

(1961) 09 KL CK 0012

In the High Court Of Kerala

Case No : O.P. No's. 1182, 1206, 1211, 1212 and 1302 of 1959, 51, 1593, 1596, 1597, 1601, 1604 and 1605 of 1960 and 2, 31, 61, 95, 102, 169, 170, 171 and 216 of 1961

D.M.S. Rao and Others

APPELLANT

Vs

The State of Kerala and Another

RESPONDENT

Date of Decision : 11-09-1961

Acts Referred:

Constitution of India, 1950 — Article 19(1), 19(6), 43

Industrial Disputes Act, 1947 — Section 2

Minimum Wages Act, 1948 — Section 27, 3, 3(1), 9

Citation : AIR 1963 Ker 115 : (1963) 1 LLJ 176

Hon'ble Judges : C.A. Vaidialingam, J

Bench : Single Bench

Advocate : V.K.K. Menon, C.S. Padmanabha Iyer and M. Ramachandran, in O.P. Nos. 1182, 1211, 1212 and 1302 of 1959 and O.P. Nos. 51 and 1593 of 1960 and O.P. No. 2 of 1961, V.K.K. Menon, C.S. Padmanabha Iyer and M. Ramachandran in O.P. 1206 of 1959, M.I. Joseph, in O.P. Nos. 1596, 1597, 1601, 1604 and 1605 of 1960 and O.P. Nos. 31, 61, 95 and 216 of 1961, N.D.P. Nambudripad and M. Viswanatha Menon, in O.P. No. 102 of 1961, C.K. Sivasankara Panicker and P.G. Parameswara Panicker, in O.P. Nos. 169, 170 and 171 of 1961, for the Appellant; Government Pleader, in O.P. Nos. 1182, 1211, 1212 and 1302 of 1959 and O.P. Nos. 51 and 1593 of 1960 and O.P. No. 2 of 1961, in O.P. Nos. 1596, 1597, 1601, 1604 and 1605 of 1960 and O.P. Nos. 31, 61, 95 and 216 of 1961, in O.P. No. 102 of 1961, in O.P. Nos. 169, 170 and 171 of 1961, Govt. Pleader and T.C.N. Menon and N. Gangadhara Menon, in O.P. 1206 of 1959, for the Respondent

Judgement

C.A. Vaidialingam, J.—In these batch of 21 writ petitions, the validity of the notifications issued by the State Government fixing minimum rates of wages for the industries in question under the provisions of the Minimum Wages Act, 1948 as amended by subsequent enactments, is challenged. There are also certain minor contentions raised in some of the writ petitions, which will be considered at the appropriate stage.

2. The two main contentions that have been urged and which are common to all the writ petitions are :

(a) in fixing the minimum wages in the industries in question, the capacity of the employers to bear the burden proposed to be imposed has not been considered; and

(b) the minimum rates of wages has not been fixed by the appropriate Government in these cases within one year of the date of the Notification issued by the State Government, adding the particular employment in Part I of the Schedule to the Act.

3. The above writ petition can be broadly divided into four groups, namely, (1) "Plywood Industry; (2) Saw Mills; (3) Film Industry; and (4) Hotels and Restaurants.

4. O. P. 1182/59, in which the petitioner is a Plywood Factory, falls under the first group. This petitioner is represented by its learned counsel Shri V. K. K. Menon.

5. The second group of cases is filed by the owners or proprietors of Saw Mills and O. P. Nos. 1206/59, 1211/59, 1212/59, 1302/59 and 51/60 fall under this group. Here again, the petitioners, though different, are represented by their learned counsel Shri V. K. K. Menon.

6. The third group of cases is the one filed by the owners or proprietors of Film Industry. Some of the petitioners are film distributors and the rest are theatres or talkie houses. In this group will fall O. P. Nos. 1593/60, 1596/60, 1597/60, 1601/60, 1604/60, 1605/60, 2/61, 31/61, 61/61 and 95/61. In this group, the petitioners in O. P. Nos. 1593/60 and 2/61 are represented by their learned counsel Shri V. K. K. Menon and in all the other Original Petitions falling in this group, the petitioners therein are represented by their learned counsel Mr. M. I. Joseph.

7. The last or the fourth group is that filed by owners or proprietors of Hotels and Restaurants. In this group will fall O. P. Nos 102/61, 169, 170, 171/61 and 216/61. The petitioner in O. P. 102/61 is represented by his learned counsel Mr. N. D. P. Nahboodiripad and the petitioners in O. P. Nos. 169, 170 and 171/61 are represented by their learned counsel Shri C. K. Sivasankara Panicker and the petitioner in O. P. No. 216/61 is represented by his learned counsel Mr. M. I. Joseph.

8. The learned Government Pleader is appearing for the State, which is the respondent in all the O. Ps.

9. I may also state that the relevant notifications fixing the minimum wages for the plywood industry and also the saw mills in respect of the writ petitions covered by groups 1 and 2 are the same. Similarly, the notifications fixing minimum rate of wages in respect of the film industry and hotels and restaurants in respect of the writ petitions coming under groups 3 and 4 are the same.

10. The first contention that the capacity of the industry or the employers to bear the burden proposed to be imposed has not been taken into account in fixing the minimum rates of wages in these cases need not detain me long because the position is now concluded against the petitioners by the recent judgment of their Lordships of the Supreme Court reported in U. Unichoyi and Others Vs. The State of Kerala, . In fact, there are certain minor grounds of attack raised in these writ petitions against the validity of the Minimum Wages Act and that an unreasonable restriction on the employers has been placed by the Act and that it is violative of Article 19(1)(g) of the Constitution.

All these aspects are also concluded by the decisions of the Supreme Court, which have been adverted to in the decision referred to earlier. The recent decision of the Supreme Court referred to earlier clearly shows that the restrictions imposed under the Act are in the interests of the general public and with a view to carry out the directive principles of State policy as embodied in Article 43 and that the impugned Act is protected by the terms of Clause (6) of Article 19 of the Constitution. That decision also lays down that the validity of the Act has been firmly established and that

"there can no longer be any doubt that in fixing the minimum wages rate as contemplated by the Act the hardship caused to the individual employers or their inability to meet the burden has no relevance."

11. in view of this recent decision of the Supreme Court, the first contention raised on behalf of the petitioners has to be rejected. Before I advert to and consider the second contention, it is necessary to state the various matters which preceded the issue of the notifications under attack. As I mentioned earlier, the facts which are stated in respect of group No. 1 will apply to group No. 2 also and what is stated regarding group No. 3 will apply to group No. 4 also.

12. The Kozhikode Taluk Central Council of Local Trade Unions representing the workmen employed in the timber industry appear to have submitted a memorandum to the Labour Commissioner, Kerala State requesting the latter to fix minimum rates of wages for workmen employed in the timber industry. The State Government, after considering these representations and making inquiries, came to the conclusion that minimum rates of wages has to be fixed in the timber industry in the State.

