the exemptions granted under them will cease. Will such quashing revive the notification dated July 15, 1977 which was in force prior to March 1, 1981 under which total exemption had been granted? We do not think so.

XXXXXXXXXX In the result, in view of the peculiar features of these cases and having regard to Article 32 of the Constitution which imposes an obligation on this Court to enforce the fundamental rights and1 Article 142 of the Constitution which enables this Court in the exercise of its jurisdiction to make such order as is necessary for doing complete justice in any cause or matter pending before it, we make the following order in these cases :

1. The Government of India shall reconsider within six months the entire question of levy of import duty or auxiliary duty payable by the petitioners and others on newsprint used for printing newspapers, periodicals, etc, with effect from March 1, 1981. The petitioners and others who are engaged in newspaper businesses shall make available to the Government all information necessary to decide the question.

- 2.If on such reconsideration the Government decides that there should be any modification in the levy of customs duty or auxiliary duty with effect from March 1, 1981, it shall take necessary steps to implement its decision

- 3.Until such redetermination of the liability of the petitioners and others is made, the Government shall recover only Rs. 550/- per MT on imported newsprint towards customs duty and auxiliary duty and shall not insist upon payment of duty in accordance with the impugned notifications. The concessions extended to medium and small news-papers may, however, remain in force.

- 4.It, after such redetermination, it is found that any of the petitioners is liable to pay any difficult amount by way of duty, such deficit amount shall be paid by such petitioner within four months from the date on which a notice of demand is

served on such petitioner by the concerned authority. Any bank guarantee or security given by the petitioners shall be available for recovery of such deficit amounts.

5.If, after such redetermination, it is found that any of the "petitioners is entitled to any refund, such refund shall be made by the Government within four months from the date of such redetermination.

6.A Writ shall issue to the respondents accordingly in these cases."

The High Courts under Article 226 are entrusted with the duty of enforce fundamental Right as also Legal Rights and to issue appropriate Writ or Order for enforcement of such rights. In the light of the guidelines available from the above order, I agree with the submission made by the learned Advocate General, that this Court instead of quashing the notifications impugned could and should issue a direction to re-do that part of the notification found invalid. I am convinced that there is no justification for quashing the impugned notification for the reason that by the quashing of the notification there will be no rate of minimum wages payable to the concerned workmen and consequently it would cause considerable hardship to the workmen and that by issuing a direction to the State Government to re-do the impugned notifications with a further direction that notifications as modified pursuant to the writ issued, would be effective from the date of the impugned notification would fully safeguard the interests of the parties and would meet the ends of justice.

In the result, I make the following order -

I. In W.P. Nos. 10280 to 10314, 11759 to 11763 of 1984

(By Management of Tailoring Industry)

(1) Writ petitions are partly allowed.

(i) The impugned notification in so far it relates to the definition of Grade-I and Grade-II Tailors, is struck-down.

(ii) A Writ in the nature of mandamus shall issue to the State Government to reconsider and re-fix the rates of wages fixed in the impugned notification for various categories of employees in Tailoring industry including the rate of dearness allowance in the light of this order and within six months from the date of this order.

(iii) The Petitioners shall continue to pay the wages at the rates fixed in the impugned notifications until revised rates are published by the State Government pursuant to the directions given in this order.

(iv) The revised rates of basic wages fixed by the State Government shall be effective from the date with effect from which the impugned notification came into force and the revised rates of dearness allowance shall be effective from 1st April 1985.

(v) If the revised rates of wages fixed by the State Government is less than the rates fixed in the impugned notification, the Petitioners shall be at liberty to recover the excess amount from their employees from their future salary in easy instalments.

(vi) If the revised rates of wages fixed are higher than the rate fixed in the impugned notifications, the Petitioners shall be liable to pay the difference of wages to the workmen.

II In W.P. Nos. 10893 to 10902, 10924 to 10927, 11067 11266 to 11273, 12085 to 12105 and 14902 of 1984: (The managements of Hotel Industry)

(1) The Writ Petitions are partly allowed.

(i) The Notification No. SWL 96 LMW 83 (No. 365) in so far it relates to the rates of wages fixed for Store Keepers, is struck down.

(ii) A Writ of Mandamus shall issue to the State Government to reconsider and refix the rates of dearness allowance within six months from the date of this order and in the light of this order.

(iii) The revised rates of clearness allowance shall be effective from 1st April 1985.

