

(1982) 10 KAR CK 0022

In the Karnataka High Court

Case No : Writ Petition No"s. 11521 of 1982 etc.

Karnataka Planters" Association

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 15-10-1982

Acts Referred:

Industrial Disputes Act, 1947 — Section 12 (3), 18 (3)
Karnataka Minimum Wages Rules — Rule 11, 4 (3)
Minimum Wages Act, 1948 — Section 5 (1) (b), 5 (2), 9

Citation : (1986) ILR (Kar) 1787

Hon'ble Judges : Bopanna, J

Bench : Single Bench

Judgement

Bopanna, J.

42. On the pleadings of the parties and the competing contentions of their Learned Counsel, the following general points arise for consideration in these batches of petitions :

(1) Did the draft notifications dated 30-7-1981 containing the proposals of the Government for revising/fixing the minimum wages and published in the Government Gazette dated 6-8-1981, comply with the requirements of Clause (b) of Sub-section (1) of Section 5 of the Act ? If not, are those notifications bad in law and vitiate the final notifications impugned in these proceedings ?

(2) Was there a consideration by the Government of all the representations against the proposals for fixation/revision of minimum wages as required u/s 5(2) of the Act ?

(3) If there was no consideration of those representations, what is the effect of such non-consideration ?

(4) Was there any consultation between the Government and the Board as required under the proviso to Section 5(1)(b) of the Act (in short "the proviso") ?

- (5) Was the Board properly constituted in that the Minister for the Government holding the Labour Portfolio himself was an independent member as also the Chairman of the Board ?
- (6) What is the proper construction of the proviso ? Is consultation between the Government and the Board mandatory or directory ?
- (7) If there was consultation, was it only illusory and not effective, meaningful and purpose-oriented as contemplated under the proviso ?
- (8) Inasmuch as some of the impugned notifications revised the minimum rates of wages fixed earlier, were the petitioners entitled to be heard in person on their representations made u/s 5(2) of the Act ? Was such hearing necessary in the case of first fixation of minimum wages ?
- (9) The Government being the owner of the Government Printing Press, Rubber Plantations, Karnataka State Road Transport Corporation, could the Government officials and the Minister fill the bill as independent members of the Board and satisfy the requirements of Section 9 of the Act ?
- (10) Did the impugned notifications fix a fair wage and not a minimum wage and therefore it was bad in law ?
- (11) Can the impugned notifications supersede the settlements u/s 12(3) of the Industrial Disputes Act, 1947, which were in force in certain industries and impose additional obligations on the employers ?
- (12) Were they made for extraneous considerations and not for the bona fide purpose of fixing/revising the minimum wages ?
- (13) Are the notifications bad because they provided for dearness allowance exceeding 100 per cent neutralisation in certain industries ?
- (14) Are the notifications violative of Section 4(1) of the Act since there is no provision for adjustment of dearness allowance but only for upward revision thereof ?
- (15) Did the participation of the Minister as Chairman-cum-Official of the Board rob the independent status of the other independent members who were Government servants and some of whom were directly under his departmental control ?
- (16) Is there any justification for the grievance that the impugned notifications in respect of the petitioners' industries were vitiated by bias as only the claim of the opposition party for revision/fixation of minimum wages was considered, as evidenced by the unchallenged report of the statement made by the Minister for Labour in "The Hindu" dated 24-2-1982 ?
- (17) Are the impugned notifications bad in law as being violative of Article 14 of the Constitution ?

(18) While revising the minimum wages, is there any scope for incorporation of variable dearness allowance in the impugned notification ?

(19) Since the draft notification did not contain the proposal for dearness allowance in certain industries, was it competent for the Government to introduce dearness allowance in the final notification in regard to those industries ?

(20) Are the factors like reduction in employment, closure of industries and consumer resistance relevant and if so, were they taken into consideration ?

(21) Are the petitioners estopped from challenging the constitution of the Board when they had not objected to the Minister's presence either in the present proceedings before the said Board or in the past ?

(22) If the advice of the Board is not binding on the Government, is consultation mandatory under the proviso ?

(23) Are the impugned notifications vitiated by lack of application of mind to the representations of the petitioners and the workmen and non-compliance with the mandatory requirements of the proviso?

(24) What is the meaning to be given to the word "also" in the proviso?

(25) Are the contentions of the petitioners, questioning the validity of the constitution of the Board and the construction of the provisions of the proviso, no more res integra in view of the decisions of the Supreme Court and this Court in the cases of Chandra Bhavan Boarding and Lodging, Bangalore Vs. The State of Mysore and Another, and AIR 1968 Mysore 156) and The State of Andhra Pradesh Vs. Narayana Velur Beedi Manufacturing Factory and Others, as contended by the Learned Counsel for the workmen and the learned Advocate General ?

43. I will take up the last contention of the respondents (point No 25) first since, if as contended by the workmen and the Learned Advocate General, I am bound by any decisions of the Supreme Court under Article 141 of the Constitution on the questions relating to the validity of the constitution of the Board and the procedure to be adopted by the Government for fixing/revising the minimum wages in the manner provided u/s 5(1)(b) of the Act, a good deal of debate in support of the petitioners' case on these points would be redundant and my judgment could be shortened considerably. The heart of the case in these proceedings is enmeshed by the tangled skeins of the various arguments of the Learned Counsel for the parties on these two points and others incidental thereto and therefore it is necessary to determine the ratio decidendi in Chandra Bhavan Boarding and Lodging, Bangalore Vs. The State of Mysore and Another, and The State of Andhra Pradesh Vs. Narayana Velur Beedi Manufacturing Factory and Others, cases.

44. The provisions of Section 5 of the Act may be noted at this stage :

"5. Procedure for fixing and revising minimum wages.

(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 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 subsection, 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 Sub-section (1), the appropriate Government shall consult the Advisory Board also.

45. In Chandra Bhavan Boarding and Lodging, Bangalore Vs. The State of Mysore and Another, , the fixation of minimum wages under the procedure as provided for u/s 5(1)(a) of the Act, was challenged in this Court originally. The principal arguments, inter alia, advanced were : (a) that the procedure u/s 5(1)(b) should have been followed and not the one u/s 5(1)(a); (b) that the appointment of Government officials as independent members of the Board had vitiated its composition. Both these contentions were rejected by the Division Bench of this Court. That was a case of fixation of minimum wages under the procedure prescribed in Section 5(1)(a) and not revision/ fixation of such wages u/s 5(1)(b). This Court held that consultation with the Board was not compulsory in the case of initial fixation of minimum rates of wages (See para 92 of the decision). Hence, the construction of Section 5(1)(b) and the proviso were not considered by this Court insofar as it related to revision of minimum wages. The Supreme Court affirmed the decision of this Court in Chandra Bhavan Boarding and Lodging, Bangalore Vs. The State of Mysore and Another, on both these points. On the first point, the Supreme Court ruled :

"The legislature has prescribed two different procedures for collecting the necessary data, one contained in Section 5(1)(a) and the other in Section 5(1)(b). In either case it is merely a procedure for gathering the necessary

information. The Government is not bound by the advice given by the committee appointed u/s 5(1)(a). Discretion to select one of the two procedures prescribed for collecting the data is advisedly left to the Government. In the case of a particular employment, the Government may have sufficient data in its possession to enable it to formulate proposals u/s 5(1)(b). Therefore, it may not be necessary for it to constitute a committee to tender advice to it but in the case of another employment it may not be in possession of sufficient data. Therefore it might be necessary for it to constitute a committee to collect the data and tender its advice. If the Government is satisfied that it has enough material before it to enable it to proceed u/s 5(1)(b) it can very well do so."

Relying on this observation, Messrs M. C. Narasimhan and K. Subba Rao for some of the Unions maintained that the procedure u/s 5(1)(b) of the Act is merely for gathering the necessary information and thus understood, the proviso has to be understood as merely directory and not mandatory and therefore the petitioners can not challenge the procedure adopted by the Government in these cases.

46. The Learned Advocate General, relying on the ruling of the Supreme Court in *State of Andhra Pradesh*², maintained that I am bound by the same. The relevant portion of that decision reads as :

"The Committee or the advisory board can only tender advice which is not binding on the Government while fixing the minimum wages or revising the same as the case may be. Of course, the Government is expected, particularly in the present democratic set up, to take that advice seriously into consideration and act on it but it is not bound to do so. The language of Section 9 does not contain any indication whatsoever that persons in the employment of the Government would be excluded from, the category of independent persons. These words have essentially been employed in contradistinction to representatives of employers and employees. In other words, apart from the representatives of employers and employees there should be persons who should be independent of them. It does not follow that persons in the service or employ of the Government were meant to be excluded and they cannot be regarded as independent persons vis-a-vis the representatives of the employers and employees. Apart from this the presence of high Government officials who may have actual working knowledge about the problems of employers and employees can afford a good deal of guidance and assistance in formulating the advice which is to be tendered u/s 9 to the appropriate Government."

This decision, as the facts disclose, no doubt, related to a notification revising the minimum wages in the beedi industry. But the sole point that arose for consideration, as is evident from para-1 of the judgment, was whether Government officials could be independent members of the Board. The Supreme Court agreed with the view of the majority of the High Courts that they could be independent members.