Accordingly, the State Government, by virtue of the powers conferred u/s 27 of the Minimum Wages Act, 1948 published a Notification No. L1/5079/57/L and LAD, dated 22nd May, 1957. declaring their intention to add employment in the timber industry to Part I of the Schedule to the Minimum Wages Act. The notification also stated that the proposals will be taken into consideration after the expiry of three months from the date of publication and the objections and suggestions received before the said period will be considered by the State Government. There were certain objections received. Finally, the Government after a consideration of those objections, published a Notification No. L1/5079/57/

L and LAD dated 19th October, 1957, u/s 27 of the Minimum Wages Act amending Part I of the Schedule to the Act by adding the employment in timber industry as item No. 22.

13. The State Government again, in exercise of their powers conferred by Clause (a) of Sub-section (1) of Section 5 of the Minimum Wages Act, appointed a committee, by notifications, dated 28th January, 1958 and 12th March, 1958, for holding inquiries and to advise them in fixing minimum rates of wages in respect of employment in the timber industry and the State Government also nominated the persons mentioned in paragraph 3 of the counter-affidavit of the State in O. P. 1182/59 as members of the committee. It is not necessary to refer to the various representatives of the employers and employees nominated to the committee, excepting to refer to the independent member who was nominated to the committee and who was also appointed as the chairman of the committee. This is being referred to by me because there is a contention raised by Shri V. K. K. Menon in respect of the writ petitions coming under groups 1 and 2, that the appointment of the chairman does not satisfy the requirements mentioned in Section 9 of the Act. That contention will be dealt with by me later; but it is enough to state at this stage that the independent member who was nominated to the committee and who was also appointed as chairman of the committee was Shri W. Krishnankutty Menon, Professor of Economics, Maharaja's College, Ernakulam.

The chairman of the committee, by his letter dated 7th February, 1958, appears to have sought for clarification from Government regarding the exact scope of the terms of reference. According to the chairman, there was a doubt as to whether employment in match industry could also be included within the scope of the reference. The State Government clarified the position by their communication, dated 24th March, 1958, that the terms of reference to the committee included all types of employment in timber industry, namely, saw mills, furniture workshops, plywood factories, factories making slate frames, wooden toys, packing cases etc.

14. The committee circulated elaborate questionnaire among the employers and workmen, collected necessary data regarding the nature of the industry, prevailing rates of wages, its place in the economy of the State and other relevant materials. The committee examined a large number of employers and employees and after a consideration of all these facts and circumstances, submitted its report, dated 29th January, 1959, to the Government. After considering the advice of the committee, the Government by the Notification No. L1/7158/59/L and LAD, dated 22nd August 1959 and published in the Kerala State Gazette, dated 1st September, 1959, fixed minimum rates of wages in respect of employment in timber industry.

15. It is this notification, dated 22nd August, 1959, fixing minimum rates of wages in respect of timber industry that is the subject of attack in the writ petitions coming under groups 1 and 2. No doubt, there is another special attack

made in the writ petition filed by the plywood factory coming under group No. I namely, O. P. 1182/59 that plywood industry as such is something different from timber industry and inasmuch as the notifications issued u/s 27 relate only to timber industry and not plywood industry, the State Government has no jurisdiction to fix minimum rates of wages in respect of plywood industry also as they have purported to do under the impugned notification. That aspect also will be dealt with by me later in the judgment.

16. The main contention is that the notification amending Part I of the Schedule to the Act by adding the employment in timber industry as Item 22 was issued by the State Government on 19th October, 1957. Under Sub-clause (iii) of Clause (a) of Sub-section (1) of Section 3 of the Minimum Wages Act, the fixation of the minimum rates of wages has to be done by the State Government before the expiry of one year from the date of the notification namely, 19th October, 1957. That period of one year has expired at any rate, on 19th October, 1958. Admittedly, the fixation of the minimum rates of wages has been made in these cases by the Government notification, dated 22nd August, 1959, long after the period of one year. Therefore, the fixation of minimum rate of wages under the impugned notification is illegal, void and without jurisdiction.

17. The statement of facts referred to earlier have been taken by me from the counter-affidavit filed on behalf of the State and no controversy has been raised so far as the actual dates and the other matters referred to above are concerned.

18. Coming to the writ petitions forming groups 3 and 4, here again, the notification that is challenged is the same. The relevant facts leading to the final notification issued on 9th November, 1960, fixing minimum rates of wages and published in the State Gazette on 22nd November, 1960, which is under attack in these groups of writ petitions are again to be found in the counter-affidavit filed on behalf of the State in O. P. 1593/60. Here again, there is no controversy about the statement of facts contained in the said counter-affidavit.

19. The State Government, by virtue of its powers u/s 27 of the Minimum Wages Act published a notification, dated 4th July, 1957, declaring their intention to add employment in Shops and Establishments (including Hostels and Restaurants) to Part I of the Schedule to the Minimum Wages Act. The notification also mentioned that the proposals will be taken into consideration after the expiry of three months from the date of publication of the notification in the official gazette and all objections received within the time mentioned will be considered by the State Government.

20. The State Government also issued another notification, on 24th August, 1957, amending the previous notification dated 4th July, 1957, by including the word "hotels" instead of the word "hostels".

21. The State Government again after considering the representations received by it, published a final notification u/s 27 of the Minimum Wages Act, 1948, dated 3rd December, 1957. amending part I of the Schedule to the Act by adding

employment in "Shops and Establishments (including Hotels and Restaurants)" as Item No. 21. The State Government again in exercise of its powers under Clause (a) of Sub-section (1) of Section 5 of the Act appointed a committee by a notification dated 5th February, 1958, to hold inquiries and advise them in fixing minimum rates of wages in employment in "Shops and Establishments (including Hotels and Restaurants)". Again, u/s 9 of the Act, Government also nominated representatives of the employers and employees to the committee and Shri P. R. Krishna Ayyar, Professor of Economics, St. Berchman's College, Changanacherry, was nominated as an independent member. The said person was also appointed as chairman of the committee.

22. The committee, after its first sitting on 5th May, 1958, asked for certain clarifications from the Government. By its letter dated 5th May, 1958, the committee requested the Government to define the scope of the inquiry and also to furnish the committee with a list of employments in which minimum rates of wages have to be fixed. The Government, by its communication dated 7th June, 1958, clarified the position stating that the scope of the inquiry of the committee will be confined to employment in all shops and establishments within the meaning of the word "Shops and Establishments" as defined in Section 2 (6) and Section 2 (16) of the Travancore-Cochin Shops and Establishments Act, 1125, (Act IX of 1125) excluding banks and other establishments covered by the employments included in the Schedule to the Act.

23. The committee later on circulated a very elaborate questionnaire among the employers and workmen engaged in the employment in Shops and Establishments and collected information regarding the nature of work, the prevailing rates of wages and all other relevant materials. The committee also examined a large number of employers and employees and after a consideration of the entire matter, submitted its report dated 24th October, 1959. to the State Government, The State Government consulted the Minimum Wages Advisory Board constituted u/s 7 of the Minimum Wages Act. The said Advisory Board considered the matter at its meeting held on 6th July 1960 and forwarded its views to the State Government.

