

(2005) 10 BOM CK 0127
In the Bombay High Court
Case No : Writ Petition No. 965 of 2005

Maharashtra Agro Industries Development Corporation Ltd.
and Others

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 25-10-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 43
Factories Act, 1948 — Section 85
Minimum Wages Act, 1948 — Section 2, 27, 3, 3(1), 3(3)

Citation : (2006) 3 LLJ 102

Hon'ble Judges : P.S. Brahme, J;B.R. Gavai, J

Bench : Division Bench

Advocate : V.R. Thakur and H.V. Thakur, R.B. Puranik, P.C. Marpakwar, A.S. Jaiswal, Y.V. Dharashivkar, K.S. Joshi, S.S. Josi, R.E. Moharir, C.S. Samudra, Masood Shareef and S.C. Mehadia, for the Appellant; Neeta Jog, Deepak Thakare, R.K. Deshpande and W.P. Wachasundar, for the Respondent

Judgement

B.R. Gavai, J.—All these petitions challenge the validity of the notifications issued by the respondent-State dated June 30, 2004, thereby fixing the minimum rates of wages for the employees employed in employments covered under Entry No. 65 of Schedule I and the notifications dated July 20, 2004, thereby fixing the minimum rates of wages for shops and commercial establishments, hospitals, not falling under entry No. 6 in part I of Schedule, and Paper and Paper Board Industries.

2. Since a common question as to whether the minimum wages as fixed by the State Government by the impugned notifications are sustainable in law, is involved in all these petitions, they were heard together and are decided by the common judgment.

3. Since there was agreement between the learned Counsel for the parties that the arguments advanced in support of the challenge and in support of the defence of the notifications dated June 30, 2004 pertaining to residuary

employments, would cover all the matters, we will only refer to the facts relevant insofar as the impugned notification dated June 30, 2004 fixing minimum rates of wages for employees employed in the said employments, is concerned.

4. Entry No. 65 was added for the first time vide Government notification dated June 26, 1986 to Part I of the Schedule to the Minimum Wages Act, 1948 (hereinafter referred to as the said Act). Entry 65 reads thus:

65. Employment in any factory as defined under Clause (m) of Section 2 or within the meaning of Section 85 of the Factories Act, 1948 (LXIII of 1948) not covered by any of the entries in the Schedule.

It can, thus, be seen that Entry 65 (hereinafter referred to as the said employment) is an omnibus entry and covers all such Industries which are not covered by any of the entries in the Schedule. Though Entry 65 was introduced in the year 1986, the minimum rates of wages for the said scheduled employment were fixed for the first time by notification dated December 6, 1996. Schedule I of the said notification which prescribes the minimum rates of wages for various classes of employees in various zones, reads thus:

Sr. No. Class of Employees Minimum Rates of Wages per month (1) (2) (3) Zone I Zone II Zone III Rs. Rs. Rs. 1. Skilled 1220.00 1120.00 1020.00 2. Semi-skilled 1170.00 1070.00 970.00 3. Un-skilled 1120.00 1020.00 920.00 The appendix to the said Schedule provides for the cost of living allowance payable to the employees. The said appendix provides that the cost of living allowance shall be payable to the employees calculated on January 1 and July 1 on the basis of rise in the Consumer Price Index Number worked out on the basis of the average of last six months. Schedule II of the said notification reads thus:

Sr. (Number)	Zone	Average of 6 months Consumer Price (1982 Series)	Index Points	Rate of Special Index	No. (Number)
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1. I	Average of 6 months of 279	1	Rs. 3.25 per month	Mumbai City Index	No. 2.
II	Average of 6 months of 279	1	Rs. 3.25 per month	Mumbai City Index	No. 3.
III	Average of 6 months of 279	1	Rs. 3.25 per month	Mumbai City Index	No. 2.

The Competent Authority shall compute the cost of living allowance in accordance with the directions made under the preceding paragraph.

3. The cost of living allowance computed shall be declared by the Competent Authority by Notification in the Official Gazette, in the last week of January when such allowance is payable for each of the month of January to June and last week of July when such allowance is payable for each of the month of July to December.

Provided that the Competent Authority shall declare the cost of living allowance payable in respect of the period from the date of revision of rates of minimum wages to the end of December or June as the case may be, immediately after the said date, with effect from which the minimum rates of wages are fixed or revised.

It can, thus, be seen from Schedule II that it provides 279 as a base index number and for rise of every point therefrom, the rate of special allowance payable will be Rs. 3.25 per month.

5. The State Government, vide notification dated July 24, 2003, published in exercise of powers under Clause (b) of Sub-section (1) of Section 3 of the said Act, proposed for fixation of minimum rates of wages payable in the said employment. A notice is given by the said notification to all the persons likely to be affected thereby, that the said draft will be taken into consideration by the Government of Maharashtra after expiry of two months from the date of publication of the said notification in the Maharashtra Government Gazette. It was also specified in the said notification that any representation which may be received by the Commissioner of Labour from any person in respect of the said draft before the expiry of the aforesaid period, will be taken into consideration by the State Government. The rates proposed by the said notification for different classes of employees for different zones are thus:

Sr.	Class of Employees	Minimum Rates of Wages per month	No. (1)	(2)	(3)
Zone I	Zone II	Zone III	Rs.	Rs.	Rs.
1. Skilled	2700.00	2600.00	2500.00	2. Semi-skilled	2600.00
		2500.00	2400.00	3. Un-skilled	2500.00
					2400.00
					2300.00

Explanation.- For the purpose of this Notification.