47. Whether these three cases lay down the law which is binding on me for considering the issues raised in point Nos. 4 to 7, 9, 15 and 23 depends on the determination of the ratio decidendi in these cases. It is common ground that (a) the procedure adopted u/s 5(1)(b) of the Act was not considered in these cases ; (b) the scope of the proviso and its interpretation in relation to revision of wages u/s 5(1)(b) in contra-distinction to the initial fixation of wages did not arise for consideration ; the Minister of Labour who is responsible for the disposal of the business of the Government in so far as it relates to the legislative mandate u/s 5 of the Act did not figure in the dual capacity as the Chairman of the Board and independent member of the same ; (d) even if he had figured in that dual capacity, in what manner he would have affected the composition of the Board or the independent character of the other official members some of whom were his direct subordinates, namely, the Labour Secretary and the Labour Commissioner, did not come up for consideration ; (e) lastly, the meaning to be assigned to the words "considering" and "consultation" in Section 5(2) and the proviso respectively for the purpose of fixing/revising minimum wages was neither argued before nor considered by the Supreme Court.

48. On the matrix of these undisputed facts, what is the ratio decidendi of these cases? "Cases do not unfold the principles for the asking." (Cardozo, J.) If the line of reasoning can be discovered in a judgment, it is binding. It is imperative for this Court, keeping in view the command of Article 141 of the Constitution to ascertain the rules for finding the principles of a case which would be a binding precedent. The rules as formulated by Professor Goodhart, the Erudite ex-editor of Law Quarterly Review, in my view, afford a good guidance in this regard and they are :-

"(1) The principle of a case is not found in the reasons given in the opinion.

(2) The principle is not found in the rule of law set forth in the opinion.

(3) The principle is not necessarily found by a consideration of all the ascertainable facts of the case, and the judge's decision.

(4) The principle of the case is found by taking account (a) of the facts treated by the judge as material, and (b) his decision as based on them.

(5) In finding the principle it is also necessary to establish what facts were held to be material by the judge, for the principle may depend as much on exclusion as it does on inclusion...."

49. Applying these rules, the ratio decidendi in The State of Andhra Pradesh Vs. Narayana Velur Beedi Manufacturing Factory and Others, cases is :

(1) If the "procedure u/s 5(1)(a) of the Act is followed, advise of the Board is not binding on the Government.

(2) Government officials could be independent members of the Board u/s 9 of the Act.

50. These cases, therefore, do not lay down the law for the aforesaid seven points for determination. Even as an obiter, they do not bind me since the procedure for fixation/ revision of minimum wages u/s 5(1)(b) of the Act was not the subject matter of litigation between the parties in those cases

51. On the other hand, in *Bijay Cotton Mills Ltd. Vs. The State of Ajmer*, a Constitution Bench of the Supreme Court, while repelling the challenge made to the constitutional validity of the Act, held :

"As regards the procedure for the fixing of minimum wages, the "appropriate Government" has undoubtedly been given very large powers. But it has to take into consideration, before fixing wages, the advice of the committee if one is appointed, or the representations on its proposals made by persons who are likely to be affected thereby. Consultation, with advisory bodies has been made obligatory on all occasions of revision of minimum wages, and Section 8 of the Act provides for the appointment of a Central Advisory Board for the purpose of advising the Central as well as the State Government both in the matter of fixing and revision of minimum wages. These provisions, in our opinion, constitute an adequate safeguard against any hasty or capricious decision by the "appropriate Government"."

52. Further in *State of Rajasthan and Another Vs. Shri Hari Ram Nathwani and Others*, the Supreme Court, in para 5 of its judgment, has ruled :

"If the procedure provided in Clause (a) is followed, consultation with the Advisory Board is not required in terms but is resorted to while it is mandatory in case of procedure (b)."

In para 6, it has stated thus :

"It must be remembered that the procedure followed in this case was the one provided in Section 5(1)(a) in which case it was not mandatory for the Government to take the opinion, of the Advisory Board."

53. These two decisions of the Supreme Court are binding on me on the point that consultation between the Government and the Board is mandatory. But either the meaning of the word "considering" in Section 5(2) or the word "consultation" in the proviso did not come up for consideration by the Supreme Court or this Court in any of their decisions rendered on the Act. While I am on the point of binding precedent or the law that is binding on this Court under Article 141 of the Constitution, certain observations of Sir Carleton Allen (*Law in the Making* 7th edn. p. 29) quoted in "*Oxford Essays in Jurisprudence*," (1968 Ed. p, 149 : : Ratio Decidendi of a case and the Doctrine of Binding Precedent : : by A.W.B. Simpson) should be noted :

"We say that he (a judge) is bound by the decisions of higher Courts ; and so he undoubtedly is. But the superior Court does not impose fetters upon him ; he places the fetters on his own hands. He has to decide whether the case cited to him is truly apposite to the circumstances in question and whether it accurately

embodies the principle which he is seeking. The humblest Judicial Officer has to decide for himself whether he is or is not bound...."

54. For these reasons, I am of the view that the decisions in Chandra Bhavan Boarding and Lodging, Bangalore Vs. The State of Mysore and Another, and The State of Andhra Pradesh Vs. Narayana Velur Beedi Manufacturing Factory and Others, cases are not binding precedents and I am free to decide these points in the light of the contentions raised by the parties in these batches of cases.

55. As noticed earlier, the first point which goes to the root of the matter is the composition of the Board in the context of the procedure adopted for revision of wages in most of these cases u/s 5(1)(b) of the Act. The composition of the Board is controlled by the provisions of Section 9 of the Act which provides that it (the Board) shall consist of persons to be nominated by the Government representing employers and employees in the scheduled employments who shall be equal in number and independent persons not exceeding one-third of the total number of other numbers. Admittedly, in these cases, the Board consisted of five employer's representatives, five employees' representatives and five independent members. These independent members on 1-1-1982, when the Board met for the last time before the impugned notifications were published, were :-

"Sriyuths :

(1) A. B. Jakanur, Hon"ble Labour Minister, Government of Karnataka, and Chairman, Karnataka State Minimum Wages Advisory Board, BANGALORE.

(2) J. Alexander, I. A. S., Secretary to Government, Social Welfare and Labour Department, BANGALORE.

(3) B.N. Betkerur, I.A.S., Commissioner of Labour, BANGALORE.

(4) T. Puttaswamy, Under Secretary (PP - II) to Planning Department, Authorised representative of Secretary to Planning Department, BANGALORE.

(5) L. Krishnamurthy, Superintending Engineer (Design), Authorised representative of Chief Engineer (C & B),P.W.D. BANGALORE."

Interestingly, in Chandra Bhavan Boarding and Lodging, Bangalore Vs. The State of Mysore and Another, , the Chief Engineer of PWD was the employers "The Civil Service in Britain and France" representative and his appointment as such was upheld by this Court on the ground that the operations of PWD would come under the scheduled employments and therefore he could be the representative of the employer, namely, the Government. However, in the instant cases, he was an independent member of the Board in its meeting held on 28-11-1981 and remained absent and as his authorised representative the Superintending Engineer (Design) was the independent member of the Board.

56. That the appointment of Government officials as independent persons in the Board is valid and regular, is well settled by the decisions of the Supreme Court

in State of Rajasthan and Another Vs. Shri Hari Ram Nathwani and Others, and The State of Andhra Pradesh Vs. Narayana Velur Beedi Manufacturing Factory and Others, cases. What the Supreme Court held in those cases was that the test of independence is that the independent members should be independent of employers and employees. While officials Nos. 2 to 5 could be independent persons, what is the position of the Minister? Is he an independent person when the Government is the employer in certain scheduled employments like printing [Government Printing Press), transport (Karnataka State Road Transport Corporation--an authority under Article 12 of the Constitution) and the Government-owned rubber plantation (which is also a petitioner in these cases)]. If the Chief Engineer of PWD could be the employers' representative in Chandra Bhavan Boarding and Lodging, Bangalore Vs. The State of Mysore and Another, I am at a loss to comprehend how the Minister could fill the bill as an independent person in the Board in these cases. Additionally, the Supreme Court, in the aforesaid cases, legitimised the appointment of only Government officials as independent members in the Board. Therefore, it is open to the petitioners to contend that the Minister is not a Government official and therefore could not be an independent person in the Board in the context of the proviso which makes consultation between the Board and the Government obligatory in all cases of revision.

57. In this connection, Rule 4(3) of the Karnataka Minimum Wages Rules should be noticed. It reads as :

"The official members of the Board shall hold office during the pleasure of the Government."

58. In the light of this rule, the learned Counsel for the petitioners contend that the Minister is not a Government official and therefore he could not be an independent member in the Board. The learned Advocate General met this point on the following grounds :

(a) Rule 11 of the Rules is the only disqualification for membership and the Minister had not suffered any disability under that rule.

(b) As an official member under Rule 4(3), he is an independent member.

(c) u/s 15 of the General Clauses Act, his appointment ceases when the notification appointing him is revoked.

(d) Though he holds the office of the Minister during the pleasure of the Governor, his membership of the Board is not subject to the pleasure theory.

