

(1982) 07 KAR CK 0016
In the Karnataka High Court
Case No : Writ Petition No. 2309, etc. of 1982

Jyothi Home Industries

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 16-07-1982

Acts Referred:

Industrial Disputes Act, 1947 — Section 25

Minimum Wages Act, 1948 — Section 12 (1), 2 (h), 3, 3 (2), 5 (1)

Citation : (1983) 1 LLJ 201

Hon'ble Judges : P.P. Bopanna, J

Bench : Single Bench

Judgement

1. These writ petitions are disposed of by a common order since they relate to a notification issued by the State Government under the provisions of S. 3 of the Minimum Wages Act, 1948 (in short the Act).
2. W.P. No. 20889 of 1982, though not fixed for hearing, was brought up for hearing at the request of the learned counsel, Mr. Holla, for the petitioner therein who has also appeared in some of the connected writ petitions listed for hearing.
3. The workmen benefited by the notification were permitted to come on record in these petitions as additional respondents and I have heard the learned counsel for the petitioners as also the learned counsel for the workmen, Mr. M. C. Narasimhan, and the learned Government Advocate.
4. The petitioners are owners of beedi factories. They manufacture and sell beedies within the State of Karnataka. Under Annexure-A filed in W.P.s. Nos. 2309 to 2313 of 1982, the Government of Karnataka, i.e., the 1st respondent therein, issued the impugned notification under clause (b) of sub-s. (1) of S. 3 read with sub-s. (1) of S. 5 of the Act. This was done in supersession of the notification dated 28th March, 1979, in order to revise with effect from 1st January, 1982, for a period of one year the minimum wages for certain classes of employment in beedi industry as indicated in the corresponding entries in the Schedule thereto. Under clause (5) of the notification the Government fixed a

sum of Rs. 7.40 as the minimum wages for thousand beedies rolled and further provided that the workmen employed in the beedi industry should be entitled to get at least Rs. 4 per day as "guaranteed wages" where the employer failed to supply sufficient quantity of raw material including tobacco leaves to roll 800 beedies per day. Clauses (7) of the said notification provided that where no raw material was supplied by the employer to the employee when the latter was willing to work and report for duty or for collecting the raw material, the employee should be entitled to get full guaranteed wages. There are other clauses in the impugned notification but they do not require consideration since the petitioners challenge only these two clauses, viz., cls. (5) and (7) of the notification which I have reproduced above.

5. The learned counsel for the petitioners Messrs. A. G. Holla and Tukaram Pai, challenged the notification on the following grounds : Firstly, cls. (5) and (7) of the notification do not relate to "wages" as defined under the provisions of the Act and, therefore, the impugned notification is beyond the amplitude of the powers delegated to the State Government under S. 3 of the Act. Secondly, in truth and substance, the term "guaranteed wages" under cls. (5) and (7) is lay-off compensation as provided for under Chapters V-A and V-B of the Industrial Disputes Act, 1947 (in short the I.D. Act) and payment of lay-off compensation being separately covered by the provisions of the I.D. Act, if the workmen of the beedi industry were to have any grievance regarding lay-off, either due to shortage of raw materials or for any other cause, their remedy is to raise an industrial dispute under the I.D. Act and seek an adjudication of the dispute by the authorities constituted under the said Act. Thirdly, no power is conferred on the State Government under S. 3 of the Act to fix the "guaranteed wages" which would operate as an infraction of the contractual rights of the parties which are recognised under the very definition of the word "wages" in S. 2(h) of the Act. Fourthly, in any event, the impugned clauses could not be applied to home-workers, since these workmen do not work in the petitioners' factory premises but in their respective homes and, therefore, there is no question of paying any guaranteed wages under the Act to workmen who do not have any fixed hours of work and do not come under the direct supervision of their employers.

6. It has to be noted at the outset that the learned counsel did not challenge the notification on the ground that the rates of wages fixed are excessive but only on the ground that no power was conferred on the Government under S. 3 of the Act to make the notification incorporating cls. (5) and (7). Though the contentions urged by these counsel appear to be simple at first blush, they require a careful and detailed consideration of the provisions of the Act.

7. Section 2(h) of the Act defines what wages means but the term "minimum wages" is not defined in the Act. Under S. 3(1), the State Government is conferred with the power of fixing the minimum rates of wages payable to employees in Schedule industries which include the beedi industry. It also confers on the State Government the power to 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. Section 3(2) empowers the Government to fix minimum rates of wages for time-work and piece-work, minimum rates of remuneration to employees employed on piece-work, for the purpose of securing to such employees a minimum rate of wages on a timework basis, and also an overtime rate in respect of overtime work done by employees.