(a) Zone I - shall comprise of the areas falling within the limits of all Municipal Corporations;

(b) Zone II - shall comprise of the areas falling within the limits of all "A" and "B" grade Municipal Councils;

(c) Zone III - shall comprise of all other areas in the State, not included in Zone I and Zone II;

(d) the minimum rates of daily wages payable to any employee employed on daily wages shall be computed by dividing the minimum rates of monthly rate of wages fixed for the class of employees to which he belongs by twenty six the quotient being stepped into the nearest paisa;

(e) the minimum rates of wages shall be inclusive of payment of remuneration in respect of weekly day of rests;

(f) the minimum rates of wages shall consist of a basic rate, the cost of living allowance, the cash value of concessions, if any;

The appendix to the said notification also proposes for payment of the cost of living allowances. The relevant portion of the said appendix reads thus:

The average Consumer Price Index Number in respect of ten centers in the State of Maharashtra for working class (New Series 1982 = 100) shall be the Cost of Living Index Number applicable to the employees in the said Scheduled employment. The Competent, Authority appointed by Government shall, after expiry of every six months commencing on the first day of January and the first

day of July, calculate the average of the cost of living index number applicable to the said employees for these six months and ascertain the rise of such average 501 points. For such rise of every point, special allowance (hereinafter referred to as "the cost of living allowance") payable to the employees in the said scheduled employment for each of the six months immediately following six months in respect of which such average has been calculated shall be at the rate of Rs. 4.00 per month in respect of all zones;

6. Vide notification dated June 30, 2004, the State Government in exercise of powers vested in it under Clause (b) of Sub-section (1) of Section 3 read with Sub-section (2) of Section 5 of the said Act, published a notification thereby fixing minimum rates of wages for the employees engaged in the said employment. The rates so fixed in the schedule read thus:

Sr. No.	Class of Employees	Minimum Rates of Wages per month (1)	(2)	(3)	Zone I	Zone II	Zone III
1.	Skilled	3200.00	3000.00	2800.00			
2.	Semi-skilled	3100.00	2900.00	2700.00			
3.	Un-skilled	3000.00	2800.00	2600.00			

Insofar as the payment of cost of living allowance is concerned, there is not much change in the final notification from the draft notification, except the rates per month which is payable for increase for every point above 501, has been changed to Rs. 4.10 from Rs. 4. The petitioners who are either manufacturing units, or the association of such units, in the respect of the said employment along with the aforesaid other employments, have objections to this notification dated 30th June, 2004 so also the other notifications dated July 24, 2003 in respect of the three other scheduled employments referred hereinabove. It is also not in dispute that all the establishments who have approached this Court are in Zone-III and, therefore, what is basically under challenge is the fixation of minimum rates of wages for the aforesaid employments in Zone-III.

7. At the outset, we must place our appreciation on record for the valuable assistance provided to us by Shri V.R. Thakur, Shri R.B. Puranik, the learned Counsel who led the arguments on behalf of the petitioners, Smt. Neeta Jog and Shri Deepak Thakare, the learned Assistant Government Pleaders appearing for the State, and Shri R.K. Deshpande, and Shri Wachasundar, the learned Counsel appearing on behalf of the intervenors/applicants.

8. The main challenge on behalf of the petitioners as could be gathered from the submissions of Shri Thakur who led the arguments on behalf of the petitioners, is that the procedure which is prescribed under the provisions of the said Act, has not been followed by the respondents while issuing the impugned notification. He submitted that the constitution bench of the Apex Court in the case of Bhikusa Yamasa Kahatriya Vs. Sangamner Akola Taluka Bidi Kamgar Union, (hereinafter referred to as the B.Y. Kshatriya) and in the case of Chandra Bhavan Boarding and Lodging, Bangalore Vs. The State of Mysore and Another, (hereinafter referred to as the C.B. Boarding and Lodging), while upholding the validity of the said Act has held that since the Act provides for inbuilt safeguards, it prevents the arbitrariness by the State in fixing the minimum wages. He submitted that in

the aforesaid judgments, the Apex Court has held that while fixing the minimum wages, the State is required to take into consideration various data and various factors. He submitted that in the case of B.Y. Kshatriya, the Apex Court has held that it is necessary to take into consideration the economic condition of the locality, necessity to gather information about general economic climate of the industrial development in the area, earnings of comparable employments and similar other factors. He submitted that since the State Government, while issuing the draft notification as well as the final notification, has not taken into consideration the same, the impugned notification is vitiated on account of not following the guidelines as laid down by the Apex Court. He further submitted that it is necessary to take into consideration the capacity of consumers and competition in market. According to the learned Counsel, the residuary entry which takes into its encompass various types of industries wherein the conditions differ, the fixation of same minimum wages for different types of industries in different localities would be arbitrary. In the submissions of the learned Counsel, the power to fix or revise the minimum wages does not vest the State with a power to make discrimination. He submitted that dissimilar industries cannot be made to pay similar wages. He further submitted that a judicial notice needs to be taken of the global competition. He submitted that the market is flooded with products of other countries and, therefore, the manufacturers have to compete with these foreign products. He submitted that as it is, the survival of the industry is difficult and if they are burdened with additional wages, the industry would be required to be closed down. He submitted that the cost of production is relevant factor which needs to be taken into consideration while fixing the minimum wages.

9. Shri Thakur, the learned Counsel, further submitted that the Advisory Board is not properly constituted. He submitted that the Advisory Board consists of one Shri Sachin Aher who is not an independent member, but a trade Unionist. He, therefore, submitted that the composition of the Advisory Board is not in accordance with Section 7 of the said Act.