(e) The Minister is a public servant as held by the Supreme Court in M. Karunanidhi Vs. Union of India and Another, and hence there was no bar for his appointment as an independent member-cum-Chairman of the Board.

(f) The petitioners should not be permitted to challenge his status, since during the last 15 years in this State every Labour Minister was the Chairman of the

Board and the petitioners had not assailed his position in any of the proceedings relating to fixation or revision of minimum wages."

59. It is not in dispute that the Minister did not suffer from any disqualification under Rule 11. The disqualifications mentioned in the said rule are personal to the members of the Board and do not apply only to the Minister. It is not in dispute that he was appointed by virtue of his office by a notification which is revocable u/s 16 of the General Clauses Act, 1897. So Rule 4(3) of the Rules may not come in the way of his appointment if he is an official. But could he be an official member and consequently an independent member when the records disclose that he took the decision for the impugned notification on behalf of the Government ? In other words, could he be a member of the Board as its Chairman and conduct its proceedings on one day and act for the Government in compliance with the mandatory requirement of the proviso the next day ? Faced with this dilemma, the learned Advocate General submitted that consultation with the Board was not mandatory and therefore the impugned notifications are not liable to be disturbed. The Learned Counsel for the workmen also supported the Advocate General to some extent, but, having conceded that the proviso is a real proviso to Section 5(1)(b) and not a mere explanation, they submitted that the Minister's dual role facilitated an effective consultation between the Board and the Government and thereby the social policy of the Act was effectively implemented. Alternatively, they contended that if the proviso is read with Sections 7 and 8, the function of the Board is only to advise the Government which is not binding on the Government and therefore the word "consult" in the proviso loses all its significance. Sections 7 and 8 of the Act read as under :-

"7. Advisory Board : For the purpose of co-ordination the work of committees and sub-committees appointed u/s 5 and advising the appropriate Government generally in the matter of fixing and revising minimum rates of wages, the appropriate Government shall appoint an Advisory Board."

"8. Central Advisory Board : (1) For the purpose of advising the Central and State Governments in the matters of the fixation and revision of minimum rates of wages and other matters under this Act and for co-ordination the work of the Advisory Boards, the Central Government shall appoint a Central Advisory Board.

(2) The Central Advisory Board shall consist of persons to be nominated by the Central 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 of the Board by the Central Government."

60. I will deal first with the argument of the Learned Advocate General on this point. I have already held that the decision of the Supreme Court in State of A. P. case² is not a binding precedent. But the Advocate General, relying on the decisions of the Supreme Court in State of Rajasthan and Another Vs. Shri Hari

Ram Nathwani and Others, and Dosa Satyanarayanamurty etc. Vs. The Andhra Pradesh State Road Transport Corporation, maintained that the functioning of the Minister in the dual capacity can only be attacked on the ground of bias ; but, for such an allegation, firstly, there is no proof and, secondly bias cannot be attributed to statutory functionaries. In State of Rajasthan and Another Vs. Shri Hari Ram Nathwani and Others, a Minister never figured in the proceedings of the Advisory Board but only Government officials. In Dosa Satyanarayanamurty etc. Vs. The Andhra Pradesh State Road Transport Corporation, , the Minister was a member of a consultative committee constituted under the Motor Vehicles Act for formulating a scheme for the nationalisation of transport and as. the Transport Minister of the Government, he sanctioned the scheme on behalf of the Government. That was not a case where the Minister functioned as a statutory functionary in two capacities as Chairman of the Board and as Minister for Labour charged with the duty to consult the Board and implement the decision of the Government. The scheme of the Motor Vehicles Act bears no comparison to the scheme of the Minimum Wages Act. In a conflict between the private operators and the State Transport Undertaking, the Motor Vehicles Act visualises that the State Government sits in judgment and resolves the conflict. The Supreme Court in para 14 of its decision, quoted with approval the ruling of Shah, J., in H.C. Narayanappa and Others Vs. The State of Mysore and Others, as follows :

"It is also true that the Government on whom the duty to decide the dispute rests, is substantially a party to the dispute but if the Government or the authority to whom the power is delegated acts judicially in approving or modifying the scheme, the approval or modification is not open to challenge on a presumption of bias. The Minister or the officer of the Government who is invested with the power to hear objections to the scheme is acting in his official capacity and unless there is reliable evidence to show that he is biased, his decision will not be liable to be called in question, merely because he is a limb of the Government."

It is not the case of the Learned Advocate General that the Government acts judicially in determining the minimum wages. Indeed it can never be since the final notification u/s 5(2) of the Act unquestionably is an administrative decision and not a judicial or quasi-judicial decision. Therefore the part played by the Government or the Minister for formulating a scheme of nationalisation under the Motor Vehicles Act does not afford any ground or basis to justify the composition of the Board with the Minister as an independent person and Chairman of the Board, when the same Minister took the final administrative decision for the impugned notifications in all these cases as Minister for Labour for the Government. Accordingly, the Learned Advocate General cannot get any sustenance from the decision of the Supreme Court in Dosa Satyanarayanamurty etc. Vs. The Andhra Pradesh State Road Transport Corporation, More to the point is that the rule of bias cannot be overlooked in administrative decisions after A.K. Kraipak and Others Vs. Union of India (UOI) and Others, . Hence, the petitioners have laid more stress on this aspect because of the alleged absence of

consultation between the Board and the Government as required under the proviso.

61. The next point of the learned Advocate General relates to waiver and acquiescence. No doubt, in this State the Labour Minister was always the Chairman of the Board since 15 years. But this is the first time the revision of minimum wages following the procedure u/s 5(1)(b) is challenged in this Court. The plea of waiver was not specifically pleaded by the Government in its counter. Even in the amendment affidavit, such a plea was not raised. Hence, it is clearly impermissible for the Government to raise such a plea, Further it is not the case of the Government or the workmen that the Petitioners had been fully informed about their right and with full knowledge of such right they intentionally abandoned the same. (See Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, Hence, on this ground, the presence of the Minister in the Board cannot be justified. Appropriately, to what extent the presence of the Minister as Chairman of the Board robs the independent character of the Government officials who were appointed as independent persons in the Board, could be considered at this stage. Under Rule 4(3) of the Rules, they hold office as independent persons during the pleasure of the Government. The Minister, as the Chairman of the Board, has the power to call for the meeting of the Board, finalise the agenda, preside over the meetings, adjourn the meeting for want of quorum, dispose of the business of the Board at such adjourned meeting irrespective of the fact whether there is quorum or no quorum, determine the methods of secret ballot if he decides that voting shall be by secret ballot, permit inspection of books, papers and other document produced before the Board by such parties as he may allow with the consent of the other party (See Rules 12 to 17 and 19(5) of the Rules). Hence, the office of the Chairman is not a gubernatorial office as suggested by the learned Counsel for the workmen. He has the prima facie authority to decide all questions which arise at a meeting and which require decision at the time. He has to preserve order, conduct the proceedings regularly and take care that the sense of the meeting is properly ascertained with regard to any question before it. He must observe strict impartiality, even though he may be personally strongly opposed to any matter. He must give a reasonable chance to the members present to discuss any proposed resolutions and ensure all views are adequately aired. He has also certain common law powers such as (i) the power to bring the discussion on any question to a close ; (ii) the power to adjourn a meeting if it is necessary, in his opinion under certain circumstances. Such being his powers and duties, could it be expected of the four Government officials, though legally baptised as independent members to question the propriety of the Minister's actions as Chairman or to ensure the proper discharge of his duties as Chairman ? More so, when they hold their office during the pleasure of the Government under Rule 4(3). In recent times, we have heard of a couple of civil servants coming out boldly with the courage of their convictions against what they thought as authoritative tyranny but these are exceptional cases. One swallow does not

make a sumner. So also these officials, though their legal status is not open to question, could not have functioned in reality as independent persons in the Board, when the Minister himself was the Chairman of the Board and this is also evident from the proceedings of the Board, to which necessary reference will be made presently. Thus the presence of the Minister as Chairman had robbed the official members of their independent status. This view is also supported by the observation of the Supreme Court in *Bijay Cotton Mills Ltd. Vs. The State of Ajmer*, of its Judgment, the Supreme Court, while crediting the Government officials with the responsibility of taking a detached and impartial view, qualified that observation by stating :

"It may be that in certain circumstances such persons who are in the service of the Government may cease to have an independent character if the question arises of fixation of minimum wages in a scheduled employment in which the appropriate Government is directly interested. It would, therefore, depend upon the facts of each particular case whether the persons who have been appointed from out of the class of independent persons can be regarded as independent or not."

In these cases, the Government was interested in scheduled employments like printing, transport and rubber plantation. Additionally, the Minister for Labour who took the decision for the impugned notifications on behalf of the Government was the Chairman of the Board. These two factors denuded the independent character of the official members and therefore the constitution of the Board was vitiated. That is the reason the Supreme Court, albeit it reversed the decision of the Rajasthan High Court in *State of Rajasthan and Another Vs. Shri Hari Ram Nathwani and Others*, did not expressly dissent from the view of that Court on this point. It observed :

"In the extract which we have given above from the decision of this Court a sentence is to be found resembling the line of thinking of the Learned Acting Chief Justice. This Court has said :

"It may be that in certain circumstances such persons who are in the service of the Government may cease to have an independent character if the question arises of fixation of minimum wages in a scheduled employment in which the appropriate Government is directly interested."