24. The State Government ultimately in exercise of its powers conferred on it by Clause (a) of Sub-section (1) of Section 3 read with Sub-section (2) of Section 5 of the Act and after considering the advice of the committee, fixed minimum rates of wages payable to the employees employed in Shops and Establishments (including Hotels and Restaurants) by its Notification No. 50165/L/1/60/HLD, dated 9th November, 1960. The said notification also stated that the minimum rates of wages fixed therein are to come into effect from 1st January, 1961.

25. it is this notification that is again challenged by the petitioners in the writ petitions coming under groups 3 and 4. The main ground of attack here again is that the fixation of minimum rates of wages on 9th November, 1960, is beyond one year from the date of the notification dated 3rd December, 1957, including the employment in question as item 21 in Part I of the Schedule to the Act.

26. Before I consider this ground of attack in these writ petitions, and which ground of attack has loomed large before me, it is desirable that I dispose of certain minor contentions that have been raised regarding either the constitution of the committee or the appointment of a chairman, or the power of the State Government to issue a general notification regarding employment in Shops and Establishments (including Hotels and Restaurants).

27. This is also a convenient stage to refer to the salient provisions of the Minimum Wages Act, 1948, as it stands at present. The preamble to the Act states that it is found expedient to provide for fixing minimum rates of wages in certain employments. Section 2 is the interpretation section. Clause (b) defines "appropriate Government" Clause (e) defines "employer"; Clause (g) defines "scheduled employment"; Clause (h) defines "wages", and Clause (i) defines "employee". Certain other expressions also are defined in Section 2.

Section 3 deals with fixing minimum rates of wages. Sub-sections (1) and (1-A) of Section 3 are as follows:

Fixing of minimum rates of wages.—Section 3(1) The appropriate Government shall, in the manner hereinafter provided,—

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

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

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

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

(iii) in an employment added to Part I or Part II of the Schedule by notification under section 27, before the expiry of one year from the date of the notification;

(b) review at such intervals as it may think fit, such intervals not exceeding five years, the minimum rates of wages so fixed and revise the minimum rates, if necessary;

Provided that where for any reason the appropriate Government has not reviewed the minimum rates of wages fixed by it in respect of any scheduled employment within any intervals of five years, nothing contained in this clause shall be deemed to prevent it from reviewing the minimum rates after the expiry of the said period of five years and revising them, if necessary, and until they are so revised the minimum rates in force immediately before the expiry of the said period of five years shall continue in force.

(1-A) Notwithstanding anything contained in Sub-section (1) the appropriate

Government may refrain from fixing minimum rates of wages in respect of any scheduled employment in which there are in the whole State less than one thousand employees engaged in such employment, but if at any time, whether before or after the expiry of any time limit specified in Sub-section (1), the appropriate Government comes to a finding after such inquiry as it may make or cause to be made in this behalf that the number of employees in any scheduled employment in respect of which it has refrained from fixing minimum rates of wages has risen to one thousand or more, it shall fix minimum rates of wages payable to employees in such employment within one year from the date on which it comes to such finding".

It may also be stated at this stage that the date "before the 31st December, 1959", occurring in Sub-clauses (i) and (ii) of Clause (a) of Sub-section (1) and the provision "before the expiry of one year from the date of the notification" occurring in Sub-clause (iii) of Clause (a) of Sub-section (1) of Section 3 were incorporated by the Minimum Wages (Amending) Act -- Central Act 30 of 1957. There have also been previous enactments extending the time mentioned originally in Sub-clauses (i) and (ii) of Clause (a) of Sub-section (1) of Section 3.

Sub-section (2) of Section 3 gives power "to the appropriate Government to fix a minimum time rate, minimum piece rate, etc., as mentioned in Clauses (a) to (d) therein. Again, under Sub-section (3) of Section 3 power is given to fix different minimum rates of wages as mentioned therein.

Section 4 states what the minimum rate of wages fixed or revised may consist of.

Section 5 dealing with the procedure for fixing and revising minimum wages is as follows :

"Section 5. (1) in fixing minimum rates of wages in respect of any scheduled employment for the first time under this Act or in revising minimum rates of wages so fixed, the appropriate Government shall either -

(a) appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision, as the case may be or

(b) by notification in the Official Gazette, publish its proposals for the information of persons-likely to be affected thereby and specify a date, not less than two months from the date of the notification, on which the proposals will be taken into consideration.

(2) After considering the advice of the committee or committees appointed under Clause (a) of Sub-section (1), or as the case may be, all representations received by it before the date specified in the notification under Clause (b) of that sub-section, the appropriate Government shall, by notification in the official Gazette, fix, or as, the case may be, revise the minimum rates of wages in respect of each scheduled employment and unless such notification otherwise provides, it shall come into force on the expiry of three months from the date of its issue:

Provided that where the appropriate Government proposes to revise the minimum rates of wages by the mode specified in Clause (b) of Subsection (1) the appropriate Government shall consult the Advisory Board also."

Sections 7 and 8 deal with Advisory Board and Central Advisory Board respectively.

Section 9 dealing with the composition of committees, etc., is as follows :-

"Section 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".

Section 10 gives power to the appropriate Government to correct clerical or arithmetical mistakes at any time in any order fixing or revising minimum rates of wages.

Section 11 deals with the payment of minimum wages in the manner mentioned therein.

Section 12 makes it obligatory on an employer to pay every employee engaged in a scheduled employment a rate of wages not less than the minimum rates of wages fixed by a notification u/s 5 of the Act.

Section 27 giving power to the appropriate Government to add to the schedule, is as follows :

"Section 27. The appropriate Government, after giving by notification in the Official Gazette not less than three months" notice of its intention so to do, may, by like notification, add to either part of the Schedule any employment in respect of which it is of opinion that minimum rates of wages should be fixed under this Act and thereupon the Schedule shall in its application to the State be deemed to be amended accordingly."

Section 29 gives power to the Central Government to frame rules in respect of certain matters and Section 30 gives power to the appropriate Government to make rules regarding the matters referred to therein.

28. Mr. M. I. Joseph, learned counsel, who appears for some of the petitioners coming under groups 3 and 4, and referred to earlier in this judgment, urged that the State Government has no power to issue a general notification regarding the employment in Shops and Establishments (including Hotels and Restaurants), i. e., the learned counsel urged that hotels, restaurants, film producers and distributors and theatres and talkie houses must be considered to be separate industries, each standing by itself.

The learned counsel also urged that the scheme of the Act will clearly show that

minimum rates of wages, if at all, can be fixed only in respect of each independent industry and the provisions of Section 27 will also show that the Government must publish a notification in respect of each of the industries separately. On this basis the learned counsel urged that taking every one of these industries, namely, hotels, restaurants, film distributors, theatres as a separate and independent industry, there has been no proper representation, for each of the industries in the committee constituted by the Government as per the provisions of Section 9 of the Act.

29. This contention has also been supported by Mr. N. D. P. Namboodiripad and Mr. C. K. Sivasankara Panicker, learned counsel appearing in some of the writ petitions coming under group No. 4.