8. Under S. 3(3)(b) of the Act, minimum wages may be fixed for any one of the wage periods, namely, by the hour, by the day, by the month or by such other larger wage-period as may be prescribed and where such rates are fixed by the day or by the month, the manner of calculating wages for a day or a month, as the case may be, may be indicated.

9. Clauses (a) and (b) of sub-s. (1) of S. 13 of the Act empower the Government to fix the number of hours of work which shall constitute a normal working day, inclusive of one or more specified intervals, provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such days of rest. Clause (c) of the said sub-section empowers the Government to provide for payment of remuneration for work on a day of rest at a rate not less than the overtime rate.

10. Section 20(1) of the Act reads as under :

"The appropriate Government may, by notification in the Official Gazette, appoint any Commissioner for Workmen's Compensation or any officer of the Central Government exercising functions as a Labour Commissioner for any region, or any officer of the State Government not below the rank of a Labour Commissioner or any other officer with experience as a Judge of a civil Court or as a stipendary Magistrate to be the authority to hear and decide for any specified area all claims arising out of payment of less than the minimum rates of wages or in respect of the payment of remuneration for days of rest or for work done on such days under clause (b) or clause (c) of sub-s. (1) of S. 13 or of wages at the overtime rate under S. 14, to employees employed or paid in that area."

11. According to the learned counsel for the petitioners, "wages" are to be paid only in respect of work done under the contract of employment but cannot be paid as provided for under the impugned notification for non-employment of the workmen for no fault of the employer either on a particular day or in a month and, therefore, the stipulation for payment of guaranteed wages for work not done is outside the definition of the word "wages" and hence S. 3 of the Act could not empower the Government to make a notification for payment of a sum in cash which is not wages under S. 2(h) of the Act. In support of this proposition, the learned counsel relied on the decision of the Supreme Court in *Bidi, Bidi Leaves*" and *Tobacco Merchants Association Vs. The State of Bombay*, In that case, a notification issued by the Government of Maharashtra in exercise

of the powers under S. 5(2) read with S. 5(1)(b) of the Act in so far as it prescribed the revised minimum rates of wages for workers in bidi industry, came up for consideration. Though the validity of certain clauses of the impugned notification was upheld by the Supreme Court, it found that cls. 3 to 7 which formed an integrated scheme to make the implementation of the provisions of cls. 1 and 2 effective by laying down the manner in which the employer should make payment for "check" or discarded bidis, was ultra vires the powers of the Government under S. 5. The reasoning of the Supreme Court is found in paras 16 to 18 of the judgment. After posing the question "What is the extent of the power conferred on the authorities in fixing and revising the minimum wages under the relevant provisions of the Act ?", Gajendragadkar, J., as he then was, answered it as follows at PP. 671-672 :

"... In dealing with this question we must necessarily bear in mind the definition of the term "wages" prescribed by S. 2(h). As we have already seen the term "wages" includes remuneration which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment. In other words, the term "wages" refers to remuneration payable to the employee as a result of the terms of employment. What would be the amount to which the employee is entitled if the other terms of the contract are performed ? That is the question which has to be asked in determining what the term "wages" means under S. 2(h). No doubt, Ss. 3, 4 and 5 authorise the appropriate Government to fix the minimum rates of wages. In other words, if the wages fixed by a contract which is either express or implied are found to be below, authority is conferred on the appropriate Government to increase them so as to bring them to the level of what the said Government regards as the minimum wages in the particular scheduled employment in the particular area concerned. This means that power is conferred on the appropriate Government to modify one term of the contract express or implied between the employer and the employee and that is a term which has reference to the payment of wages. If for a certain piece of work done by the employee the employer has agreed to pay him either expressly or by implication a certain amount of wages the appropriate Government can issue a notification and prescribe that for the said work done under the contract the employer must pay his employee a much higher rate of wages and the higher rate of wages thus prescribed would be deemed to be the minimum rate of wages between the parties".