(iv) Till the revised rates are fixed, wages at the rates fixed in the impugned notifications shall be paid to the employees subject to recovery of excess if any from the employees after the rates are refixed.

(v) The Writ Petitions are dismissed in all other respects.

III. In W.P. Nos. 13005. 13070 and 14839 of 1984

(By Employees of Hotel Industry)

(1) The Writ Petitions are partly allowed.

(i) Both the impugned notifications dated 5th June 1984, in so far they relate to the amount of deduction from the wages of the employees is struck down.

(ii) A Writ of Mandamus shall issue to the State Government to refix the amount of deduction in lieu of food, shelter, etc., furnished to the employees in the light of this order within six months from the date of this order and in the light of this order.

(iii) Till the State Government publishes the revised rates of wages and deductions, the rates of deductions provided in the notification dated 24th July 1981 shall operate.

(iv) A Writ of Mandamus shall issue to the State Government to reconsider and refix the rates of wages of various categories of employees in Hotels in the light of this order within six months from the date of this order.

(v) The employees shall continue to get the wages at the rates fixed in the impugned notifications until revised rates are published by the State Government pursuant to the directions given in this order.

(vi) The revised rates of basic wages fixed by the State Government shall be effective from the date with effect from which the impugned notification came into force and the revised rates of dearness allowance shall be effective from 1st April 1985.

(vii) If the revised rates of wages fixed by the State Government is less than the rates fixed in the impugned notification, the employers shall be at liberty to recover the excess amount from their employees from their future salary in easy instalments.

(viii) If the revised rates of wages fixed are higher than the rate fixed in the impugned notifications, the employers shall be liable to pay the difference of wages to the workmen.

IV.In W.P. Nos. 10480 to 10498 of 1984

(By Managements of Coffee Curing Industry)

(i) The Writ Petitions are partly allowed.

(ii) A Writ in the nature of Mandamus shall Issue to the State Government, to reconsider and refix the rates of wages fixed for various categories of workmen and the rates of dearness allowance in the light of this order within six months from the date of this order.

(iii) The Petitioners shall continue to pay the wages at the rates fixed in the impugned notifications until revised rates are published by the State Government pursuant to the directions given in this order.

(iv) The revised rates of basic wages fixed by the State Government shall be effective from the date with effect from which the impugned notification came into force and the revised rates of dearness allowance shall be effective from 1st April 1985.

(v) If the revised rates of wages fixed by the State Government is less than the rates fixed in the impugned notification, the Petitioners shall be at liberty to recover the excess amount from their employees from their future salary in easy instalments.

(vi) If the revised rates of wages fixed are higher than the rate fixed in the impugned notifications, the Petitioners shall be liable to pay the difference of wages to their workmen.

V.In. W.P. Nos. 14333 to 14344 of 1984

(By Managements of Ply-wood Industries) AND W. P. No. 14203 of 1984 and 15264 to 15277 of 1984 (By managements of Cotton Ginning Industry) And W. P.

Nos. 14542 to 14545 of 1984 and 15428 of 1984 (By Management of Film Industry) And Writ Petition No. 14840 of 1984 (By Managements of Rice and Flour Mills) (i) The Writ Petitions are partly allowed.

(ii) A Writ of Mandamus shall issue to the State Government to reconsider and re-fix the rates of dearness allowance, within six months from the date of this order in the light of this order.

(iii) The revised rates of dearness allowance shall be effective from 1st of April 1985.

(iv) Till the revised rates of dearness allowance are fixed the dearness allowance at the rate fixed in the impugned notifications shall be paid to the employees subject to recovery of excess if any from the employees after the rates are re-fixed.

(v) The Petitions are dismissed in all other respects.

VI. In W.P. Nos. 11592 to 11597

(By Small Planters) AND W.P. No. 13071 of 1984 (By employees in Coffee plantation)

The Writ Petitions are dismissed.

VII. In W. P. Nos. 12261, 12430, 124313 12945, 12946, 13005, 13069, 13243, 13250, 13873 and 14839 of 1984

(i) The Writ Petitions are partly allowed.

(ii) The notifications impugned in each of the Petitions, in so far they relate to the fixation of maximum amount of dearness allowance, are struck down.

(iii) The Petitions are dismissed in all other respects.

VIII. The Parties shall bear their own costs in all the Petitions.