30. On the other hand, the learned Government Pleader urged that the expression "Shops and Establishments" used by the State Government is not a novel or a new expression unknown to the public, because there is already an enactment governing those subjects, namely, the Travancore-Cochin Shops and Establishments Act, 1125 --T. C. Act IX of 1125. The preamble to the Act will show that it is enacted for the regulation of conditions of work in shops, commercial establishments, restaurants, theatres and other establishments. "Commercial establishment" is defined in the Act under Clause (3) of Section 2. Again, "establishment" is defined in Clause (6). Similarly, "restaurant" in Clause (15); "shop" in Clause (16); and "theatre" in Clause (17) of Section (sic).

In fact, the clarification issued by the State Government on 7th June, 1958, clearly mentioned that the enquiry of the committee is to be confined to employment in all shops and establishments as defined in Sections 2 (6) and 2 (16) of the Act of 1125 excluding certain other establishments. It is not the case of any of the petitioners that the business run by them will not come under the definition of either "shop" or "establishment" as contained in the Travancore-Cochin Act. Therefore, the learned Government Pleader urged that the fixation of minimum wages in respect of these establishments cannot be challenged on this ground.

31. The learned Government Pleader also urged that when once employment in Shops and Establishments (including Hotels and Restaurants) is what is being considered by the committee for the concerned employers and employees and an independent person who was nominated to the committee, has also been appointed as chairman.

32. After a consideration of the various points of view urged by the learned counsel for the petitioners and the learned Government Pleader on this aspect. I am inclined to accept the points of view urged by the learned Government pleader. Admittedly, as pointed out by him, there is an enactment dealing with Shops and Establishments, namely, the Travancore-Cochin Act of 1125 referred to above and in my view, there is no illegality or irregularity committed by the State Government when it included the employment in Shops and Establishments

(including Hotels and Restaurants) as item 21 in Part I of the Schedule to the Act. Even u/s 27 of the Minimum Wages Act, the power given to the appropriate Government is to add to either part of the Schedule "any employment in respect of which it is of opinion that minimum rates of wages should be fixed under this Act". Therefore, the notification issued by the State Government fixing the minimum rates of wages in respect of the employment in "Shops and Establishments (including Hotels and Restaurants)" is perfectly within the jurisdiction of the Government.

33. I am not also impressed with the contention regarding the violation of the provisions of Section 9 of the Minimum Wages Act. If once the view expressed by me above is correct, it has not been shown that even on that basis the representation on the committee does not satisfy the requirements of Section 9. Therefore, the contention of the learned counsel for the petitioners on this aspect of the matter has to be rejected.

34. The learned counsel, Shri V. K. K. Menon, appearing for the petitioners in groups 1 and 2 raised a contention that the constitution of the committee appointed by the Government, is not in accordance with the provisions of Section 9 of the Minimum Wages Act. This contention is to be confined only to the committee constituted in respect of the employment in timber industry.

35. As I have mentioned earlier, the independent member who was nominated to the committee, was Shri W. Krishnankutty Menon, Professor of Economics, Maharaja's College, Ernakulam. The contention of the learned counsel Shri V. K. K. Menon is that the chairman being a Professor in a Government College, is an official under the Government and therefore, he cannot be considered to be an independent person as contemplated u/s 9 of the Minimum Wages Act. Section 9 of the Minimum Wages Act has been extracted earlier in this judgment. It will be seen from the section, that apart from representatives of employers and employees in the scheduled employments, there should also be independent persons not exceeding one-third of its total number of members and it also states that one of such independent persons shall be appointed the chairman by the appropriate Government.

36. in this case, there is no controversy that there was only one independent member nominated to the committee and that was Mr. W. Krishnan-kutty Menon and he was also appointed chairman of the committee by the Government.

37. The aspect that is presented before me by Mr. V. K. K. Menon, learned counsel is that the expression "independent person" occurring in Section 9 should be understood as person who is independent of everybody including the Government which makes the nomination. The Government is vitally interested in the fixation of minimum rates of wages and therefore, a Government official cannot be considered to be independent of the Government. Therefore, the purpose underlying Section 9 will be defeated by the Government nominating its own officers on the committee.

38. Mr. V. K. K. Menon in this connection, relied upon a decision of the Madhya Pradesh High Court in *Narottamdas Harjiwandas Vs. P.B. Gowarikar, Inspector, Minimum Wages, Assistant Labour Commissioner's Office and Others*, . The view of the learned Judges therein appears to be that they are not prepared to accept that the expression "independent persons" occurring in Section 9 of the Minimum Wages Act means persons who are independent only of employers and employees in the scheduled employment and that it can include also an official. The learned Chief Justice observes at p. 187 as follows :

"The expression "independent person" must be construed to mean as one who is independent Of the employers and the employees as well as the Government. A Government servant's freedom of action and thought is limited by the fact that he is required to act for carrying out Government's policy"".

On the strength of this decision, the learned counsel Mr. V. K. K. Menon urges that the chairman Mr. W. Krishnankutty Menon in this case, who was a Professor in the Maharaja's College and as such an officer under the Government, cannot be considered to be an independent person and therefore, his appointment as the chairman treating him as an "independent person" is not valid and therefore the proceedings of the committee itself are also invalid.

On the other hand, the learned Government Pleader urged that even assuming that there is any irregularity in the nomination of persons to the committee u/s 9 of the Minimum Wages Act, the scheme of the Act will clearly show that the Government is not bound by the report of the committee. No doubt, the Government will give very great regard to the matters contained in the report.

39. The learned Government Pleader further urged that though the expression "independent person" has not been defined in the Minimum Wages Act, useful guidance will be obtained as to how that expression has been understood in the Industrial Disputes Act, 1947 -- Central Act 14 of 1947. He referred me to Clause (i) of Section 2 of the said Act to show that a person shall be deemed to be "independent" for the purpose of his appointment as chairman or other member of a Board, Court, or Tribunal, if he is unconnected with the industrial dispute referred to such Board, Court or Tribunal or with any industry directly affected by such dispute. There is also a proviso to Clause (i) of Section 2 of the Industrial Disputes Act which is not necessary to be adverted to.

Therefore, the learned Government Pleader urged that in this case, Sri. W. Krishnankutty Menon, who was nominated as an independent member of the committee and also appointed as chairman, is one who is unconnected with employment in timber industry which was the matter referred to the committee. The learned Government Pleader also relied upon a decision of the Punjab High Court in *Jaswant Rai v. State of Punjab*, AIR 1958 Pijnj 425 wherein the learned Judge has upheld the appointment of a Labour Commissioner who was no doubt, an official as an independent member of the Minimum Wages Committee in the following words occurring at p. 427 :

"It is however, not laid down anywhere in the Act or elsewhere that an official of the Government cannot be nominated as a member of the committee or that only a non-official can be considered to be an independent person.

To my mind an "independent" person in this context means a person who is neither an employee nor an employer in the employment for which minimum wages are to be fixed."