10. Shri Thakur the learned Counsel, further submitted, that the State Government has been changing stand from time to time. He submitted in the initial return, it is stated that it was not necessary for the State Government to collect the necessary data since the State Government was adopting the procedure prescribed u/s 5(1)(b) of the said Act. He submitted that however, later on, the stand is changed to the effect that the State was having adequate material. He submitted that these inconsistencies in the stand of the State Government are sufficient enough to doubt the validity of the impugned notification.

11. He further submitted that the impugned notifications have been issued for collateral purpose. He submitted that the elections were due in couple of months when the impugned notifications were published. He, therefore, submitted that the impugned notifications were issued by the persons in powers so as to attract

the vote bank. Shri Thakur also relied on the judgment of the Apex Court in the case of Standard Vacuum Refining Co. of India Vs. Its Workmen and Another, (hereinafter referred to as the Standard Vacuum) and the judgment of the Apex Court in the case of The Workmen represented by Secretary Vs. The Management of Reptakos Brett and Co. Ltd. and another, (hereinafter referred to as Reptakos Brett & Co.) and the judgments of the division benches of this Court in the case of N.M. Wadia Charitable Hospitals and Ors. v. State of Maharashtra and Ors. 1993 III LLJ (Supp) 541 and in the case of Sangli District Powerloom Owners' Association Ltd. and Ors. v. State of Maharashtra and Ors. reported in 1995 III LLJ (Suppl.) 779 .

12. Shri Puranik appearing on behalf of some of the petitioners, submitted that by the impugned notification, the Respondent-State has granted 100% neutralization of the wages fixed in the year 1996. Relying on the judgment of the Apex Court in the case of Management of Shri Chalthan Vibhag Khand Udyog Sahakari Mandli Ltd. Vs. G.S. Barot, Member, Industrial Court and Another, (hereinafter referred to as CVKU Sahakari Mandi), he submitted that 100% neutralization of wages is not permissible in law. He submitted that once 100% neutralization is granted, the wages cease to be the minimum wages and come in the category of fair wages. He submitted that if the fair wages are to be determined, then it is necessary to take into consideration the capacity of employer to pay. Shri Puranik further submitted that if the wages are already fixed, then it is necessary for the State to point out that there was a data which establishes that the minimum wages which were already fixed, are so eroded which necessitates a revision. Relying on the provisions of Sections 3 and 4 of the said Act, the learned Counsel submitted that it is necessary for the Government to find out, as to what extent the scheme of special allowance has failed so as to revise the wages.

Shri Puranik has placed on record a chart which, in the submissions of the learned Counsel, has been prepared on the basis of the scheme of neutralization approved by the division bench of this Court in the case of Hindustan Lever Mazdoor Sabha v. Hindustan Lever Ltd. and Anr. reported in 1990 LIC P. 950 (hereinafter referred to as HL Mazdoor Sabha). He also relied on the judgment of the Apex Court in the case of Hindustan Lever Limited Vs. B.N. Dongre and Others, (hereinafter referred to as Hindustan Lever Ltd.).

13. Smt. Jog learned A.G.P., relying on the provisions of Article 43 of the Constitution of India, submitted that the said Act has been enacted with a social objective and to comply with the dictum of directive principles so as to ensure minimum wages for the lowest strata of the society.

14. Relying on the provisions of Sub-sections (c) and (d) of Section 2, and Section 4 of the said Act, Smt. Jog submitted that the basic rate of wages and special allowance has to be as nearly as practicable with a variation in the cost of living index. She submitted that under the provisions of Sub-section (c) of Section 2 of the said Act, the Competent Authority has been appointed by the

appropriate Government which is situated at Simla. It is submitted that the respondent has special cells at ten centres which collect the data. The data is collected on the basis of the questionnaire in a format prepared by the Labour Ministry of Union of India. She submitted that this data is sent to the competent authority at Simla and that cost of living index is prepared by the Competent Authority at Simla for every month. She, therefore, submitted that cost of living index is relevant factor for determining the minimum wages and that the same has been taken into consideration by the State while determining the minimum wages.

15. Smt. Jog further submitted that the present petitioners had an opportunity to make representation to the State Government in pursuance to the draft notification. She submitted that however, none of the petitioners has made a representation to the State Government. She submitted that if such a representation would have been made same would have been considered by the State Government. In the submissions of the learned A.G.P., the petitioners who have not availed of the opportunity available to them of making representation to the State Government, are not entitled to invoke the extraordinary writ jurisdiction of this Court.

16. Smt. Jog further submitted that the act has inbuilt safeguards inasmuch as it is mandatory for the State Government, when it chooses to opt for a method prescribed u/s 5(1)(b) of the said Act, to obtain the opinion of the Advisory Board. She submitted that the Board has taken into consideration the representations of the employers as well as employees and thereafter made recommendations. She further submitted that after the recommendations are made by the Advisory Board, the State Government has considered the same and issued the impugned notification.

17. Smt. Jog further submitted that the Board consists of equal number of representatives of employees so also employers and, therefore, the interest of the employers is also taken into consideration by the Board while making recommendations.

18. Insofar as the allegations regarding Shri Sachin Aher being the member of the Advisory Board, she submitted that he was taken as a member in his capacity as Member of the Legislative Assembly and not as a Trade Unionist. She further submitted that the said member has not participated in the meeting in which recommendations were made and as, such no prejudice has been caused to the petitioners.