The learned Judge further observed as follows (at P. 672) :

"Bearing this fact in mind let us examine the impugned clauses of the notification. Clauses 1 and 2 clearly fall within the purview of the power conferred on the respondent because they do no more than prescribe the minimum rates of wages as therein specified; but cls. 3 and 7 clearly and unambiguously purport to deal with the terms of the contract between the parties other than that relating to the remuneration. These clauses are obviously

intended to deal with the dispute between the employers and their employees as to how bidis should be discarded and in what proportion and what should be the procedure to be followed in regard to the payment for such discarded bidis. In appreciating the true effect of these clauses it is necessary to recall that the parties are agreed about the practice at present prevailing which must be taken to represent the terms of the contract either express or implied. According to the said practice the employer decides which bidis should be discarded, he retains the discarded bidis and pays only for such bidis as are accepted by him. It is plain that the impugned clauses of the notification purport to modify these terms in material particulars and that would be plainly outside the jurisdiction of the authority of the respondent. It may well form the subject-matter of reference for industrial adjudication but it cannot form the subject-matter of a notification prescribing minimum rates of wages under Ss. 3, 4 or 5."

12. In my view, these observations of the Supreme Court should be understood on the facts of that case which arose for consideration. Clauses 3 and 7 in the notification impugned therein dealt with the terms of the contracts of employment between the parties. The petitioners in these writ petitions have not taken any specific contention regarding their rights under the contract of employment they have entered into with the workmen. Even then, the above observations of the Supreme Court will have to be considered in the light of the definition of the word "wages" since if cls. (5) and (7) in the impugned notification do not relate to wages at all the Government could not exercise its powers under S. 3 of the Act. That question will then taken us back to the definition of the word "wages" under S. 2(h) of the Act which read as :

""Wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment and includes house rent allowance."

13. The learned counsel for the petitioners also relied on the decision of the Madhya Pradesh High court in Madhya Pradesh Bidi Udyog Sangh, Sagar v. State of Madhya Pradesh (No. 2) (1982) 61 FJR 325. A division Bench of that High court, following the decision of the Supreme Court in Bidi, Bidi Leaves and Tobacco Merchants Association's case, (supra) held that the impugned notification made by the Madhya Pradesh Government fixing what is known as guaranteed rate of wages under S. 3 of the Act was not valid in law as being in excess of the powers of the State Government on the ground that what was sought to be paid under the notification was lay-off compensation which does not form part of the definition of the word "wages" under S. 2(h) of the Act. The Division Bench observed (at P. 327) :

"Such a payment partakes of lay-off compensation and cannot fall within the definition of "wages" as contained in S. 2(h). The definition in S. 2(h) is similar to the definition of "wages" as given in S. 2(vi) of the Payment of Wages Act, 1936.

There is, however, one marked distinction that the definition contained in the Payment of Wages Act specifically includes within wages any sum which by reason of termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions but does not provide for the time within which the payment is to be made. Because of this specific inclusion it has been held by the Supreme Court in *Payment of Wages Inspector Vs. Surajmal Mehta and Another*, that retrenchment compensation payable under Ss. 25-F, 25-FF and 25-FFF of the Industrial Disputes Act, 1947, will fall within the definition of wages as contained in the Payment of Wages Act. Opinion has also been expressed by a learned author that lay-off compensation payable under S. 25-C of the Industrial Disputes Act will also fall within the definition of wages as contained in the payment of Wages Act (see Malhotra : The Law of Industrial Disputes, Second edition, Volume I, page 699). But in the absence of any such inclusive definition in the Minimum Wages Act it is not possible to hold that an amount payable, in the nature of lay-off compensation is included within "wages" as defined in S. 2(h). As earlier pointed out by us, the guaranteed wages of Rs. 4 per day payable for the day on which the employee does not work at all because no raw material is supplied to him by the employer is in the nature of lay-off compensation and cannot be said to be payable to him as wages if the terms of the contract of employment were fulfilled. In *Bidi, Bidi Leaves and Tobacco Merchants Association v. Bombay State*, (supra) the Supreme Court held that the fulfilment of the other terms of the contract is a condition precedent for the payment of wages as defined under S. 2(h) and it continues to be such a condition precedent even for the payment of the minimum rates of wages fixed and prescribed by the appropriate Government. It was also pointed out that the Act operates on the wages and does not operate on the other terms of the contract between the employer and the employee. It was further pointed out that in fixing the minimum rates of wages the Government cannot claim wide powers possessed by the Industrial Tribunal under the Industrial Disputes Act."