I am not inclined to accept the contention of Mr. V. K. K. Menon, learned counsel in this regard. Even in the decision of the Madhya Pradesh High Court, the learned Chief Justice states that Section 9 of the Minimum Wages Act does not prohibit the appointment of an official on the Board. But with great respect to the learned Judges of the Madhya Pradesh High Court, I am not inclined to adopt their construction of the expression "independent person" as one who is independent of the employers and the employees as well as the Government. In my view, if I may say so with respect, there is no such indication available from the provisions of Section 9 of the Minimum Wages Act. When it speaks of persons to be nominated by the Government to the committee representing employers and employees in the scheduled employments and also of nominating an "independent person", in my view, the object of the enactment is that the "independent person" should be one who has nothing to do with the employers or employees in the scheduled employment in question. It may be that under particular circumstances, when an industry, in which the State Government as an employer may also be vitally interested and in which case it can be considered to be an employer, it may not be proper to nominate an official to the committee treating him as an independent member.

40. But I am not certainly inclined to hold that excepting in circumstances mentioned above, it is not open to the State Government to nominate officials, who are totally unconnected with employers or employees regarding the scheduled employment in question. If such officials can be dominated, there is no impediment to such officials being appointed also as chairman of the committee. The fact that the Government, in a larger sense, is interested in fixing a minimum rate of wages, by itself, will not mean that an official of the State Government, who is nominated on such committee, cannot be considered to be an "independent person". Though no doubt, it may not be strictly proper to adopt the test laid down in respect of an "independent person" in Clause (i) of Section 2 of the Industrial Disputes Act, nevertheless, that interpretation can also be reasonably placed upon the expression "independent person" occurring in Section 9 of the Minimum Wages Act.

Accepting the contentions of Mr. V. K. K. Menon will mean that no Government official can ever be nominated to the Minimum Wages Committee. I am not prepared to accept this very large contention. Therefore, the contention of Mr. V. K. K. Menon regarding the invalidity of the appointment of Shri. W. Krishnankutty Menon, Professor of Economics, Maharaja's College, Ernakulam as an independent member of the committee and his further appointment as Chairman

of the committee cannot be accepted.

41. Then I come back to the major ground of attack raised on behalf of all the petitioners regarding the invalidity of the notifications in question fixing minimum rates of wages on the ground that they have been issued beyond the period of one year mentioned in Sub-clause (iii) of Clause (a) of Sub-section (1) of Section 3 of the Minimum Wages Act.

42. Mr. V. K. K. Menon learned counsel, who advanced the leading arguments on this aspect of the matter, and whose contentions have been adopted and accepted by the learned counsel appearing for the various other petitioners also, contended that the provisions regarding the period mentioned in Sub-clause (iii) of Clause (a) of Subsection (1) of Section 3 of the Minimum Wages Act are mandatory with the result that a notification issued in violation of that sub-clause is an absolute nullity and of no legal effect so as to bind the petitioners in these various writ petitions.

The contention of the learned counsel is briefly as follows : The fixation of minimum wages under the Act is in the interests of both the employer and the employee. The legislature has fixed definite periods on or before which the minimum wages have to be fixed. That is contained in Section 3 of the Act. In respect of employment specified in Part I of the Schedule at the commencement of the Act, the appropriate Government is to fix the minimum rates of wages before the 31st December 1959 as the Act stands at present, Similarly, in respect of an employment specified in Part II of the Schedule at the commencement of the Act such fixation is to be made before the 31st December 1959. That is to be found in Sub-clauses (i) and (ii) of Clause (a) of Sub-section (1) of Section 3.

43. Similarly, power is given to the appropriate Government u/s 27 of the Act by following the procedure indicated therein to add to either Part of the Schedule any employment in respect of which it is of opinion that minimum rates of wages should be fixed under the Act and when such notification is issued, the Schedule is to be deemed to be amended accordingly. In respect of any employment that is added to either part of the Schedule by the State Government on action taken u/s 27 of the Act, again there is an obligation on the State Government by virtue of Sub-clause (iii) of Clause (a) of Sub-section (1) of Section 3 to fix minimum wages before the expiry of one year from the date of the notification u/s 27. In respect of the timber industry, which applies to the writ petitions coming under groups 1 and 2, the notification u/s 27 of the Minimum Wages Act including employment in lumber industry as item 22 of Part I of the Schedule to the Act was issued on 19th October 1957; whereas the notification fixing minimum wages for the employment in question to come into effect from 1st September 1959 was issued only on 22nd August 1959 and published in the State Gazette on 1st September 1959.

44. Similarly in respect of employments to Shops and Establishments (including

hotels and restaurants which are taken in by the writ petitions coming under groups 3 and 4 the notification u/s 27 was issued by the Government on 3rd December 1957, The notification issued by the Government fixing minimum wages coming into effect from 1st January 1961 was issued on 9th November 1960 and published in the State Gazette on 22nd November 1960. These notifications fixing minimum wages either in respect of the timber industry or in respect of Shops and Establishment (including hotels and restaurants) have not been issued before the expiry of one year from the date of the concerned notifications u/s 27 of the Act.

45. The learned counsel also urged that the period mentioned in the Act, u/s 3 when it was originally enacted, has been from time to time extended as will be seen by the Minimum Wages (Amending) Acts -- Acts 56 of 1950, 16 of 1951, 26 of 1954 and 30 of 1957. These amendments in the statute extending the period mentioned in Subsection (1) of Section 3 are clear indications that the legislature was conscious of the fact that the provisions regarding the time within which fixation is to be made, are mandatory.

46. The learned counsel also urged that the proviso to Clause (b) of Sub-section (1) of Section 3 wherein a specific power is given to the appropriate Government to review the minimum rates of wages even after the expiry of the five years period mentioned in Clause (b) is also an indication in the statute itself that otherwise, the period mentioned in Sub-section (1) of Section 3 is mandatory. There is no such proviso to any of the Sub-clauses (i) to (iii) of Clause (a) of Sub-section (1) of Section 3 which gives power to fix the minimum rates of wages even after the periods mentioned therein. Mr. V. K. K. Menon also urged that Sub-section (1) of Section 3 clearly states :

"the appropriate Government shall in the manner hereinafter provided"

and that the expression "shall" should receive its ordinary meaning namely, that the provision is mandatory.

47. The learned counsel also referred to Sub-section (1-A) of Section 3 of the Act where again provision is made for fixation of minimum rates of wages within one year from the date when the appropriate Government comes to a finding that the number of employees in any scheduled employment has risen to 1,000 or more, when Section 3 uses the expression "shall" and also follows it up by fixing definite dates within which the fixation of minimum wages had to be done, the learned counsel urges that the implication is that the provision regarding time is mandatory and a breach of those provisions will result in the act done after the expiry of the time being struck down by this Court as void. The learned counsel also referred to the provisions of Section 31 of the Act wherein the fixation of minimum rates of wages even after the expiry of the periods mentioned in the previous enactments have been validated. This again, according to the learned counsel, is an indication of the mind of the legislature that the periods mentioned are mandatory.