19. Learned A.G.P. further submitted that, the petitioners have not placed any material on the record to point out that the wages fixed by the State Government were not the minimum wages, but much above the concept of minimum wages. She, therefore, submitted that on account of failure on the part of the petitioners to produce any material in support of their claim, the contention in this behalf needs to be rejected.

20. Smt. Jog submitted that the wages fixed under the impugned notification are the minimum wages for the lowest paid workers. She submitted that these wages are minimum wages necessary for survival of their families and have been worked out by taking into consideration the factors approved by the Apex Court in the case of the Standard Vacuum. She, therefore, submitted that this Court would not lightly interfere in the wages so fixed, in exercise of the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

21. In support of the aforesaid submissions, Smt. Jog also relied on the judgment of the Apex Court in the case of B.Y. Kshatriya, (supra) C.B. Boarding & Lodging, (supra) (para 11 citation) Reptakos Brett & Co., (supra) (para 11) citation CVKU Sahakari Mandi (supra) and the judgment of the Apex Court in the case of Bijay Cotton Mills Ltd. Vs. The State of Ajmer, (hereinafter referred to as Bijay Cotton Mills), Crown Aluminium Works Vs. Their Workmen, (hereinafter referred to as Crown Aluminium Works) and the judgment of the Constitution Bench in the case of U. Unichoyi and Others Vs. The State of Kerala, (hereinafter referred to as U. Unichoyi).

22. Smt. Jog further submitted that insofar as the challenge regarding 100% neutralization is concerned, the same is devoid of substance inasmuch as the said principle is only applicable for dearness allowance/special allowance and would not be relevant when the wages are either fixed or revised. In the alternative, she submitted that even on facts, there is no 100% neutralization and as such claim in this regard is not tenable.

23. The learned A.G.P. relying on the judgment of the Apex Court in the case of Union of India (UOI) and Another Vs. Cynamide India Ltd. and Another etc., (hereinafter referred to as Cynamide India) submitted that the function of fixation of minimum wages under the said Act, is quasi legislative in nature and, therefore, the scope of judicial review under Article 226 of the Constitution, was limited. Relying on the judgment of the Apex Court in the case of Federation of Railway Officers Association and Others Vs. Union of India (UOI), (hereinafter referred to as the Federation of Railway Officers Association), she submitted that in matters affecting policy and requiring technical expertise, this Court should be slow in exercising the powers of judicial review.

24. Shri R.K. Deshpande, the learned Counsel appearing on behalf of the intervenors/employees, submitted that the minimum wages so fixed under the impugned notification, are for the workers in unorganized sectors. Relying on the judgment of the Apex Court in the case of Ahmedabad Mill Owners' Association Etc. Vs. The Textile Labour Association, , he submitted that the competent authority i.e. Simla Bureau which notifies the consumer price index, is also recognized by the Apex Court. He submitted that since the criteria adopted by the State Government of price index is in accordance with Section 4 of the said Act, the criteria adopted is just and proper having nexus with the aims and objects of the Act. Shri Deshpande, therefore, submitted that the minimum wages which have been notified by taking into consideration the consumer price

index, cannot be said to be arbitrary. He further submitted that the interference by this Court in fixation of wages, which has been fixed by taking into consideration the relevant aspects, is not warranted in law. Relying on Section 3(3) of the said Act, the learned Counsel submitted that there is nothing in the Act which precludes uniform wages for different industries in different areas. He submitted that in any case, the wages fixed by the impugned notification, are lowest as compared to any other scheduled employment and as such no grievance could be made on this count.

25. Relying on the judgment of the Apex Court in the case of Secretary, Finance Department and others Vs. West Bengal Registration Service Association and others, and State of Haryana and Another Vs. Haryana Civil Secretariat Personal Staff Association, he submitted that fixation of pay is a domain of experts and in such matters judicial interference should be minimal.

26. Shri Wachasundar, the learned Counsel appearing for some other intervenors, submitted that not only the workers covered under the impugned notification are unorganized, but they are also seasonal workers. Therefore, relying on the observations of the Apex Court in the case of CVKU Sahakari Mandi, he submitted that formula of 100% neutralization would not be applicable to the facts of the present case.

27. Before we consider the rival submissions, and the law as laid down by the Apex Court and this Court, we would refer to Article 43 of the Constitution of India and certain relevant provisions of the said Act. Article 43 of the Constitution of India, reads thus:

43. Living wages, etc., for workers

The State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

It can, thus, be seen that the said Act has been enacted by the Parliament so as to comply with the mandate of Article 43 of the Constitution with an avowed object of securing minimum wages to the workers so as to ensure them a decent standard of life and full enjoyment of leisure and social and cultural opportunities, Sub-sections (c), (d) and (h) of Section 2 of the said Act reads thus:

(c) "Competent Authority" means the authority appointed by the appropriate Government by notification in its Official Gazette to ascertain from time to time the cost of living index number applicable to the employees employed in the scheduled employments specified in such notification;

(d) "cost of living index number" in relation to employees in any scheduled

employment in respect of which minimum rates of wages have been fixed, means the index number ascertained and declared by the competent authority by notification in the Official Gazette to be the cost of living index number applicable to employees in such employment;

(h) "wages" means all remuneration, capable of being expressed in terms of money, which would if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment and includes house rent allowance but does not include -

(i) the value of -

(a) any house-accommodation, supply of light, water, medical attendance; or

(b) any other amenity or any service excluded by general or special order of the appropriate Government;

(ii) any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;

(iii) any travelling allowance or the value of any travelling concession;

(iv) any sum paid to the person employed to defray expenses entailed on him by the nature of his employment; or

(v) any gratuity payable on discharge.