14. The learned counsel for the petitioners strongly relied on these decisions of the Supreme Court and the Madhya Pradesh High Court in support of the contention that the term "guaranteed wages" under cls. (5) and (7) of the impugned notification would not amount to "wages" as defined under S. 2(h) of the Act. They maintained that the Legislature had in view the different concepts, viz., remuneration and wages and though all wages may be remuneration under S. 2(h) of the Act, all remuneration could not be equated with the term "wages" and if the provisions of Ss. 13, 15 and 20 are kept in view, according to the learned counsel, there will be no doubt that the concept of guaranteed wages introduced for the first time in this State under the impugned notification would not be wages which the Government is empowered to fix under S. 3 of the Act.

15. I have already referred to the relevant part of the definition of the word "wages". There are two parts in that definition. The first part says that "wages" means all remuneration in terms of money payable to a person employed in

respect of his employment and the second part relates to work done in such employment. The emphasis laid by the learned counsel is on the words "of work done in such employment". But since the statute has used the words "payable to a person employed in respect of an employment", full meaning has to be given to those words also while considering the first part of the definition. But the argument of Mr. Pai, learned counsel for some of the petitioners, is that these words "payable to a person employed in respect of his employment", will apply only to persons if they are in actual employment and not when they are not in employment as in the case of home workers on piece-rate basis. Alternatively, he submitted that these two distinct expressions apply to time-rate of wages and to piece-rate of wages depending on the nature of the work done. If a person is employed on a time-rate basis, the first part, viz., "a person employed in respect of his employment" would apply but if a workman is employed on a piece-rate basis, then the second part viz., "payable to a person in respect of the work done" would apply. According to him, the Legislature has also kept in view these two distinct types of payment as could be seen from the provisions of S. 3 of the Act to which I have already made a reference in the earlier part of this order.

16. One more contention raised by the learned counsel for the petitioners is that the term "guaranteed wages" under the impugned notification is potential wages since it is wages payable to the workmen for not doing any work and, therefore, as observed by the Madras High Court in *A. C. Arumugham v. Jawahar Mills Ltd.*, Salem [1956 I L.L.J. 519], the employer could be only made liable for compensation for not giving enough work to the workmen for fulfilling his terms of the contract and the claim for potential wages was beyond the scope of the powers under S. 3 of the Act.

17. In order to appreciate these contentions of the learned counsel for the petitioners, a few more provisions of the Act will have to be noticed.

18. The preamble to the Act makes it clear that it was enacted for the purpose of fixing minimum rates of wages in certain employments. An employee under the Act includes and outworker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, furnished, repaired, adapted or otherwise processed for the purposes of the trade or business of that other person where the 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.

19. Section 22D of the Act reads :

"All amounts payable by an employer to an employee as the amount of minimum wages of the employee under this Act or otherwise due to the employee under this Act or any rule or order made thereunder shall, if such amounts could not or cannot be paid to the employee on account of his death before payment or on account of his whereabouts not being known, be deposited with the prescribed authority who shall deal with the money so deposited in such manner as may be

prescribed."

Section 22F reads thus :

"(1) Notwithstanding anything contained in the Payment of Wages Act, 1936, the appropriate Government may, by notification in the Official Gazette, direct that subject to the provisions of sub-s. (2), all or any of the provisions of the said Act shall, with such modifications, if any, as may be specified in the notification, apply to wages payable to employees in such scheduled employments as may be specified in the notification.

(2) Where all or any of the provisions of the Act are applied to wages payable to employees in any scheduled employment under sub-s. (1), the Inspector appointed under this Act shall be deemed to be the Inspector for the purpose of enforcement of the provisions so applied within the local limits of his jurisdiction."

Section 24 reads as under :

"No Court shall entertain any suit for the recovery of wages in so far as the sum so claimed -

(a) forms the subject of an application under S. 20 which has been presented by or on behalf of the plaintiff, or

(b) has formed the subject of a direction under that section in favour of the plaintiff, or

(c) has been adjudged in any proceeding under that section not to be due to the plaintiff, or

(d) could have been recovered by an application under that section"

20. Section 25 prohibits a workman from entering into any contract for relinquishing or reducing his right to a minimum rate of wages or any privilege or concession accruing to him under the Act.

21. Section 26 enables the appropriate Government to issue the necessary directions to the effect that the provisions of this Act shall not apply in relation to the wages payable to the disabled employees.