48. Mr. V. K. K. Menon relied upon the two recent decisions of the Supreme Court in *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhya*, where the provisions of a rule were held to be mandatory and action taken in contravention of the rule was declared void; and *Banwarilal Agarwalla Vs. The State of Bihar and Others*, where a particular Section of a statute was held to be mandatory and similarly, action taken in non-compliance with the provisions of that section, was struck down.

Mr. V. K. K. Menon also relied upon a decision of this Court of Kumara Pillai and M. S. Menon, JJ. reported in *Vasudevan v. State of Kerala* AIR 1960 Ker 67 where the learned Judges have held the period of two months referred to in Clause (b) of Sub-section (1) of Section 5 of the Act to be mandatory. The scope of the decisions cited by the learned counsel, will be considered by me later in this judgment.

49. This contention of Mr. V. K. K. Menon has been adopted by all the other learned counsel appearing for the various petitioners. But Mr. N. D. P. Namboodiripad, learned counsel for the petitioner in O P. No. 102/61 coining under group 4 pressed a further point of view to be considered in this connection. According to the learned counsel, the State cannot even plead in this case that there has been a substantial compliance with the provisions of Sub-section (1) of Section 3 of the Act because there has been inordinate delay.

The learned counsel also urged that u/s 5 it is open to the State Government to take action either on the basis of Clause (a) or Clause (b). But the fact that the Government have chosen to adopt the method mentioned in Clause (a) of Section 5 whereby a committee is appointed and that it takes some time for sending the report and the further circumstance that the Government also takes some time to come to a decision after considering the report cannot be pleaded by the Government for not being able to comply with the period specified in Sub-section (1) of Section 3 of the Act. Whatever method is adopted by the Government, there is a duty on the part of the State to comply with the period specified in Sub-section (1) of Section 3 of the Act.

50. On the other hand, the learned Government Pleader urged that the scheme of the Act will show that the provision regarding time is not mandatory, but is only directory. The specification regarding time is only with a view to see that the object of the legislation namely fixation of minimum rates of wages is considered and decided as quickly as possible, so that the employees can have the benefit of such fixation of minimum rates of wages.

51. The learned Government Pleader urged that the provisions of the Minimum Wages Act are intended to achieve the object of doing social justice to workmen employed in the scheduled employments and the Court, in construing the provisions of the said enactment, should adopt a beneficent rule of construction. The learned Government Pleader urged that even assuming that the words in the statute are capable of two constructions, preference is to be given to that

construction which helps to sustain the validity of the impugned notification, a construction holding that the periods mentioned in Sub-section (1) of Section 3 will further the policy of the Act and will be more beneficial to the employees in whose interest the Act has been passed.

52. The learned Government "Pleader urged that the use of the expression "shall" in Sub-section (1) of Section 3 does not by itself make the provisions therein mandatory. The question as to whether a statute is mandatory or directory will depend upon the intention of the legislature and not merely upon the language in which the intent is clothed. The intention of the legislature is to be ascertained not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences that will follow from construing it one way or the other.

The learned Government Pleader referred to certain passages from Crawford on the Construction of Statutes and Maxwell on the Interpretation of Statutes. The learned Government Pleader again referred me to the principles applied by their Lordships of the Supreme Court in the two decisions cited by Mr. V. K. K. Menon for being applied to find out whether the fixation of time under Sub-section (r) of Section 3 of the Minimum Wages Act is mandatory or directory.

53. According to the learned Government Pleader, no doubt, in those two decisions, the Supreme Court, having regard to the entire scheme of the Act and the various other provisions either in the statute or the rules and the object behind them, came to the conclusion that the particular rule or particular section was mandatory. The learned Government Pleader urges that by applying the various tests laid down by Their Lordships in these cases, it will be seen that the fixation of time is only directory and not mandatory in the sense that a fixation of minimum rates of wages after the time specified therein will not totally invalidate the fixation so made. No doubt, the legislature has referred to the period within which fixation of minimum rates of wages is to be made. That only shows the anxiety of the legislature that action must be taken within as short a time as possible, so that the employees who are intended to be benefited by the enactment, should get the benefit Of the same. There is no prohibition in the Act against the Government taking action after the expiry of the period. There is no penal action provided for default. The very circumstance that the legislature extended the period from time to time clearly shows that the legislature was aware of the magnitude of work involved in such matters and that the time by itself is not a vital factor.

54. The learned Government Pleader also urged that the reliance placed upon Section 31 of the Act validating fixation of minimum rates of wages fixed after the expiry of the periods mentioned in the Act will not assist the petitioners, as it is enacted merely to avoid a controversy being raised on such matters.

55. The learned Government Pleader quite naturally urged very strongly that one of the tests propounded by the Supreme Court is to find out whether a particular

construction will result in the object of the legislation being defeated or furthered. The object of the legislation in this case is very clear, namely, of doing social justice and ensuring to the employees that they get the minimum wages as per the provisions of the Act. To hold that the periods mentioned in Sub-section (1) of Section 3 of the Act are not mandatory will be furthering the object of the legislation; whereas the construction sought to be placed by the petitioners, if accepted, will result in the object of the legislation being defeated.

56. The learned Government Pleader ultimately urged that Sub-section (1) of Section 3 itself makes it obligatory for the Government to proceed "in the manner hereinafter provided", for fixation of minimum rates of wages. Section 5 indicates the procedure for fixing and revising minimum wages and under Sub-section (1) of Section 5 when minimum rates of wages have to be fixed for the first time under the Act, there is an obligation on the part of the Government to adopt one or other of the methods indicated in Clause (a) or Clause (b) of Sub-section (1) of Section 5.

The action taken by the Government for including the employment in question in Part I of the Schedule to the Act as well as the steps taken by them to appoint committees, the work done by the committees and also the action taken by the Government after the reports were received have all been given in detail in the court-affidavit filed on behalf of the state. Therefore, those matters will clearly show that there has been absolutely no default or delay on the part of the Government and they will also show as to why the fixation of minimum rates of wages could not be done within one year of the issue of the notifications u/s 27 of the Act. Having placed an obligation on the appropriate Government to follow a particular procedure before minimum rates of wages are to be fixed, it should be assumed that the legislature was full well aware of the necessary time that will be taken in such matters and therefore, the fixation of time under Sub-section (1) of Section 3 could not be considered to be mandatory.

57. After a consideration of the various aspects presented before me by the learned counsel for the petitioners as well as the learned Government" Pleader on behalf of the State and also after having due regard to the various principles laid down by the decisions of the Supreme Court and also in leading text-books which have been approved by the Supreme Court, I am of the opinion that the contention of the learned counsel for the petitioners that the notifications in question fixing minimum rates of wages are to be set aside, cannot be accepted and the contention raised on the basis of the periods mentioned in Sub-section (1) of Section 3 of the Minimum Wages Act have to be negated.

58. The object of the Minimum Wages Act can be better stated in the words of Their Lordships of the Supreme Court occurring in at p. 636 : U. Unichoyi and Others Vs. The State of Kerala, .