The question as to whether in such a situation a Government officer appointed on the Board or a Committee can be said to be an independent member or not will have to be cautiously considered when an appropriate occasion arises for the same."

63. (sic) Even then, it was contended by the Learned Counsel for the respondents that the advice of the Board was not binding on the Government and therefore any irregularity in its constitution would not vitiate the impugned notifications. Reliance was placed on the decision of the Supreme Court in *The Edward Mills Co. Ltd., Beawar and Others Vs. The State of Ajmer and Another*,

That was a case of fixation of minimum wages. In that case, there was only a procedural irregularity in the constitution of the Board and the Government was not bound to accept the advice of the Board as it was a case of fixation of minimum wages under the procedure prescribed u/s 5(1)(a) of the Act. That decision, therefore, cannot be an authority for the question arising for consideration u/s 5(1)(b) of the Act when consultation with the Board is mandatory under the proviso. Additionally, the set-up of the Board consisting of four Government officials and the Minister as independent members on the facts and circumstances of these cases, is not a procedural irregularity but a grave defect going to the root of the constitution of the Board u/s 9 of the Act which has thus vitiated the consultation as required under the proviso.

64. One more factor which robs the independent character of the official members, namely, the Labour Secretary and the Commissioner of Labour and two other Officers who participated in the proceedings of the Board on 1-1-1982, is the apparent conflict between their roles as civil servants of the Government and as independent members of the Board with the Minister as the Chairman enjoined to act within the parameters of the Act. The role of the civil servants in a democracy is admirably brought out by William A. Robson "The Civil Service in Britain and France" in his essay on Bureaucracy and Democracy thus :

"In theory, Ministers decide policy, and civil servants carry out their decisions. This is strictly true from a constitutional standpoint ; but in reality it is a conventional half truth. Ministers seldom have the time, or knowledge, and sometimes not the skill, to formulate policy unaided. They must rely on their senior officials for advice, and still more for knowledge of the basic facts and figures on which policy must be based. They have a right to expect that civil servants will do their utmost to make proposals which will reflect, or at least be compatible with, the political philosophy and the programme of the party in power.

"A Minister should always consult his senior officials before deciding an important matter of policy, though he is not under a legal or constitutional duty to do so, One compelling consideration is that if he blunders, the department, as well as he personally, will suffer a loss of reputation. The civil servant on his side has a right to put forward what Sir Edward Bridges has called "the departmental philosophy". It is, indeed, his duty to give his Minister the quintessence of departmental experience on those large issues of policy which he must decide and thus "to Jet the waves of the practical philosophy wash against ideas put forward by his Ministerial master". The civil servant is entitled to advise, to warn, to encourage and to explain but no more. Sir Ernest Gowers has gone so far as to say that if a civil servant thinks a proposal by his Minister is misconceived, it is his duty to say so, and why. He may, if invited to do so, express his opinion as to the relative advantages and disadvantages of alternative courses of action, looked at from the Government's stand point. He must not, however, allow his personal prejudices or his political bias to suppress or distort policies or to

denigrate courses of action which are administratively practicable although leading to ends he considers to be undesirable. If he feels very strongly opposed to a course of action which the Government has decided upon, he should ask for a transfer to another department. This will rarely occur.

"Above all, a civil servant has no right to be unhelpful, unconstructive, and negative, Nor should he be indifferent to the political convictions and party pressures which affect the Minister he serves. Although as an official he may not share them, he should nonetheless be aware of their existence and make due allowances for them in his work. Civil servants will, however, be acting without the knowledge or guidance of their political chiefs most of the time ; and hence it is important that they should accurately reflect the Minister's mind or at least his policy in every aspect of day-to-day administration. This should apply right down the line, subject to the important qualification that the vast majority of departmental decisions are non-political."

This quotation also brings out the distinction between a civil servant and a Minister in the parliamentary form of government.

65. In these cases, the civil servants, namely the Deputy Secretary Labour, who put up the note to the Labour Secretary for orders, who in turn minuted that a decision should be taken in the presence of the Minister, should have expressed their own views in the matter or advised the Minister as to what he should do. As members of the Board, the Commissioner of Labour and the Labour Secretary could have only formulated their views within the framework of the Act. That was also not possible in these cases, as the Minister himself was the Chairman and he controlled the proceedings of the Board. They did neither play the role of civil servants, if their performance were to be evaluated by the above quotation, nor fulfilled their duties as independent members of the Board since for a proper consultation there was no consideration of the various representations pertaining to various industries by them. A Minister may be a public servant for the purpose of prosecution under the Prevention of Corruption Act but that does not mean that he is a civil servant. His role as the Chairman of the Board in these cases conflicted with his role as the Minister of the Government. This discussion disposes of points Nos. 5 and 9 formulated by me and my reasoning is further supported by my observations on the Board's proceedings and the Government's proceedings found in paras 72 and 77.

66. Before I take up the other points, point No. 6 will have to be considered since the core of the case is to be found in the proper construction of the proviso. The proviso reads as follows :

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

According to the learned Counsel, Messrs M.C. Narasimhan and K. Subba Rao for certain Unions, firstly, the word "shall" in the proviso is not mandatory and

therefore there was no need for any consultation between the Board and the Government. Alternatively, assuming it is mandatory, there was consultation between the Board and the Government and therefore there was proper compliance with the proviso.

67. On the first contention, they submitted that Sections 7 to 9 of the Act control the proviso ; that the proviso applied to the whole of Section 5 and therefore not mandatory ; the word "shall" has to be interpreted as "may" regard being had to the nature of the power to be exercised by the Government coupled with the duty to revise the minimum wages under the Act ; since the Act operates in the field of unorganised sector of the working class, they have no control over the compliance with the proviso by the Government and therefore it is not mandatory. Reliance was placed on the decision in *Montreal Street Railway Company v. Normandin*, AIR 1917 PC 142, AIR 1945 67 (Federal Court) Major U.R. Bhatt Vs. Union of India (UOI), *The Edward Mills Co. Ltd., Beawar and Others Vs. The State of Ajmer and Another*, , *Chandra Bhavan Boarding and Lodging, Bangalore Vs. The State of Mysore and Another*, and *Manohar Narayan Joshi and Others Vs. State of Maharashtra and Others*, as also a passage in *Craies on Interpretation of Statutes* (7th Edn. p. 218).

68. I will deal with these contentions in seriatim. The procedure for fixing/ revising minimum wages is found only in Section 5 of the Act. These are cases of fixation and revision and Government has followed the method prescribed under the Section 5(1)(b) of the Act read with the latter part of Section 5(2). The proviso is indisputably attracted in the case of revision of wages by, the above method. The whole of Section 5 contains the modalities of fixing and revising minimum wages whereas Section 7 provides for the constitution of the Advisory Board for the purpose of co-ordination the work of committees and sub-committees appointed u/s 5 and advising the appropriate Government generally in the matter of fixing and revising minimum rates of wages. Section 8 provides for the appointment of a Central Advisory Board but that board does not figure in these proceedings. Section 9 provides for the composition of the Advisory Board.

69. Now, the proviso to a Section will be generally a real proviso limiting or qualifying what preceded it or sometimes on account of inept draftsmanship that which is expressed to be a proviso may itself add to and not merely limit or qualify that which precedes it, i. e., the main provisions of a Section. This is the well settled construction of a proviso. If it is a real proviso, full effect must be given to it and if it is a mere explanation, that explanation should not be interpreted in such a way as to whittle down the effect or intendment of the main provisions. Where the enacting part of the Section is unambiguous and complete and is followed by a true proviso, that is a qualification or an exception out of it. The view expressed in *Kent's Commentaries on American Law* (cited with approval by Maxwell in his book on *Interpretation of Statutes* and quoted with approval by the Privy Council in *Commissioner of Stamp Duties v. Atwill and Ors.*) 1973 I All. E.R. 576 is the correct view in interpreting the provisions of a

Section ending with a proviso. That view is :

"The true principle undoubtedly is, that the sound interpretation and meaning of statute, on a view of the enacting clause, saving clause, and proviso, taken and construed together, is to prevail."

This view was also adopted by the Supreme Court in *The Commissioner of Commercial Taxes and Others etc. Vs. R.S. Jhaver and Others etc.*, , In that case, the Supreme Court was dealing with an exceptional proviso and not a real proviso.

70. Keeping in view these rules of construction, the language of Section 5(1) and (2) may be examined. The words therein are clear, explicit and admit of no ambiguity. For the purpose of these cases, the relevant portion of Section 5 reads as follows :-

"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)

(b)

"(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 Sub-section (1), the appropriate Government shall consult the Advisory Board also."