22. Section 30 of the Act empowers the Government to make rules for carrying out the purposes of the Act and such rules may -

(a) prescribe the term of office of the members, the procedure to be followed in the conduct of business, the method of voting, the manner of filling up casual vacancies in membership and the quorum necessary for the transaction of business of the committees, sub-committees and the Advisory Board;

(b)

(c) prescribe the mode of computation of the cash value of wages in kind and of concessions in respect of supplies of essential commodities at concession rates;

(d) prescribe the time and conditions of payment of, and the deductions permissible from wages;

(e)

(f) provide for a day of rest in every period of seven days and for the payment of remuneration in respect of such day;

(g)

(h) prescribe the case and circumstances in which the employee employed for a period of less than the requisite number of hours constituting a normal working day shall not be entitled to receive wages for a full normal working day.

23. If these provisions and the provisions of Ss. 3, 13, 15 and 20 are kept in view, it is clear that though the Act is called the Minimum Wages Act, the scheme of the Act provides for -

(a) fixation of minimum rates of wages on time-rate or piece-rate;

(b) fixation of minimum rate of remuneration;

(c) fixation of a basic rate of wages and special allowance to determine the minimum rates of wages; (see S. 4 of the Act)

(d) fixing the number of hours of work to constitute a normal working day;

(d) a day of rest and payment of remuneration for the day of rest;

(f) for overtime rate and minimum time rate for piece-rate workers;

(g) constitution of the authority for deciding claims arising out of payment of less than minimum rates of wages or in respect of remuneration;

(h) fixation of compensation for non-payment of minimum wages and in other cases;

(i) payment of undisbursed amounts of minimum wages or other amounts;

(j) application of the Payment of Wages Act to wages payable under the Act;

(k) protection of wages from civil action;

(l) prohibiting "contracting out" in respect of minimum wages;

(m) exempting wages payable to disabled employees;

(n) deductions permissible from wages;

(o) prescribing the cases and circumstances in which an employee employed for a period less than the requisite number of hours constituting a normal working day shall not be entitled to receive wages for a full normal working day.

24. These provisions apply to all employees who come within the scope of the definition of "employee" if they are employed in any scheduled employment. But

since we are concerned in this petition only with the guaranteed wages prescribed under the impugned notification, it would be useful to note what exactly is meant by the expression "minimum wages" under the Act.

25. The Supreme Court in *Bijay Cotton Mills v. State of Ajmer* [1959 I L.L.J. 129], while upholding the validity of the provisions of the Act, observed :

"It can scarcely be disputed that securing of living wages to labourers which ensure not only bare physical subsistence but also the maintenance of health and decency, is conducive to the general interest of the public. This is one of the Directive Principles of State Policy embodied in Art. 43 of our Constitution. It is well-known that in 1928 there was a Minimum Wages Fixing Machinery Convention held at Geneva and the resolutions passed in that convention were embodied in the International Labour Code. The Minimum Wages Act is said to have been passed with a view to give effect to these resolutions. Vide *South India Estate Labour Relations Organisation v. State of Madras* [1954 I L.L.J. 8]. If the labourers are to be secured in the enjoyment of minimum wages and they are to be protected against exploitation by their employers, it is absolutely necessary that restraints should be imposed upon their freedom of contract and such restrictions cannot in any sense be said to be unreasonable. On the other hand, the employers cannot be heard to complain if they are compelled to pay minimum wages to their labourers even though the labourers, on account of their poverty and helplessness, are willing to work on lesser wages."

26. The State Government, taking into consideration that fact that the wages paid to beedi workers calls for revision since the fixation of wages was made some time in the year 1979, made the impugned notification providing for a guaranteed wage or Rs. 4 per day for every employee where the employer failed to supply sufficient quantity of goods/raw materials to roll 800 beedies per day. The minimum piece rate of wages per thousand beedies rolled is fixed at Rs. 7.40.

27. Therefore, the short point that arises for consideration on these facts is whether the sum of Rs. 4 per day fixed as guaranteed wages is wages within the meaning of S. 2(h) of the Act. A couple of general observations will have to be made before considering this question. From the scheme of the Act, it is clear that what is payable as wages under the Act is not only contractual but also statutory wages. Section 12(1) of the Act makes it clear that the wages payable to an employee under the Act should be at a rate not less than the minimum rate of wages fixed by a notification in respect of any scheduled employment. This point admits of no doubt in the light of the decision of the Bombay High Court in *Balaram Abaji Patil and Others Vs. M.C. Ragojiwalla and Another*, relied on by Mr. Narasimhan for the workmen. Further, it should also be noted that what is payable under the Act is not wages as agreed under the express or implied terms of a contract but what is payable if the express or implied terms of the contract are fulfilled by the workmen. If he fulfils the express or implied terms of the contract to do his job for a full day, he would be entitled to wages for that day. In the aforesaid decision, a Division Bench of the Bombay High Court observed :