".....What the Act purports to achieve is to prevent exploitation of labour and for that purpose authorizes the appropriate Government to take steps to prescribe

minimum rates of wages in the scheduled industries. In an under-developed country which faces the problem of unemployment on a very large scale it is not unlikely that labour may offer to work even on starvation wages. The policy of the Act is to prevent the employment of such sweated labour in the interest of general public and so in prescribing the minimum wage-rates the capacity of the employer need not be considered. What is being prescribed is minimum wage-rates which a welfare State assumes every employer must pay before he employs labour."

59. That the provisions of the Minimum Wages Act are intended to achieve the object of doing social justice to the workmen and that in construing the provisions the Court should adopt a beneficent rule of construction, is also clear from the observations of His lordship Mr. Justice Gajendragadkar in the decision of the Supreme Court reported in *Madhya Pradesh Mineral Industry Association Vs. The Regional Labour Commissioner Jabalpur and Others*, at p. 1071.

"It is true that the provisions of the Minimum Wages Act are intended to achieve the object of doing social justice to workmen employed in the scheduled employments by prescribing minimum rates of wages for them, and so in construing the said provisions the court should adopt what is sometimes described as a beneficent rule of construction, if the relevant words are capable of two constructions preference may be given to that construction which helps to sustain the validity of the impugned notification."

60. That the provision of a welfare legislation should receive a beneficent rule of construction and that if a section is capable of two constructions, that construction should be preferred which furthers the policy of the Act and is more beneficial to the employees in whose interest the Act has been passed, is again clear from the decision of the Supreme Court in *Alembic Chemical Works Co. Ltd. Vs. The Workmen*, .

61. in my view, these observations will have to be borne in mind when construing the particular provisions of Sub-section (1) of Section 3 of the Minimum Wages Act, No doubt, the various amending Acts referred to by Mr. V. K. K. Menon, have extended the period from time to time for fixation of minimum rates of wages provided in Sub-section (1) of Section 3 of the statute in question.

In my view, the fact that the legislature extended the period from time to time by amending the section is not really conclusive of the point to be considered one way or the other. The question whether a particular provision is mandatory or directory will have to be considered by applying the various principles laid down by Their Lordships of the Supreme Court to which I will refer immediately. On the other hand, if there is any indication available at all by the legislature extending the period from time to time, the inference will be in my view, that there is no special sanctity regarding the fixation of period having due regard to the object sought to be achieved by the enactment. In my opinion, the two decisions of the Supreme Court, relied upon by both Mr. V. K. K. Menon as well as by the learned

Government Pleader, clearly lay down the principles that have to be applied for considering whether a particular provision is mandatory or directory. It is after applying those principles and testing the particular rule or section in the light of those principles that Their Lordships in those cases came to the conclusion that the particular section or the rule is mandatory.

62. Crawford on the Construction of Statutes at page 516 states :

"The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it one way or the other...."

The passage extracted above by me from Crawford has been approved by Their Lordships of the Supreme Court in *State of U.P. Vs. Manbodhan Lal Srivastava*, at p. 918.

63. Again at page 535 the learned author observes :

"As a general rule, a statute which specifies a time for the performance of an official duty will be construed as directory so far as the time for performance is concerned, especially where the statute fixes the time simply for convenience or orderly procedure. But there are various exceptions. For instance, the language may be such that the performance of the act within or at the specified time, is imperative. As a result, if the statute contains prohibitive or negative words relating to the time within which the act is to be performed, it will be considered mandatory."

64. Maxwell on Interpretation of Statutes 10th Edition, at page 381 under the heading "Performance of Public Duty" states :

"On the other hand, where the prescriptions of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or, in other words, as directory only. The neglect of them may be penal, indeed, but it does not affect the validity of the act done in disregard of them. It has often been held, for instance, when an Act ordered a tiling to be done by a public body of public officers and pointed out that specific time when it was to be done, that the Act was directory only and might be complied with after the prescribed time."

The above passage has also been accepted by Their Lordships of the Judicial Committee of the Privy Council in *Montreal Street Ry. Co. v. Normandin* AIR 1917 PC 142.

65. The principles laid down by the Privy Council in the above case have also been adopted by our Federal Court in the decision reported in AIR 1945 67 (Federal Court) . Their Lordships of the Supreme Court have also approved the above principles in their decision reported in State of U.P. Vs. Manbodhan Lal Srivastava, .

66. Their Lordships of the Supreme Court have also quoted with approval, another observation of the Privy Council in the said decision to the following effect:

"When the provisions of a statute relating to the performance of a public duty and the case is as such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to person who have no control over those entrusted with duty, and at the same time would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory only, the neglect of them though punishable not affecting the validity of the acts done."

67. Sutherland's Statutory Construction, 3rd Edition, Vol. 3 paragraph 5816 at pages 101 and 102 states the proposition as follows :

"Particular matters dealt with in the statute -- Time provisions -- A great many cases involve the determination of mandatory or directory in connection with time provision, as where a statute limits things to be done within a certain time or prescribes the date on which a thing is to be done. In this determination there is seen an outstanding example of statutory construction not on the basis alone of ascertaining the actual intent of the legislature, but on grounds of policy and equity to avoid harsh, unfair or absurd consequences. Although those considerations may be couched in terms of legislative intent, it is apparent that the decision rests on an inference of what the legislature can be presumed to have intended had it anticipated a situation that may have arisen in a particular case. It is difficult to conceive of anything more absolute than a time limitation. And yet, for obvious reasons founded in fairness and justice, time provisions are often found to be directory merely, where a mandatory construction might do great injury to persons not at fault, as in a case where slight delay on the part of a public officer might prejudice private rights or the public interest. It has been aptly stated that "where there is no substantial reason why the thing by statute required to be done might not as well be done after the time prescribed as before; no presumption that, by allowing it to be so done it may work an injury or wrong; nothing in the act itself, or in other acts relating to the same subject matter, indicating that the legislature did not intend that it should rather be done after the time prescribed than not done at all -- the courts will deem the statute directory merely." "

68. Again, in Craies on Statute Law, 5th Edition at page 242 it is stated :

"No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligated with an implied nullification for

disobedience; and that it is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed."

69. As the Supreme Court has stated in *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, .

"It is well established that an enactment in form mandatory might in substance be directory and that the use of the word "shall" does not conclude the matter."

70. in *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, His Lordship Mr. Justice Subba Rao, speaking for the majority of the Court, after referring to passages from the various text books on Construction and Interpretation of Statutes, observes at page 764 :

"The word "shall" in its ordinary import is "obligatory"; but there are many decisions wherein the Courts under different situations construed the word to mean "may"."

The learned Judge in that case was considering the question as to whether rule 1 of paragraph 486 of the Police Regulations is directory or mandatory. His Lordship sums up the relevant rules of interpretation as follows at p. 765 :

"The relevant rules of interpretation may be briefly stated thus : When a statute uses the word "shall" prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the legislature the Court may consider inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered."