Relevant provisions in the said Act reads thus:

3. Fixing of minimum rates of wages

(1) The appropriate Government shall, in the manner hereinafter provided -

(a) fix the minimum rates or wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either part by notification u/s 27;

Provided that, the State Government may, instead of fixing minimum rates of wages under this clause for the whole State, fix such rates for a part of the State or for any specified class or classes of such employments in the whole of the State or any part thereof; and in the case of an employment under any local authority, the State Government may fix such rates for any specified local authority, or class of local authorities;

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

Provided that, where for any reason the appropriate Government has not reviewed the minimum rates of wages fixed by it in respect of any scheduled employment within any interval of five years, nothing contained in this clause

shall be deemed to prevent it from reviewing the minimum rates after the expiry of the said period of five years and revising them, if necessary, and until they are so revised the minimum rates in force immediately before the expiry of the said period of five years and revising them, if necessary, and until they are so revised the minimum rates in force immediately before the expiry of the said period of five years shall continue in force.

(1-A)-----

(2)-----

(2-A)-----

(3) In fixing or revising rate of wages under this section,-

(a) different minimum rates of wages may be fixed for-

(i) different scheduled employment;

(ii) different classes of work in the same scheduled employment;

(iii) adults, adolescents, children and apprentices;

(iv) different localities;

(b)-----

4. Minimum rates of wages

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

(i) a basic rate of wages and 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 worker (hereinafter referred to as the "cost of living allowance"); or

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

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

(2) The cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concession rates shall be computed by the competent authority at such intervals and in accordance with such directions as may be specified or given by the appropriate Government.

Procedure for fixing and revising minimum wages

(I) In fixing minimum rates of wages in respect of any scheduled employment for

the first time under this Act or in revising minimum rates of wages so fixed, the appropriate Government shall either -

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

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

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

Provided that where the appropriate Government purposes 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.

7. Advisory Board

(1) For the purpose of co-ordinating 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.

9. Composition of committees, etc.

Each of the committees, sub-committees and the Advisory Board shall consist of persons to be nominated by the appropriate Government representing employers and employees in the scheduled employments, who shall be equal in number, and independent persons not exceeding one-third of its total number of members; one of such independent persons shall be appointed the Chairman by the appropriate Government.

28. It can, thus, be seen from the provisions of Section 3 of the said Act that there is a mandate to the appropriate Government to fix the minimum rates of wages payable to employees employed in employment specified in part I or part II of the Schedule and in the employment added to either part by, notification u/s 27 of the Act. It can also be seen from the scheme of the Act that the appropriate Government is mandated to review the minimum rates of wages so fixed, at such intervals as it may think fit. It is further clear that such an interval should not exceed 5 years. It is further clear that after reviewing at such

intervals as the State Government thinks fit, the State Government is also required to revise the rates, if necessary. Proviso to Section 3(1)(b) of the said Act permits the appropriate Government to review the minimum wages fixed by it even beyond the period of five years, if the same are not reviewed within an interval of five years. It is, thus, clear that the appropriate Government is expected to normally review the wages so fixed within a period of five years. It is further clear that the State Government is also expected to revise the rates after such review, if found necessary. In the case of said employment, though entry No. 65 was added in the year 1986, for the first time, the wages were fixed by the notification in the year 1996. Normally, the State was duty bound to review the said wages within a period of five years i.e. by 2001 and revise, if necessary. However, the steps were taken for revising the same by issuing a draft notification in 2003 and finally fixing the rate by notification in 2004.

29. Perusal of Sub-section (3) of Section 3 of the said Act clearly shows that though it is permissible for the appropriate Government to fix or revise different minimum rates of wages for different scheduled employments, different classes of work, in the same scheduled employment and different localities, there is nothing which precludes the appropriate Government from prescribing same rates for different types of scheduled employments.

30. Section 4 of the said Act provides that the minimum rates of wages fixed or revised by the appropriate Government u/s 3, may consist of basic rate of wages and the special allowance at a rate to be adjusted at such intervals and in such manner as appropriate Government may direct to accord as nearly as practicable with the variation in the cost of living index number applicable to such a worker. The cost of living index number has been defined under Sub-section (d) of Section 2, which means the index number ascertained and declared by the competent authority. Sub-section (c) of Section 2 defines "Competent Authority". As discussed hereinabove, Simla Bureau has been notified as a competent authority. Section 5 of the said Act provides for procedure for fixing and revising minimum wages. There are two methods prescribed, first one being appointment of committees and sub-committees to enquire and advice in respect of such fixation or revision. Second method u/s 5(1)(b) provides for notification in the official gazette, publishing its proposal 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. Sub-section (2) of Section 5 provides that 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 notification in Clause (b) of that sub-section, the appropriate Government shall, by notification in the official gazette, fix or revise minimum rates of wages in respect of each scheduled employment. However, where the rates are proposed to be revised under clause (b) of Sub-section (1) of Section 5 of the said Act, it is mandatory for the appropriate Government to consult Advisory Board also.

31. Section 7 of the said Act provides for appointment of Advisory Board. Section 9 provides that the committees and the Advisory Board shall consist of the persons representing employers and employees in the scheduled employment, which shall be equal in number and independent person not exceeding 1/3rd of total number of members. It further provides that one of such independent persons shall be appointed as the Chairman of the Board.