On the plain language of this Section, the Act prescribes a definite procedure for revision of minimum wages if the procedure u/s 5(1)(b) is followed. That is, there should be a consultation between the advisory board and the Government before the final notification revising the minimum wages is issued. Any further elaboration is unnecessary on this point as the proviso is a safeguard against any arbitrary action by the Government in revising the minimum wages and this was noted by the Supreme Court in *Bijay Cotton Mills Ltd. Vs. The State of Ajmer*, and in *State of Rajasthan and Another Vs. Shri Hari Ram Nathwani and Others*, For these reasons, neither the contentions of Messrs M.C. Narasimhan and K. Subba Rao nor the cases and authorities relied on by them, are of any avail to them for sustaining their contention that consultation under the proviso was not mandatory. Additionally, the word "also" in the proviso, in the light of the

decision of the Supreme Court in *Govindlal Chaggan Lal Patel v. The Agriculture Produce Market Committee and Ors.* AIR 1976 SC 2632 @ 67 makes it clear that consultation is mandatory. In that case, the Section that came up for consideration was Section 6(1) of the Gujarat Agricultural Produce Markets Act (20 of 1964). The Supreme Court ruled :

"..... Section 6(1) of the Act provides in terms, plain and precise, that a notification issued under the Section "shall also" be published in Gujarati in a newspaper. The word "also" provides an important clue to the intention of the legislature because having provided that the notification shall be published in the Official Gazette, Section 6(1) goes on to say that the notification shall also be published in Gujarati in a newspaper. The additional mode of publication prescribed by law must in the absence of anything to the contrary appearing from the context of the provision or its object, be assumed to have a meaning and a purpose."

71. The second limb of their argument that assuming consultation was mandatory, there was consultation between the Board and the Government, requires consideration if that point is held against the Government, I could make short-shift of several other contentions of the petitioners. It was common ground that such consultation may be before or after considering all representations received, by the Government to its proposals published in the draft notifications. All the petitioners in unison have complained that there was no consideration of their representations at any stage. The Government has rested its case on this aspect by producing the records of each of the employments affected by the impugned notification, The Learned Counsel for the workmen have submitted that the impugned notifications being issued pursuant to an administrative decision for implementing the avowed legislative policy in a Welfare State for the betterment of the conditions of labour in "sweated industries" the words "consideration" and consultation" should not be given the meanings judicially assigned to them. Even a perusal of the representations is also consideration. This argument overlooks the ruling of the Supreme Court in *Bidi, Bidi Leaves*" and *Tobacco Merchants Association Vs. The State of Bombay*, The creation of a welfare state or a socialist republic under the Constitution can be brought about only by strict adherence to the rules of procedure prescribed by law and any departure from this rule on the ground of expediency or by being swayed by the incantations of homilies like social justice for wiping every tear from every eye, full employment and fair wages to every able-bodied person, or by promises of Government that works or delivers the goods, should not deter the Government from deviating from the Rule of Law. Any such departure to appease those meaningful cliches will result initially in a functioning anarchy which will degenerate in due course into an authoritarian form of Government totally repugnant to our Constitution and the values enshrined in it. That is why the Supreme Court in the aforesaid decision observed :

"But, it is necessary to remember that no claim can be made for such broad

jurisdictional power by the respondent when it purports to issue a notification under the provisions of the Act. These powers and authority would necessarily be conditioned by the relevant provisions under which it purports to act, and the validity of the impugned notification must therefore be judged not by general considerations of social justice or even considerations for introducing industrial peace; they must be judged solely and exclusively by the test prescribed by the provisions of the statute itself."

72. I will now consider the Government's case with reference to its records.

(a) In File No. SWL 38 LMW 81 relating to the public motor transport industry, the Commissioner of Labour writes to the Secretary, Labour Department putting up his proposal for revision of wages on the ground that the cost of living index number has increased by 112 points between 1974 and 1981, In para 10 of his proposals, he refers to the resolution of the Board in its meeting held on 29-1-1981 deciding that the minimum rates of wages for workmen should not be less than Rs. 8.10 per day and should not be less than Rs. 699/- per month for a family consisting of two adults and two children. After stressing the need for revising the minimum wages, he puts up the draft notification containing his proposals for issuing the preliminary notification u/s 5(1)(b) of the Act. The preliminary notification is published on 6-6-1981. The 14 affected parties filed their representation to this notification to the Labour Secretary, and they were forwarded to the Commissioner of Labour under cover of letter dated 11-9-1981 for necessary action. (Page 92 of the file). What is next found in the file is the letter from the Joint Labour Commissioner 1-2-1982 enclosing the proceedings of the Board held on 1-1-1982. Those proceedings relate not to transport industry alone but to all the 26 scheduled employments in respect of which preliminary notifications had already been issued. They also refer to the proceedings of the Board held on 28-11-81. Since there was no unanimity among the members, the following resolution of D. Venkatesh, Labor-member was put to vote.

"The draft proposal of the Government to revise the minimum wages for Scheduled employment in any Public Motor Transport for which notification has been issued may be accepted and Government be advised accordingly with slight modification in the formula for Cost of living Allowance. The formula for calculation of Cost of Living Allowance may be adopted as is in other employments like Film Industry, Hotel Industry etc."

It was supported by majority and therefore passed by the majority sparing the Minister of proffering his casting vote. Thus the preliminary notification became the final impugned notification with slight modification in the formula for cost of living allowance and the same was published in the Gazette dated 25-2-1982. I have noticed earlier that the 14 representations were sent to the Commissioner of Labour for necessary action. But in Note No. 13 of the Government file, it is found that the Commissioner of Labour had "not furnished the statement of remarks on the objection suggestion for consideration of the Government which was the previous practice. Anyhow, the objection/suggestion may be considered

at Government level." Note No. 14 reads as :-

"A draft final notification was also put at pages 101-104 C/F."

At Note No. 19, the Deputy Secretary to Government, Labour Department, refers to the 14 representations not individually but collectively. He finds that the employers had complained that the "rates proposed are on a higher side whereas the employees claim that the rates are on a lower side". After making a suggestion that D.A. may be linked to the average increase during the year and not at 25 paise for every 5 point increase in the cost of living index, to facilitate the calculation of total pay packet per month, he puts up the file to the Labour Secretary, who promptly suggests that a decision should be taken in the chambers of the Minister at a meeting consisting of the Minister, himself and the Commissioner of Labour.

(b) The order of the Minister, after such meeting, reads as :-

"The suggestions and objections received in response to the preliminary notification have been considered as also the advice of the State Minimum Wages Advisory Board."

(c) From the above notings in the file, it is clear that :

(i) the 14 representations consisting of objections of various types were not considered by the Government after they were received ;

(ii) they were sent to the Commissioner of Labour for necessary action ;

(iii) the Commissioner of Labour also did not consider them ; and

(iv) the Deputy Secretary did not offer any of his remarks on those objections but suggested an amendment to the preliminary notification regarding D.A. proposal and the Labour Secretary did not take any decision on his own.

73. In the background of these facts, can it be said that the Minister considered the objections of the 14 objectors to the revision of minimum wages for transport workers in his order which was a prelude to the impugned notification though the word "considered" is found in his order *State of Rajasthan and Another Vs. Shri Hari Ram Nathwani and Others*,

74. In *Kosoram Industries & Cotton Mills Ltd. v. Bangalore City Municipal Corporation* 1975(2) KLJ 97 a Division Bench of this Court while construing Section 98 of the City of Bangalore Municipal Corporation Act, explained the meaning of the words "after considering" appearing in that Section. The relevant portion of Section 98(1) reads as:-

"....The Corporation may, after considering the objections, if any, received within the period specified, determine by resolution to levy the tax or duty. Such resolution shall specify the rate at which, the date from which and the period of levy, if any, for which such tax or duty shall be levied."

Chandrashekhar, J, as he then was, speaking for the Bench (consisting of himself and Venkataramiah, J. as he then was) observed :-

"From the above sub-section it is clear that before passing a resolution to levy a tax or duty, the Corporation should consider the objections, if any, received within the period specified in the notice under that sub-section calling for objections. Such consideration of objections is, in our opinion an essential prerequisite for passing a resolution to levy tax or duty. As stated in Craies on Statute Law (7th Edn) at page 297, a subordinate law making body is bound by the terms of the delegated or derived authority and the Courts of law, as a general rule, will not give effect to the rules etc., thus made unless satisfied that all the conditions precedent to the validity of the rules have been fulfilled.

"The several meanings of the word "considered" according to the Shorter Oxford Dictionary are as follows :

"to view attentively, to give, examine, inspect ; to look attentively, to contemplate mentally ; to give heed to; take note of ; to think deliberately, bethink one self; reflect."

"From the aforesaid meanings of the word "considered" it is clear that there must be an application of the mind to a problem or question or subject before it can be said to have been considered. When the Corporators were intimated just before the commencement of the meeting that the subject of the proposed levy of octroi would be taken up for consideration at that meeting and the aforesaid note on behalf of the Commissioner regarding the objections to the proposed levy of octroi, was also furnished to the Corporators just before the commencement of that meeting, it is difficult to imagine that the Corporators could have applied their minds and considered those objections. They did not have reasonable opportunity to know what those objections were and much less to consider them."