"..... In the present case, it is not disputed that the remuneration which is claimed as minimum wages was payable to persons employed in respect of their employment or of work done in their employment or of work done in their employment. It is, however, disputed that the remuneration claimed by way of minimum wages satisfies the other condition, namely, that it should be payable if the terms of the contract of employment, express or implied, were fulfilled. Now it seems clear that the expression "if the terms of the contract of employment express or implied were fulfilled" refers only to such of the terms of the contract of employment as are required to be fulfilled by the employed person. The expression has no reference to the terms of the contract which are to be fulfilled by the employer. This is obvious from the fact that, if all the terms of the contract of employment were fulfilled by both the parties to the contract, i.e., by the employer as well as the employee, no question of unpaid wages would arise in those cases where the workers are entitled only to contractual wages. It follows that the definition of "wages" does not confine that expression to contractual wages. The definition does not define "wages" as the remuneration which is payable to the employed person under the terms of the contract of employment, express or implied, but defines it as all remuneration which is payable to the employed person if the latter fulfils the terms of the contract of employment, express or implied. Moreover, the definition uses the words "all remuneration", with the result that, once the worker has fulfilled his part of the contract, whatever he is entitled to receive from the employer in respect of his employment or of work done in his employment amounts to wages, provided the right of the worker to the remuneration in question flows directly from the fulfilment of his part of the contract. The definition makes no reference to the origin of the employer's obligation to pay the remuneration. The obligation may arise from contract, from a binding award, or from a statute. In all such cases, if the amount which the employer is obliged to pay is an amount payable to his employee in respect of his employment or of work done in such employment, and it further the amount becomes payable in consequence of the worker having fulfilled the terms of the contract of employment, the amount is "wages" within the definition.

In the present case, what the petitioners have claimed are minimum wages, and there is no difficulty in holding that the right of the petitioners to receive them was directly connected with their fulfilment of the terms of the contract of employment. It must follow that the minimum wages claimed by the petitioners are "wages" within the definition of that term in S. 2(vi) of the Payment of Wages Act."

28. Keeping these observations in view, the scope of the relevant provisions of the Act which I have adverted above should be examined.

29. The term "wages" under S. 2(h) of the Act, shorn of all verbiage. means all remuneration payable to a person employed in respect of his employment or work done in such employment but does not include the items excluded in the

definition clause. It, therefore, follows that any remuneration that the Government is empowered to fix under the provisions of the Act would be wages. This is clear from S. 3(2) of the Act which empowers the Government to fix a minimum rate of wages for time work, a minimum rate of wages for piece work and a minimum rate of remuneration in the case of employees employed in piece work for the purpose of securing to such employees a minimum rate of wages on time-work basis. The change in the language of S. 3(2)(c) of the Act makes it clear that the Legislature has kept in view the distinction between wages and remuneration. Wherever a person employed in a scheduled employment has worked, he is entitled to wages but if the same person in the scheduled employment does not work or could not work for the reasons mentioned in the Act, he is entitled to remuneration. This is clear from the other provisions of the Act, viz., Ss. 13 and 20.

30. Under S. 13(1)(b), the State Government is competent to provide for a day of rest in a period of seven days which will be applicable to all employees or to any specified class of employees and for the payment of remuneration in respect of such days of rest. Section 13(1)(c) empowers the Government to provide for payment for work on a day of rest at a rate not less than the overtime rate. The payment for work on a day of rest could only be the payment of remuneration if clause (c) is read with clause (b) of S. 13(1) of the Act. Under S. 20 of the Act, the authority constituted under the Act could hear all claims arising out of payment of less than the minimum rates of wages or in respect of payment of remuneration for days of rest or for work done on such days under clause (b) or (c) of S. 13(1) of the Act, or of wages at the overtime rate under S. 14. This section makes it abundantly clear, as I have noticed earlier, that the Act, inter alia, contemplates three types of wages which come within the definition of the word "wages" under S. 2(h) of the Act. One is the minimum rate of wages, another is remuneration on days of rest and the third is wages at the overtime rate under S. 15. If this distinction is kept in view, the solution to the questions posed before me would become easy.