32. Having considered the relevant provisions of the Act, now let us consider the pronouncements of the Apex Court and this Court on the issue involves. The validity of the said Act came to be challenged being ultra vires on the ground that it was in conflict with the fundamental rights of the employers guaranteed under Article 19(1)(g) of the Constitution of India, in the case of Bijay Cotton Mills (supra). It was contended that the said Act puts unreasonable restriction upon rights of the employers, in the sense, it has prevented them from carrying on any trade or business unless they are prepared to pay minimum wages. It was also urged that the said Act left unfettered discretion to the appropriate Government. The Constitution Bench in the said judgment observed thus Bijay Cotton Mills Ltd. Vs. The State of Ajmer, :

It can scarcely be disputed that securing of living wages to labourers which ensure not only bare physical subsistence but also the maintenance of health and decency, is conducive to the general interest of the public. This is one of the Directive Principles of State Policy embodied in Article 43 of our Constitution....If the labourers are to be secured in the enjoyment of minimum wages and they are to be protected against exploitation by their employer, it is absolutely necessary that restraints should be imposed upon their freedom of contract and such restrictions cannot in any sense be said to be unreasonable. On the other hand, the employers cannot be heard to complain if they are compelled to pay minimum wages to their labourers even though the labourers, on account of their poverty and helplessness, are willing to work on lesser wages.

The Constitution Bench, thus, found that securing of minimum wages to labourers which ensures not only bare physical subsistence, but also maintenance of health, decency, is one of the directive principles of the Constitution. It also held that employer cannot be heard to complain that they are compelled to pay minimum wages to the labourers even though the labourers, on account of poverty and helplessness, are willing to work on lesser wages. The contention that some employers might find it difficult to carry on the business on the basis of minimum wages, was also negated by the Constitution Bench.

Negating the contention that the appropriate Government has been left with unfettered discretion, the Apex Court observed thus:

...In the committees or the advisory bodies the employers and the employees have an equal number of representatives and there are certain independent members besides them who are expected to take a fair and impartial view of the

matter. These provisions, in our opinion, constitute an adequate safeguard against any hasty or capricious decision by the "appropriate Government".

The Apex Court, thus, found that the restrictions, though, to some extent, interfere with the freedom of trade or business guaranteed under Article 19(1)(g) of the Constitution, are reasonable and being imposed in the interest of general public, are protected in view of Clause (6) of Article 19 of the Constitution.

33. In the case of *B. Y. Kshatriya (supra)*, it was contended that the provisions of Section 3(3)(iv) of the said Act, confer arbitrary and uncontrolled powers on the State Government to fix the minimum wages in respect of certain localities and thereby enables the Government to discriminate contrary to equal protection clause of the Constitution. It was further contended that it also amounts to imposing unreasonable restriction upon the rights of the employers to carry on the business under Article 19(1)(g) of the Constitution. It was further contended that the notification impugned therein violates the fundamental rights of equality before law guaranteed by the Constitution. Shri Thakur the learned Counsel mainly relied on the following observations of the Apex Court in the said case *Bhikusa Yamasa Kahatriya Vs. Sangamner Akola Taluka Bidi Kamgar Union*, :

..In considering the minimum rates of wages for a locality diverse factors such as basic rates of wages, special allowance, economic climate of the locality, necessity to prevent exploitation having regard to the absence of organization amongst the workers, general economic condition of the industrial development in the area, adequacy of wages paid and earnings in other comparable employments and similar other matters would have to be taken into account....

...Conditions of labour vary in different industries and from locality to locality, and the expediency of fixing minimum wages, and the rates thereof depends largely upon diverse factors which in their very nature are variable and can properly be ascertained by the Government which is in charge of the administration of the State. It is to carry out effectively the purpose of this enactment that power has been given to the appropriate Government to decide, with reference to local conditions, whether it is desirable that minimum wages should be fixed in regard to any scheduled trade or industry, in any locality and if it be deemed expedient to do so, the rates at which the wages should be fixed in respect of that industry in the locality....

The Apex Court, in the aforesaid case, after finding that the fixation of rates of wages and revision thereof, was manifestly preceded by a detailed survey and after considering the report of the committees, negated the contention that fixation of minimum wages for different localities was violative of Article 14.

34. The Apex Court in the case of *C.B. Boarding & Lodging (supra)* was considering a notification, thereby fixing minimum wages of different classes of employees in residential hotels and eating houses in the State of Mysore. The challenge was basically on the ground that Section 5(1) of the Act is violative of Article 14 of the Constitution as it confers unguided and uncontrolled discretion

on the Government to follow either of the alternate procedure prescribed in clauses (a) and (b) of that section. Negating the contention, the Apex Court found that where the State does not have adequate data, it may resort to the procedure as prescribed u/s 5(1)(a) of the said Act. The Apex Court further held that in a case where the State is in possession of certain data, it may decide to resort to the procedure prescribed u/s 5(1)(b) of the said Act. However, it found that since when the procedure u/s 5(1)(b) is chosen, consultation with the Advisory Board is mandatory, there is a sufficient safeguard so as to weed out arbitrariness. It also found that since in the Committee, the representatives of the employers and the employees are equal in number and also there are independent members who are expected to take fair and impartial view, it provides an adequate safeguard against any hasty and capricious decision by the State Government.