75. I have perused the various representations myself in order to ascertain the veracity of the Minister's order that they had been considered. There are 52 pages in those representations from the workmen as also from the operators crammed with facts and figures. None of those pages bear any indication of having been thumbed through by any officer of the Government much less the Minister. Considering the fact that on one day i.e. 23-2-1982 the decision relating to the impugned notifications in as many as 13 scheduled employments were taken by the Government may speak volumes of the indefatigable industry of the persons concerned and their sincerity of purpose. Significantly even a gist of the representations was not before the Minister in any of these files to facilitate a quick decision. The record does not disclose either the application of mind by the Minister or his officials to the representations or their consideration in the manner required by law. To quote the words of Chandrashekhar, J. "the consideration of such objections must be real and not a pretence." The tell-tale notings in all the relevant Government files are sufficient proof, if at all proof is

needed, that there was no application of mind to the various representations of the persons likely to be affected by the preliminary notification either by the Minister or by any official of the Government. Accordingly, the statutory requirement of Section 5(2) of the Act was not complied with by the Government. As a corollary, the meaning of the word "consultation" between the Board and the Government is of considerable significance under the proviso in the absence of consideration of the representations of the petitioners and the workmen by the Government.

76. The meaning of the word, "consultation" has been elaborately discussed by the Supreme Court in the High Court Judges" case reported in S.P. Gupta Vs. President of India and Others, . I may note here that the modalities of consultation may vary from Act to Act depending on its scheme and object but the general meaning of the word "consultation" will not change unless statutorily defined in a given Act. The majority view of the Supreme Court on this point reads thus :-

"We have already discussed the true nature and scope of consultation required under Article 217 and pointed out that the consultation contemplated by that Article is full and effective consultation where the relevant facts bearing upon appointment or non-appointment are brought to the notice of the Central Government and the three constitutional functionaries required to be consulted and the opinion of each of the three constitutional functionaries is taken on identical material and then a decision is reached by the Central Government whether or not to appoint the person concerned as a Judge, whether additional or permanent. Now Article 217 does not require that any particular procedure should be followed for full and effective consultation nor does it insist that the relevant facts on which the final decision of the Central Government is based should be conveyed to the other three constitutional functionaries in any particular manner or by the Central Government itself. What is necessary to ensure full and effective consultation within the meaning of Article 217 is that the Central Government as well as each of the three constitutional functionaries required to be consulted must have for its consideration full and identical facts which can at once constitute both the source and foundation of the final decision and it is immaterial as to how such full and identical facts are conveyed by one authority to the other. It is sufficient compliance with the constitutional requirement of Article 217 if the self-same facts on which the final decision is taken by the Central Government are placed before each of the three constitutional functionaries required to be consulted and their opinion is taken on the basis of such facts whatever be the manner in which those facts are brought to their notice."

77(a) Now let me examine how the Board had done its exercise in conformity with the proviso. For a proper consultation between the Government and the Board, the Board should also have all the materials that the Government had before it made the impugned notifications. The records of the Board disclose that

in the first meeting of the Board dated 29-1-1981, long before the preliminary notification of the Government was published, only 8 subjects relating to 8 scheduled employments were placed before the Board. The Minister who had just then taken over the Labour Portfolio was apprised of the statutory requirements of revising/fixing minimum wages by the Secretary to the Board. The General modalities of fixing the minimum wages were discussed by the members. The decision taken by the Minister as the Chairman reads as follows :-

"..... In this regard the Chairman suggested to obtain all relevant information from the neighbouring States and to workout the minimum rates of wages on the basis of the norms and place the same before the Board during its next meeting. He also suggested that the information might be circulated among all the members. The Chairman further requested all the members to calculate the Minimum Rates of wages on the basis of the norms and give it to the Secretary so as to enable him to place the particulars during the next meeting."

(b) The Board met again on 18-11-1981 and took up for consideration 24 scheduled employments. Only the draft notifications fixing/revising the minimum wages in those 24 employments were kept before the Board and not the representations of the affected parties. The meeting was adjourned to 28-11-1981 to consider all the preliminary notifications and not the representations. I have noticed earlier that these representations were with the Commissioner of Labour on 11-9-1981. (Page 92 of the Government file on Transport, I workers). On 28-11-1981 the Board met for fixing and revising the minimum wages for the following 26 scheduled employments :-

1. Public Motor Transport
2. Agriculture
3. Agarbathi Industry
4. Film Industry
5. Stone-breaking and Stone-crushing
6. Coffee Curing Works
7. Tile Industry
8. Tailoring Industry
9. Ceramics Stone Wears & Potteries Works
10. Rice, Flour and Dhal Mill
11. Cotton Ginning & Pressing Works
12. Printing Press
13. Khandasari Sugar Factory

14. Toddy Tapping
15. Plywood Industry
16. Stone breaking and Stone crushing in any quarry
17. Construction and maintenance of Roads and building operations.
18. Tanneries and leather manufactory
19. Carpentry Industry
20. Agriculture (Soil conservation) Part-II
21. Residential Hotels and Eating Houses
22. Residential Hotels and Eating Houses (additional categories)
23. Cardamom Malais & Cardamom Garden 24. Cinchona Rubber Tea or Coffee Plantations
25. Agriculture (Horticulture Grape yard & Wine Yard)
26. Sericulture

First, the preliminary notifications were taken up for consideration by the Board. The Minister as Chairman pointed out that while the employers had suggested a reduction in the proposed revision, the employees wanted an upward revision. He also conveyed to the members the intention of the Government to publish the final notification as early as possible. Hence he wanted "the members of the Board to consider the notifications and to offer their opinion and recommendations so as to advise the Government in the matter", (Page 83 of the Board proceedings file). I have gone through the deliberation of the Advisory Board on all these 26 scheduled employments. They bear out a uniform pattern. There is a proposal by the employers to reduce the rates of minimum wages proposed. This proposition is met by the opposition of the employees' representatives who, unlike Oliver Twist do not ask but demand for more. The independent Members, true to their label, remained neutral and stood by the preliminary notification proposals. However, in tile industry, tailoring, stone breaking, stone crushing, construction and maintenance of roads and building operations, they were conspicuous by their silence. They expressed no views. The various representations to the preliminary notification in all these 26 scheduled employments find a place in the pleadings of the parties in these petitions and they form the major portion of this order running up to about 140 pages. But they were all considered and disposed of in one sitting of the Board on 28-11-1981. Nothing can be more eloquent than these proceedings of 28th November, 1981 to drive home the point that there was no consideration as understood in law by the Board of the representations of the affected parties to the preliminary notification. It is significant to note the decision taken on that day :

"After elaborate discussion on all the Notifications, the meeting was adjourned to a later date. The matter of communicating the advise of the Board to the Government was deferred for the next meeting."

(c) The next meeting took place on 1-1-1982. In that meeting, the Board confirmed the proceedings of the meeting held on 28-11-1981. The relevant portion of the proceedings read as under :

"Sri B. Basavaiah, Joint Labour Commissioner and Secretary, Karnataka State Minimum Wages Advisory Board informed the members that the previous meeting was adjourned as no unanimous decision was arrived at. Afterwards the Chairman requested the members to discuss and arrive at a decision in order to enable the Government to take decision in respect of all the proposals to fix/revise the minimum rates of wages to all the 26 scheduled employments for which preliminary notifications have already been issued.

The Chairman further informed that discussions on all the Employments took place on 28-11-1981 and now final decision has to be taken so as to advise the Government in the matter of fixation/revision of Minimum Rates of wages in respect of all the 26 notifications."

The discussion on all the employments did take place without a consideration of the representations of the aggrieved parties. It is further seen while the employers' and the employees' representatives put forth their views, the independent members were once again conspicuous by their silence. More pertinently, two of the independent members, namely, the Chief Engineer, P. W. D. and the Secretary, Planning Department had absented themselves in the previous meeting on 28-11-1981. But their places were filled up by B. Puttaswamy and L. Krishnamurthy as authorised representatives of these two absentee members. These two persons having not participated in the most important meeting of 28-11-1981, it is mind belonging as to how, when they had not even worked in the Labour Department, could play the part of independent members with specialised knowledge of the intricacies of wage fixation/revision in as many as 26 different types of industries for taking a decision on the final notifications impugned herein. Rule 5 of the Minimum Wages Rules provides for nomination of substitute members but File No. SWL 38 LMW 81 of the Government on the subject of reconstitution does not even bear any order or notice in writing as required under that rule for the appointment of these two persons as independent members. Assuming their nomination was valid, they had no knowledge of the proceedings that took place on 28-11-1981. Their presence only served the purpose of maintaining the quorum and voting along with other two independent members who, as noticed earlier, had also not considered the representations nor involved themselves in the discussions of the Board apart from standing firm by the preliminary notification proposals. For all these reasons, there was no consideration of the representations of the persons likely to be affected. In the records produced by the Government in all these cases, there were more than 930 representations from the employers as well as

the employees on the initial proposals and it will be a great travesty of truth to contend that these objections had been considered by the Board in the meetings held on 28-11-1981 and 1-1-1982. That these objections had not also been considered by the Government or the Commissioner of Labour, is evident from the noting of the Desk Officer at Note No. 13 in the respective Government files pertaining to these industries. That is also evident from, the uniform pattern of voting in that all the independent members voted in favour of a proposal put up by a particular employee's representative and against the other two proposals.