31. The provisions of S. 3(2) of the Act, if they are scrutinised closely, bring out the powers of the Government to fix a minimum rate of wages for time work and for piece-work and a minimum rate of remuneration to employees employed on piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis. This remuneration under S. 3(2)(c) of the Act is called as guaranteed time-rate. It is also open to the government under S. 17 of the Act to bring about parity in the wages of employees employed on piece-work, for which a minimum rate is not fixed, with those employed in work, for which a minimum time-rate has been fixed under the Act. Hence, it is clear that the appropriate Government, under S. 3 of the Act, can fix minimum wages for hours actually worked by the employee and if he is not in a position to fulfil his part of the contract on account of the fact that the employer does not offer him the necessary raw material to work on his job, he would be entitled to remuneration under S. 3(2)(c) of the Act. The Government, knowing the plight of the beedi

workers, has prescribed a sum of Rs. 4 per day as guaranteed remuneration in the event of the employer being not in a position to fulfil his part of the contract in offering a full day's work to the employee and that remuneration is called the "guaranteed wages" in the impugned notification. In my view, it is wrong to treat the terms "wages", "minimum wages" and "remuneration" as connoting different concepts under the Act. The word "wages" is the genus, and "time-rate", "piece-rate", "over-time wages", "minimum rate of wages" and "remuneration" are species. As observed by the Supreme Court, while considering the meaning of the word "remuneration" in the Catering Wages Act, 1943, in *Central Bank of India v. Their Workmen* [1959 II L.L.J. 205], words must be given their meaning with reference to the context in which they occur in a statute. What the Supreme Court observed was :

"... We think that the decision itself shows that the word "remuneration" must be given its meaning with reference to the context in which the word occurs in the statute. In the context of the Catering Wages Act, 1943, it meant the net payment after certain deductions from wages paid by the employer; and in the Workmen's Compensation Act, it meant the amount of a man's earnings in an employment. We have pointed out that in the Banking Act with which we are concerned, the word "remuneration" has been used in the widest sense. In that sense, it undoubtedly includes bonus."

In the context in which the word "wages" is defined and used in the Act, it also includes remuneration which is not for work done but amount paid by way of compensation for the period of involuntary unemployment of the workmen on account of the fact that the employer is not in a position to give the employee raw material for doing his day's job. Had he been employed on a time-rate basis, he would have been entitled to the full day's wages at the rate of Rs. 7.40 per day. In this case, most of the employees are employed on a piece-rate basis and, therefore, to bring up the level of their wages with those of employees employed on time-work basis, the Government provided that they should be paid a minimum amount of Rs. 4 per day as remuneration or guaranteed wages for the period of their involuntary unemployment on a given day. Though the term used is "guaranteed wages" it should be understood as guaranteed remuneration. It could also be understood in that way in the light of the provisions of S. 3(2) read with S. 20 of the Act and why that guaranteed minimum remuneration is paid to these workmen is clear from the very object of the Act. If these employees are entitle to a minimum time-rate of Rs. 7.40 per day and if they are not provided with sufficient raw material to earn Rs. 7.40 per day on piece-rate basis, it is but fair that the Government should guarantee that these employee working on piece-rate basis should get a minimum amount of Rs. 4 per day either for rolling one beedi per day or for 700 or for rolling no beedies at all. Therefore, it is wrong to contend as maintained by the learned counsel for the petitioner that the impugned notification interferes with the contractual right of the parties as observed by the Supreme Court in *Bidi, Bidi Leaves and Tobacco Merchants Association's case* (supra). The concept of wages under the Act is not contractual

but statutory and the statutory element is provided for under the provisions of S. 3 of the Act and the employer would be bound by any notification under S. 3 of the Act fixing either a minimum rate of wages or remuneration.

32. The second point for consideration would be whether the guaranteed wages under the impugned notification is lay-off compensation, and hence, the remedy of the employees is to approach the appropriate authorities under the I.D. Act by raising an industrial dispute. Both Mr. Holla and Mr. Pai relied on the decision of the Division Bench of the Madhya Pradesh High Court which dealt with a similar notification made by the Madhya Pradesh Government under S. 3 of the Act. In that decision, the contention of the employers, namely, that the fixation of guaranteed minimum wages is nothing but lay off compensation which comes under Chapter V-A of the I.D. Act was accepted by the learned Judges of that High Court. With great respect, I am unable to subscribe to the reasoning of the learned Judges in that judgment. Firstly, it cannot be said that any compensation payable under the Act would amount to lay-off compensation as understood under Chapters V-A and V-B of the I.D. Act. The Act itself makes a special provision for the payment of remuneration for these workmen for the periods of involuntary unemployment which is treated as compensation under the I.D. Act under Chapter V thereof. As observed by the Supreme Court in *The Workmen of Firestone Tyre and Rubber Co. of India (P) Ltd. Vs. The Firestone Tyre and Rubber Co.,*