35. We will first deal with the challenge on the ground that by impugned notification 100% neutralization of the wages fixed vide notification published in the year 1996 has been granted. Firstly, we must observe that all the cases which have been cited at the bar, which rule that normally 100% neutralization should not be granted, are arising out of the payment of dearness allowance. In the case of CVKU Sahakari Mandi (supra), the Apex Court on facts held that by granting an increase of 83 paise for rise in 1 point in the cost of living index, 100% neutralization will be achieved and, therefore, it was found that by granting an increase of one rupee for increase of 1 point, neutralization would be 125%. The Apex Court observed that dearness allowance was primarily intended as protection of persons whose salaries are at the subsistence level, to protect them against the adverse effects of the rise in prices. The Apex Court, therefore, held that 100% neutralization was not permissible and hence directed the increase " 83 paise per point which would have resulted in 100% neutralization instead of Re. 1 per point. The question for consideration before this Court in the case of H.L. Mazdoor Sabha (supra) and before the Apex Court in the case of Hindustan Lever Ltd. (supra) was also related to neutralization on account of payment of dearness allowance. On facts, this Court as well as Apex Court found that on account of dearness allowance paid as per the scheme applicable to company, neutralization did not exceed 100%. So also in the case of N.M. Wadia Charitable Hospitals (supra) the notification impugned therein was set aside on the ground that the special allowance seeks to neutralize the dearness in excess of 100%. It is to be noted that the factual position in the said case was undisputed to the effect that the dearness allowance so provided under the impugned notification granted more than 100% neutralization. So also in the case of Sangli District Powerloom Owners' Association (supra) it was found that in case of persons who are getting basic minimum wages less than Rs. 184/-, the neutralization would be more than 100%, inasmuch as the consumer price index number 184 was taken as a basis for ascertaining average rise in the prices. It is, thus, clear that all the cases which rule that there could not be 100% neutralization, relate to payment of special allowance or dearness allowance

which is linked with consumer price index so as to provide cushion for increase in the price. In any case, in the case of CVKU Sahakari Mandi, the Apex Court has held that full neutralization can be given to the very lowest class of employees. We are, therefore, of the considered view that the cases cited in support of this proposition are not applicable to the facts of the present case.

36. The next ground of challenge was regarding the Improper constitution of Advisory Board. The challenge in this respect is on the basis of inclusion of one Shri Sachin Aher, Member of Legislative Assembly, as an independent member. It is urged that said Shri Sachin Aher is a Trade Unionist and as such his inclusion as independent member is improper. We find the said challenge to be without substance. Firstly, said Shri Sachin Aher has not participated in the meeting dated June 10, 2004 in which the recommendations were made on the basis of which impugned notification has been issued. Secondly, no prejudice is caused to any of the parties since recommendations of the Advisory Board were unanimous. In this respect, we may refer to the observations made by the division bench of this Court in the case of Sangli District Power Loom Owners' Association (supra), which read thus 1995-III-LLJ(Suppl)-779 at p. 782:

5. ...It appears from the affidavit filed by the respondents that at the material time Shri Naik was a member of the Legislative Council and in that capacity he came to be appointed as Chairman of the Board and not because he was President of Rashtriya Mill Mazdoor Sangh. Further in view of the fact that the advice given by the Board was unanimous one, no prejudice was caused by his appointment as Chairman of the Board. Therefore, we do not find any substance in this contention.

37. Insofar as the contention of the learned Counsel for the petitioners that dissimilar industries situated in different localities have been granted similar wages and as such it is violative of Article 14 of the Constitution is concerned, the same is also devoid of substance. The minimum rates of wages, which are under challenge in the present petitions, pertain to workers working in Zone-III. The rates so fixed are minimum as compared to other scheduled employments. The rates are worked out on the basis of minimum requirements of a family by taking into consideration the norms which have been approved by the Apex Court in the case of the Standard Vacuum (supra). The rates so fixed, being bare minimum, necessary for a survival of a family, we do not find much substance in the contention in this regard.

38. That leads us to the main challenge as to whether the respondent-State has followed the procedure prescribed by the various pronouncements of the Apex Court, while issuing the impugned notification. The Apex Court in the case of the Standard Vacuum (supra) has approved following norms which would guide all wage fixing authorities including Standard Vacuum Refining Co. of India Vs. Its Workmen and Another, at pp. 235 and 236:

(i) In calculating the minimum wage, the standard working class family should be

taken to consist of 3 consumption units for one earner, the earnings of women, children and adolescents should be disregarded.

(ii) Minimum food requirement should be calculated on the basis of a net intake of calories, as recommended by Dr. Aykroyd for an average Indian adult of moderate activity.

(iii) Clothing requirements should be estimated at a per capita consumption of 18 yards per annum which would give for the average workers family of four a total of 72 yards.

(iv) In respect of housing, the rent corresponding to the minimum area provided for under Government's Industrial Housing Scheme should be taken into consideration in fixing the minimum wage.

(v) Fuel, lighting and other "miscellaneous" items of expenditure should constitute 20 per cent of the total minimum wage.

The Apex Court in the case of Raptakos Brett & Co. (supra), has observed thus The Workmen represented by Secretary Vs. The Management of Reptakos Brett and Co. Ltd. and another, :

12. The concept of "minimum wage" is no longer the same as it was in 1936. Even 1957 is way behind. A worker's wage is no longer a contract between an employer and an employee. It has the force of collective bargaining under the labour laws. Each category of the wage structure has to be tested at the anvil of social justice which is the live-fibre of our society today. Keeping in view the socio-economic aspect of the wage structure, we are of the view that it is necessary to add the following additional component as a guide for fixing the minimum wage in the industry:

(vi) children's education, medical requirement, minimum recreation including festivals/ceremonies and provision for old age, marriages etc. should further constitute 25 per cent of the total minimum wage.