78. On a perusal of all the Government files relating to revision, one significant fact that should be noticed is, that the officers who processed the impugned notifications were blissfully aware of the proviso. I have already referred to those notings in File No. SWL 38 LMW 81 relating to public motor transport industry, while examining whether there was consideration of the representations of the interested parties. They only wanted the advice of the Board presumably because they overlooked the fact that they were dealing with fixation/revision of minimum wages in all the cases by following the procedure u/s 5(1)(b) of the Act. This fact is evident from the counter filed by the Government. The Government's stand was that no consultation was necessary and not that there was consultation. However, as the arguments reached the stage of near conclusion, the Government came out with an amendment application which did not in any way improve their case. It is clear from the relevant notings in the files that they proceeded under the assumption that they had followed the procedure u/s 5(1)(a) of the Act. Therefore, it is obvious that there was no consultation as required under the proviso. However, the argument of the Government and the workmen proceeded on the basis that there was consultation because of the fact that the Minister, the Labour Secretary and the Commissioner of Labour were members of Board. I have already held that the proceedings of the Board were vitiated by the presence of the Minister as the Chairman which robbed the independent character of the official members ; that they were vitiated by the non-consideration of the representations of persons affected, that the constitution of the Board was vitiated by the further fact that the nominees of the two independent members (official) namely. T. Puttaswamy and L. Krishnamurthy were neither properly nominated under Rule 5 of the Rules, nor were they aware of the deliberations of the important previous meeting. Hence, their participation had upset the balance in the composition of the Board and violated the provisions of Section 9 of the Act. To cap it all, there could not have been any effective, meaningful, purpose-oriented consultation when both the Board and the Government had not considered the hundreds of representations against the preliminary notifications. In this context, the allegations levelled by the petitioners against the Government with reference to publication of the news item in "The Hindu" dated 24-2-1982 needs consideration. What was reported therein was :

"The Government had faced the Opposition wrath in the legislature recently for the delay in revising the minimum wages and the Labour Minister Mr. A.B.

Jakanur was the main target of attack with Opposition charging him with taking money from some managements to delay the revision and demanding his resignation.

Opposition charge baseless : Mr. Jakanur told newsmen that while making the revision all the procedures laid down had to be carefully followed, as otherwise there was a likelihood of any lapse being challenged in the Court by managements to obtain a stay which would have nullified all their efforts. He said the revision had been strictly according to the rates of wages indicated in the draft notifications published sometime ago inviting objections. No reduction had been made in the wages. That showed that the opposition charge was baseless and their apprehension that the final rates of wages might be lesser than the ones in the draft notification had been falsified."

The Learned Counsel for some of the petitioners contended on the basis of this report that :-

(a) the Minister was more anxious to falsify opposition charges than to apply, as he should have, a rational and an independent mind to the question before him based on the suggestions and objections submitted by the employers to his proposals ;

b) there was no application of mind at all to any objection or suggestion made on behalf of the employers ;

c) all the procedures were followed outwardly but not in substance with a view only to avoiding stay orders from Court ; and

d) this Court should direct the Government to disclose the basis on which the minimum wage rate have been notified.

These contentions, in the light of my findings against the procedure adopted by the Government u/s 5(1)(b) cannot be said to be baseless, imaginary and not in good taste. They cannot be treated as merely adding grist to the rumour mills that exist in the opposition camp which is an essential part of our democratic set-up. But I may make it clear my conclusions are not based on that report.

79. What the Government had stated in para 6 of its counter is that the matter of wage revision was discussed in the Board prior to the issue of the draft notification. That only shows that the Government had in view the method of fixation u/s 5(1)(a) of the Act and not u/s 5(1)(b) of the Act. In the amendment application what the Government stated was that their records would disclose that the representations had been placed before the Board and the same were considered before accepting the final notification. This is palpably untrue since the Government records disclose that the objections had been sent to the Commissioner of Labour for necessary action but he did not consider the same and therefore the Deputy Secretary had put up a note to the Labour Secretary that these objections might be considered at Government level. I have already found after going through the proceedings on 28-11-1981 and 1-1-1982 that the

Board did not consider the representations in the manner it ought to have done. Further the dual role played by the Minister eliminated the element of consultation that was mandatory under the proviso as is clear from his own order in note No. 24 in the file relating to public motor transport industry to which I have made a reference earlier. What was necessary in the cases of revision u/s 5(1)(b) of the Act was not the advice of the Board but consultation with the Board as required under the proviso. The Minister's note itself bespeaks his mind. Neither he, nor the Secretary, nor the Deputy Secretary, was aware of the requirements of the proviso in these cases. Hence, I have no hesitation in holding that there was no consultation which was mandatory under the proviso between the Board and the Government in the eye of law, Assuming that there was such consultation, it was only illusory and not meaningful and real. Hence, the entire exercise of revision of minimum rates of wages is vitiated by :

(a) non-application of mind by the Government and the independent members of the Board to the representations of employers and employees, which was necessary and essential for consultation between them under the proviso ;

(b) absence of consultation between the Government and the Board ;

(c) the improper constitution of the Board as on 1-1-1982 which robbed the independent character of the independent members ; they may be factually independent of employer and employees; but the part played by them without consideration of the various representations and with the Minister as the Chairman was contrary to the intendment and object of Section 5(1)(b) and the proviso thereto ;

d) and consequently the impugned notifications suffer from the vice of arbitrariness and therefore hit by Article 14 of the Constitution and is also vitiated by lack of application of mind to the representations of affected parties including the petitioners.

80. However, a valiant attempt was made by M.C. Narasimhan and K. Subba Rao for some of the Unions, to salvage the impugned notifications on the ground that albeit the arbitrariness in the procedure, the end product is fair and reasonable and could be kept intact. They wanted me to take judicial notice of the rise in the cost of living, the prevalent inflationary conditions, the exploitation of workmen, in the unorganised sector of industry, etc. They relied on the mechanics of quantification of minimum wages as formulated by the Supreme Court in *U. Unichoyi and Others Vs. The State of Kerala*, and other cases and the reports of the Planning Commission whose veracity, according to them, can never be doubted, Their arguments make good rhetoric on the hustings but not good law in the Courts of Justice committed to the Rule of Law. The riposte to all their persuasive rhetoric is found in the decision of the Supreme Court in *Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others*, of its Judgment, the Supreme Court ruled :-

"A century ago, in *Taylor v. Taylor* (1875) 1 Ch D 426 Jessel M. R. adopted the

rule that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performances are necessarily forbidden. This rule has stood the test of time..... This rule squarely applies "where, indeed, the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other." "

This must be read with the observations of the Supreme Court on the interpretation of the Act itself in *Bidi, Bidi Leaves*" and *Tobacco Merchants Association Vs. The State of Bombay*, referred to by me in para No. 71 of this order. The answer could be more pithily put in the dictum of Justice. Frankfurter of the Supreme Court of United States quoted with approval by our Supreme Court in *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation*,

".....An executive agency must be rigorously held to the standards by which it professes its action to be judged..... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword."

More important, the constitutional validity of the Act was sustained by the Supreme Court in *Bejoy Cotton Mills*³ by virtue of the safeguards provided in the provisions of Sections 5 and 9 of the Act against arbitrary action and there fore this Court should not be a party to perpetuate arbitrary action by the Government as the revision of minimum wages could be done from time to time u/s 3(b) of the Act mulcting the petitioners without any regard to their financial capacity to higher and higher impost of wages through a procedure shockingly contrary to law.

81. Before I conclude my discussion on the meaning of the word "consultation" under the proviso, one decision of the Division Bench of the Allahabad High Court in the *U.P. Cinema Exhibitors Federation and ors. v. The State of Uttar Pradesh and ors.* 1977 Lab I.C. 993 cited by the workmen needs consideration. That was also a case of revision u/s 5(1)(b) of the Act. In that case, the records disclosed not only the proposals of the Government but also the objections to such proposals had been sent to the Advisory Board. The Board did not have any counterproposals and hence the High Court presumed that the Board was in agreement with the proposals of the Government, On those facts, the High Court found that the Government did consult the Board and there was effective consultation. But the constitution of the Board in that case was not complicated by the Minister remaining in the Board as the Chairman thereof along with other official members who were nevertheless independent members. Therefore, the decision of the Allahabad High Court has to be understood on the facts of that case. Further, the proceedings of the Board were not vitiated by non-consideration of the representations of the affected parties and also by the presence of two official members who had no knowledge of the earlier

proceedings of the Board therein as in these cases but they had simply voted in favour of the Government's proposal. I have not referred to the number of other decisions cited by the Learned Counsel for the workmen since they do not relate to the revision of minimum wages u/s 5(1)(b) and the proviso. I have also not considered the various other contentions of certain petitioners as raised in their pleadings since they are opposed to the fundamental concept of minimum wages and they appear to be ""ghosts of the past" standing in the path of social Justice "clanking their medieval chains and the proper course for the judge is to pass through them undeterred", (See the views of Lord Atkin in 1940 Appeal Cases 124 in a slightly different context).

82. The above discussion disposes of the other main questions, viz., Points Nos. 2 to 4, 7, 15, 17 and 22 to 24, concerning challenge to the impugned notifications and is sufficient to quash the said notifications. But some other contentions which require consideration for avoiding any future controversy are points Nos. 1 to 8 and 17 to 20.