"In a case of compensation for lay-off the position is quite distinct and different. If the terms of contract of service or the statutory terms engrafted in the Standing Orders do not give the power of lay-off to the employer, the employer will be bound to pay compensation for the period of lay-off which ordinarily and generally would be equal to the full wages of the concerned workmen. If, however, the terms of employment confer a right of lay-off on the management, then, in the case of an industrial establishment which is governed by Chapter V-A, compensation will be payable in accordance with the provisions contained therein. But compensation or no compensation will be payable in the case of an industrial establishment to which the provisions of Chapter V-A do not apply, and it will be so as per the terms of the employment.

In *Kanhaiya Lal Gupta Vs. Ajeet Kumar Dey and Others*, a learned single Judge of the Allahabad High Court seems to have rightly held that in the absence of any term in the contract of service or in the statute or in the statutory rules or standing orders and employer has no right to lay-off a workman without paying him wages. A learned single Judge of the Punjab and Haryana High Court took an identical view in the case of *Steel and General Mills Co. Ltd. v. Addl. District Judge, Rohtak* (1971) 40 FJR 144 . The majority view of the Bombay High Court in *K.T. Rolling Mills Private Ltd. and Another Vs. M.R. Meher and Others*, that it is not open to the Industrial Tribunal under the Act to award lay-off compensation to workmen employed in an "industrial establishment", to which S. 25-C does not apply, is not correct. The source of the power of the employer to lay-off

workmen does not seem to have been canvassed or discussed by the Bombay High Court in the said judgment."

Further, attention of the Madhya Pradesh High Court was not invited to the various provision of the Act which provide for payment of wages and remuneration, fixation of minimum rate of wages and remuneration, payment of compensation, etc., and especially the provisions of Ss. 3, 15, 17 and 30 of the Act. In any event, the said decision is pending consideration before the Supreme Court and, hence, no opinion can be expressed in this order against the correctness of that judgment.

33. The third contention of Mr. Pai is that the word "remuneration" under the Act means potential wages, relying on the decision of the Madras High Court in *A. C. Arumugham v. Jawahar Mills Ltd.*, (supra). That decision was rendered under the provisions of the Payment of Wages Act, 1936. The learned Judge in that decision made a distinction between the potential wages and the actual wages. According to him, wages is what is payable for work done and potential wages is compensation for the period during which the workman remained unemployed for want of work. That distinction made under the Payment of Wages Act, in my view, would not be applicable to the provisions of the Act since the provisions in that Act are not in pari materia with the Act we are considering. I have already pointed out from the various provisions of the Act that the State Government is empowered to fix a minimum remuneration for the workmen if certain conditions as provided for under the Act exist and remuneration comes within the meaning of the word "wages".

34. One more contention of Mr. Pai is that in any event, the impugned notification could not be made applicable to beedi rollers who are home workers who carry home the raw material and roll beedies on piece-rate basis. This contention has to be rejected in the light of the definition of the word "employee" in the Act.

35. In the view I have taken, it is not necessary to consider the various other authorities of the various High Courts rendered under the Payment of Wages Act and also under the I.D. Act. Further, on a plain reading of the definition of the word "wages" under the Act and the Payment of Wages Act, and in the light of the different objects of these Acts, there is no doubt that the word "wages" under this Act has a connotation which is different from the one under the Payment of Wages Act and, therefore, any decision rendered under the Payment of Wages Act would not be applicable to the facts and circumstances of this case.

36. To sum up, cls. (5) and (7) of the impugned notification give effect to the power of the State Government to fix a minimum rate of remuneration as provided for under S. 3(2)(c) of the Act. This power is also recognised by this Court in the decision reported in *Mizar Govinda Annappa Pai & Sons v. State of Mysore* (1971) 39 FJR 275, that remuneration is "guaranteed wages" prescribed under clause (5) of the impugned notification. Clause (7) is consequential to

clause (5).

37. For these reasons, I find no good ground to accept the challenge made by the learned counsel for the petitioners to the validity of the impugned notification.

38. Accordingly, these petitions are dismissed.

39. In the circumstances of the case, parties shall bear their own costs.