From the above observations it follows that the use of the expression "shall" will be prima facie mandatory. But the Court is to ascertain the real intention of the legislature by having regard to the whole scope of the statute. Ultimately, the Court will have "to consider as to whether a particular construction sought to be placed will further the object of the legislation or defeat the object of the legislation."

71. Ultimately no doubt the learned Judge in that case, came to the conclusion that the provisions of paragraph 486 of the Police Regulation are mandatory.

72) Again in the later decision of the Supreme Court in *Banwarilal Agarwalla Vs. The State of Bihar and Others*, His Lordship Mr. Justice Das Gupta observes at p. 851 as follows :

"As has been recognised again and again by the courts, no general rule can be laid down for deciding whether any particular provision in a statute is mandatory, meaning thereby that non-observance thereof involves the consequence of invalidity, or only directory, i.e., a direction the non-observance of which does not entail the consequence of invalidity, whatever other consequences may occur. But in each case the court has to decide the legislative intent. Did the legislature intend in making the statutory provisions that non-observance of this would entail invalidity or did it not? To decide this we have to consider not only the actual words used but the scheme of the statute, the intended benefit to public of what is enjoined by the provisions and the material danger to the public by the contravention of the same."

The learned Judges in that case were considering the mandatory or directory nature of certain provisions in the Mines Act of 1952. The learned Judges after an examination of the language used, the scheme of the legislation, the benefit to the public on insisting on strict compliance as well as risks to the public interest on insistence of such compliance, came to the conclusion that the legislative intent was to insist on the provisions for consultation with the Mining Board as a pre-requisite for the validity of the Regulations.

73. Therefore, it will have to be seen that the legislative intent in the statute has to be considered and it has also to be further seen as to whether there is any intention in the statute that the legislature in making the statutory provisions regarding time in Sub-section (1) of Section 3 of the Minimum Wages Act intends that non-observance of this provision will entail invalidity of the fixation of minimum wages after the period mentioned therein.

74 Applying the various tests laid down by Their Lordships of the Supreme Court in the decisions referred to above, it cannot be held that in fixing the periods within which the minimum rates of wages have to be fixed under Sub-section (1) of Section 3 of the Act the legislature in any way, intended that the non-observance of the provisions would entail invalidity of action taken. There is no prohibition in the statute against the Government fixing minimum rates of wages after the dates referred to in Sub-section (1) of Section 3 of the Act. There will be very serious consequences flowing from holding that the provision regarding time under Sub-section (1) of Section 3 is mandatory because the employees for whose benefit essentially the Act is intended, would be deprived of the benefit of the fixation of minimum wages by the State Government. To hold that the provisions regarding time in the relevant section of the statute are mandatory, would also, in my view, defeat the object of the very legislation itself and it is on this aspect, if I may say so with respect, that His Lordship Mr. Justice Subba Rao has laid considerable emphasis in the decision reported in *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, when His Lordship winds up his discussion regarding the relevant rules of interpretation as "above all, whether the object of the legislation will be defeated or furthered."

It is also clear from the various passages referred to from leading text-books

that from the mere fact that there is a fixation of time, it does not follow that those provisions in the (sic) mandatory unless there are any other provisions in the statute which lead to the said conclusion. In this case, I do not find any such provision in the statute which compels me to come to the conclusion that the fixation provided in Sub-section (1) of Section 3 of the Act is to be considered as mandatory, the breach of which will result in the notifications issued, in question, being declared void.

75. There is also another aspect which has to be taken into account namely, how have the employees or their interests been in any way pre-judiced by the minimum rates of wages not having been fixed within one year of the date of the notification issued u/s 27 of the Act. Surely, if the employees are able to show that by not fix-ing the minimum rates of wages within the period of one year, their interests have suffered or that their position has been very seriously altered, that will be a circumstance which may have to be taken into account to find out whether the provisions regarding time in Sub-section (1) of Section 3 are manda-tory or directory. No such consideration can certainly be advanced by the various petitioners in these cases, because if at all, the delay has only resulted in their favour that they need pay the minimum rates of wages only from the dates when they have been actually fixed. There is no question of any minimum rates of wages being fixed retrospectively and therefore, even for this point of view, it cannot be considered that the provision regarding the fixing of minimum rates of wages within the time mentioned in Sub-section (1) of Section 3 is to be considered other than as being directory.

76. In O. P. 1056/60, I had occasion to consider the question regarding the validity of a publication of the award of an industrial tribunal after 30 days of its receipt by the Government. u/s 17(1) of the Industrial Disputes Act it is provided among other matters that

"every award of a labour court, tribunal, or national tribunal shall within a period of 30 days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit."

In that case, the award of an industrial tribunal was published by the State Government in the Gazette after 30 days of its receipt and a contention was raised that the Award itself is void, as it has not been published within the time specified in Sub-section (1) of Section 17. I had occasion to refer to the judgment of His Lordship Mr. Justice Subba Rao in *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhya*, dealt with by me earlier and after having due regard to the principles laid down by the learned judge and the scheme and object of the Industrial Disputes Act, I rejected the contention and held that the period mentioned in Sub-section (1) of Section 17 of the Industrial Disputes Act is not mandatory but only directory. In consequence, I held that the award, though published after the time specified in Subsection (1) Section 17, was valid.

77. The decision of this Court in AIR 1960 Kerala 67 will not also assist the

learned counsel for the petitioners, because it will be seen that the learned Judges were of the view that the period of two months mentioned in Clause (b) of Subsection (1) of Section 5 of the Minimum Wages Act is really to enable the persons likely to be affected to make representations and that the persons who can make such representations, have got a right in that regard and that right cannot be abridged. That decision will not assist the learned counsel for the petitioners because in the cases before me, there is no question of any right of the petitioners involved in the fixation of the minimum rates of wages u/s 3 of the Act. On the other hand, the State Government is only discharging a public duty when it takes action u/s 3 of the Minimum Wages Act. I may also state that the decision of the Kerala High Court referred to above has also been followed by the Madhya Pra-desh High Court in the decision reported in AIR 1961 Madh Pra 182.

78. From the foregoing discussion it follows that the respective notifications issued by the State Government fixing the minimum rates of wages in respect of the employments in timber industry and in Shops and Establishments (including hotels and restaurants) and which are challenged by the petitioners in these writ petitions, will have to be sustained and held to be valid. It further follows that the contention raised by the petitioners that the said notifications are invalid inasmuch as they have been issued beyond one year from the date of the notifications issued u/s 27 of the Minimum Wages Act, has to be rejected.

So far as O. P. 1182/59 which relates to the plywood industry is concerned, this judgment will be subject to my decision regarding the special contentions raised by the learned counsel for the petitioner therein that the expression "timber industry" does not include "plywood industry" and as such the notification fixing minimum wages for employment in "timber industry" will not bind the owners of "plywood industry".

79. O. P. 1182/59 alone will be posted for further hearing at the request of the counsel on 18th September, 1961.

80. in the result, all the above Original Petitions excepting O. P. 1182/59 will stand dismissed and parties will bear their own costs.