"83. Point No. 1 : In these cases, the draft notifications dated 30-7-1981 were published on 6-8-1981 in the Karnataka Gazette. The grievance of the petitioners is that the affected parties did not have full period of two months for submitting their representations and that those notifications did not specify a date not less than two months from their date on which proposals would be taken into consideration. The second grievance need not detain me for long since I am bound by the decision of the Division Bench of this Court in Appannah v. State of Mysore AIR 1962 Mys 157 and I am also in respectful agreement with the view taken therein. But on the first point there appears to be some controversy. A Division Bench of the Kerala High Court in Sukumaran v. State of Kerala ILR1972 Ker. 254 answered this question in favour of the petitioners In that case, the draft notification was as follows :--

"Notice is hereby given that the proposal will be taken up for consideration on or before 15th April 1968 and that any representation that may be received from any person with respect to the said proposal before the expiry of the above date will be considered by the Government. All representations shall be addressed to the Secretary, Health and Labour Department, Secretariat, Trivandrum".

The notification was dated 9-2-1968 and published on 27-2-1968. Admittedly, the notice fell short of two months and provided that the consideration of the proposals would be-taken on or before 14th April. On those facts, the Kerala High Court held that the draft notification was bad in law.

84. The object of the draft notification is to afford the affected parties a right of representation against the proposals for fixation/revision. It is not the case of the petitioners that they could not file a detailed representation for want of time. The records disclose more than 600 representations from all these petitioners against the draft notification. Hence, there has been no failure of justice to the petitioners nor the draft notification is violative of the principles of natural justice

and the petitioners contention at best is hyper-technical. The petitioners have not brought to my notice any cases of rejection of their representations because they were received after 1-10-1981.

85. Point No. 3 : Though the language of Section 5(1)(b) does not provide for a personal hearing, the Learned Counsel for the petitioners contended that on the facts of these cases, where there were settlements u/s 12(3) of the Industrial Disputes Act in operation, earlier revisions of minimum wages and facts and circumstances very material and peculiar to each of these industries, a right of personal hearing should be read into these provisions. They concede that the decision of the Government is not quasi-judicial but administrative. But they maintain a revision of minimum wages upsets the existing wage structure and thereby disrupts the industrial relations, and therefore a personal hearing is the only safeguard for avoiding the catastrophic results of periodic wage revisions. I am unable to accede to these contentions. The provisions of Section 5(1)(b) read with the proviso, do not expressly provide for a right of hearing. By implication also it is excluded since such a right by implication will defeat the very object of the Act. Moreover, the safeguards against any arbitrary action by the Government, namely, "consideration" and "consultation" whose connotations I have elaborately discussed above are ample safeguards to the petitioners and therefore they have no right to be personally heard. On this point, I am also bound by the decision of the Division Bench in Chandrabhavan's case¹.

86. POINT NO. 17 : That the Government has the power to fix variable dearness allowance is not open to challenge on a plain reading of the provisions of Section 4(1) of the Act. But Mr. Kurian contended that the impugned notifications provide for the upward revision only and not for adjustment downwards in the event of the cost of living index going down. He relied on an unreported decision of a Division Bench of the Madras High Court in Stanmore Estate, Yercaud and ors. v. The Commissioner of Labour and Ors., W.P. Nos. 293, 1199, 1120 & 1154 of 1978 pp. 28-9-1978 (Madras). The Madras High Court, interpreting Section 4(1) of the Act, observed as follows :

"Simply as a matter of construction of Section 4(1)(i) which we have already extracted and with which the Government Order already referred to is fully in accord, we have to hold that the contention of the Learned Counsel for the petitioners is well founded. The words used in the statute are : "a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct, to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers". We have already referred to the fact that the Government order has fixed the rate of adjustment for every 5 points and also at what intervals the revision has to be made. The only question that falls for consideration is whether there is anything in the language of Section 4(1)(i) of the Act or the Government Order to hold that the adjustment and variation contemplated is only adjustment and variation upwards and not downwards. We are clearly of the opinion that the words "to be

adjusted" and "to accord.... with the variation in the cost of living index number clearly contemplate an alteration or change in general without confining the alteration or change to only one way, namely increase. The ordinary dictionary meaning of the words "adjustment" or variation will mean an alteration or change without confining that alteration or change to only one direction. Consequently simply as a matter of construction of the words used in the section which are simple words whose meaning is clear, we cannot up-hold the contention of the Commissioner of Labour that the variation and adjustment contemplate only in one direction, namely upwards and not downwards."

This view of the Madras High Court supports the contention of Mr. Kurian. Having regard to the connotation of the word "variation", I am in respectful agreement with the decision of that High Court. The Government is not only committed to the welfare of labour but also to the control of inflation and rise in consumer prices of essential commodities and the regulation of proper distribution of such commodities. There are various enactments on the Statute Book for these purposes. The cost of living index is a variable concept depending on the ability of the Government to control and contain the disturbing and violently oscillating factors which lead to inflation and rise in the prices of essential consumer articles. The impugned notifications portend that there is not even a remote chance for the Government to control these disturbing factors. Section 4(1) of the Act is sanguine enough to foresee the Government's efforts to reverse the trend. The Counsel for the respondents had no answer to this argument, apparently because they did not believe or have faith in the Government's efforts in this direction. Hence, the impugned notifications are bad for not providing for adjustment of dearness allowance downwards.

87. Point No. 10 :- The correct answer to this question requires investigation into facts in each of these industries. The Government having not filed their counter in all these industries answer can be given on this point as a question of fact. This is also not the function of this Court under Article 226 of the Constitution. But the law is clear, and that is, what was once a fair wage or living wage could not be a minimum wage due to rise in the cost of living. Therefore, the Government's power to fix a minimum wage which is higher than the fair wage, cannot be challenged (See *Crown Aluminium Works Vs. Their Workmen*, and *Standard Vacuum Refining Co. of India Vs. Its Workmen and Another*,

88. Point No. 11 : This question admits of no doubt. The concept of quantum of minimum wages varies from time to time and Section 3 empowers the Government to revise the minimum rates of wages from time to time. That legislative power is not taken away by Section 12(3) or 18(3) of the Industrial Disputes Act which deals with settlements between the Management and the workmen and its consequences where such settlements are made for resolving the industrial dispute between the parties.

89. Point No. 12: Since the notifications are liable to be quashed on more substantial grounds, the answer to this question is not necessary.

90. Point No. 13: It is true, in some cases, neutralisation of cost of living works out to more than 100%. But that does not mean that the total wage after such neutralisation is more than the minimum wage. It is not the quantum of the different components that matters but the total wage packet the workmen ultimately receives. Where there is a difference in the basic pay between male and female workers, neutralisation by more than 100% in the case of female workers cannot be opposed to the concept of minimum wages. In *Malayalam Plantations Limited and Others Vs. State of Kerala and Others*, 100% neutralisation in the cases of female workers was upheld by the Kerala High Court. As observed by the Madras High Court in *Chairman of the Madras Port Trust Vs. Claims Authority and Others*,

"Basically what the employee is entitled to is wages. The scheme of the Act is to provide for a minimum wage for each employee. The minimum applies to the rate. But what is payable is still the wages. The Act provides for the payment of a minimum. So long as that minimum is paid, the contractual wage structure is left unaffected and the component parts of the wages can still be regulated by contract between the employer and the employee."

Hence the neutralisation factor over 100 % does not vitiate the quantification of minimum wages.

91. Point No. 16: There is no doubt that the Minister was influenced to some extent in taking the final decision due to the attack by the opposition for procrastinating the decision on the final notifications. A receptive mind to opposition views is the quintessence of a real democratic form of Government. Therefore, the charge of bias is baseless. The Minister, perhaps in his anxiety to satisfy the opposition, overlooked the legal implications of the procedure adopted by the Government. It was a costly mistake. But it does not either affect his bona fides or sense of purpose.

92. Point No. 17: I have already held that the notifications are hit by the vice of arbitrariness in the procedure adopted by the Government. In that sense, they are violative of Article 14 of the Constitution. The other facets of Article 14 brought out in some of the petitions require a detailed examination of facts which cannot be gone into in the absence of proper return by the Government in respect of all these industries. It is for the Government to examine this aspect in the light of the directions to be given by me.

93. Point No. 18 : Section 4(1) of the Act is a complete answer to this question and, therefore, this point is held against the petitioners.

94. Point No. 19 : The power of the Government is not circumscribed by the proposals made by it in the draft notifications. But if, as contended by some of the petitioners, there was no proposal to introduce variable dearness allowance in the draft notifications, the impugned notifications in those cases which had introduced variable dearness allowance will be clearly violative of the principles of natural justice unless the parties are given a chance to file their

representations against the inclusion of variable dearness allowance in the final notifications.

95. Point No. 20: There is no substance in this contention in the light of the various decisions of the Supreme Court. The power of the Government u/s 3 of the Act is not controlled by any such considerations.

99. For the aforesaid reasons, these petitions are allowed and the impugned notifications fixing/revising the minimum rates of wages are quashed, with the following directions :

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

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

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

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

(5) Till such time, the petitioners shall continue to pay 56 % of the wages enhanced by the impugned notifications in all these cases, subject to adjustment against the wages to be fixed or revised under a fresh notification.