39. It can thus, be seen that in addition to the five norms which have been approved by the Apex Court in the case of The Standard Vacuum Refining Company, sixth norm has been added by the Apex Court, in Raptakos Brett. & Co. (supra).

40. By now, it is settled law that the minimum wages is not a static concept. It has to change with social and economic growth of the country.

In paragraph 8 of the judgment in the case of the Standard Vacuum Refining Co. (supra) the Apex Court has observed that in a modern democratic State, the problem of wage structure revolves, on the ultimate analysis to some extent, on ethical and social consideration. We quote a part of paragraph 8 which reads thus Standard Vacuum Refining Co. of India Vs. Its Workmen and Another, :

...As the social conscience of the general community becomes more alive and

active, as the welfare policy of the State takes a more dynamic form, as the national economy progresses from stage to stage, and as under the growing strength of the trade union movement collective bargaining enters the field, wage structure ceases to be a purely arithmetical problem. Consideration of the financial position of the employer and the state of national economy have their say, and the requirements of the workman living in a civilized and progressive society also come to be recognized. It is in that sense, and no doubt to a limited extent, that the social philosophy of the age supplies the background for the decision of industrial disputes as to wage structure....

In the light of the aforesaid observations of the Apex Court let us note as to what would be the wages under the notifications impugned herein.

Name of the Schedule Basic + Special Allowance Daily Wage Daily wage for four family Employment = M. W. (Rs.) (Rs.) members (Rs.) 1. Residuary Employment 2600+ 151.70= 2751.70 91.72 91.72= 22.93 June 30, 2004 (2751.70) 30 (days) per day 4 Family Members 2. Shops & Commercial 2730+ 151.70= 2881.70 96.05 96.05= 24.01 July 20, 2004 (2881.70) 30 (days) per day 4 Family Members 3. Chemical & Fertilizer 2810+ 151.70= 2961.70 98.72 98.72= 24.68 July 20, 2004 (2961.70) 30 (days) per day 4 Family Members 4. Paper & Paper Board 3430+ 151.70= 3581.70 119.39 119.39= 29.85 July 20, 2004 (3581.70) 30 (days) per day 4 Family Members The contention on behalf of the State Government is that the proposal prepared by them were on the basis of the consumer price index. It is submitted that the information collected from various markets at 10 centres in the State of Maharashtra is supplied to the Simla Bureau which is the competent authority as provided u/s 2(c) of the said Act. The said authority, on the basis of the information received by it, notifies the cost of living index number. We have verified the questionnaire which is in the form as prepared by Ministry of Labour which forms the basis for collection of information. We have seen that the said questionnaire provides for prices of all the necessary goods that a person from lowest strata of the society would require for his consumption. It is on the basis of this information collected that the cost of living index is notified. The cost of living index or the consumer price index has been taken as a basis for the proposals published vide draft notification. Reference to Section 4 of the said Act would also reveal that the cost of living index would be a factor which can be taken into consideration for determining the wage structure. The proposal by the Commissioner of Labour submitted to the State Government for publication of draft notification would] also reveal that the minimum wag? proposed have been worked out taking into consideration the guidelines laid down by the Apex Court in the case of The Standard Vacuum Refining Company (supra).

41. Though Shri Thakur, the learned Counsel, has rightly placed his reliance on the observations of the Apex Court in the case of B.Y. Kshatriya (supra) to the effect that while fixing the minimum wages, various factors like the absence of organization amongst the workers, general economic conditions of the industrial

development in the area, adequacy of wages paid and earnings in other comparable employments are to be taken into consideration. However, the factors which have been stated in the said judgment, are not exhaustive, but enumerative. In the present cases, the State has taken into consideration as to what is the bare minimum necessity for the survival of a family by taking into consideration the norms which have been approved in the case of the Standard Vacuum (supra). We find that when the minimum rates of wages are fixed for the lowest strata of workers and which are minimum as compared to the rates fixed for other scheduled employments, the factor which is taken into consideration by the State Government, cannot be said to be irrelevant. When a bare minimum wages structure is prescribed, necessary for the survival of a family, the consideration which weighed with the State Government as to what is the bare minimum requirement of a family, in our opinion, is a relevant consideration.

42. In this respect, we may refer to the observations of the Apex Court in the case of the Standard Vacuum Refining Company (supra), which read thus:

...The proper approach to adopt would be to evaluate each constituent of the concept of the living wage in the light of the prices prevailing today and thus reach a proper conclusion....

We may also refer to the observations of the Apex Court in the case of Raptakos Brett & Co. (supra) in paragraph 25, which read thus The Workmen represented by Secretary Vs. The Management of Reptakos Brett and Co. Ltd. and another, :

25. In any case we are of the opinion that purchasing power of today's wage cannot be judged by making calculations which are solely based on 30/40 years old wage structure. The only reasonable way to determine the category of wage structure is to evaluate each component of the category concerned in the light of the prevailing prices. There has been sky-rocketing rise in the prices and the inflation chart is going up so fast that the only way to do justice to the labour is to determine the money value of various components of the minimum wage in the context of today.

The Commissioner of Labour, placing his proposal on the basis of five norms as approved in the case of the Standard Vacuum Refining Company (supra) in our view, has adopted a proper approach. We therefore, do not find that the rates which were proposed by the draft notification were proposed on any irrelevant or extraneous consideration.

43. After the publication of the draft notification, the persons who were likely to be affected adversely, were to make representations. It is stated in the affidavit that various representations were received by the State Government. Said representations were sent for consideration to the Advisory Board. The Advisory Board, after considering various representations, made its recommendations. The State Government, accepting the said recommendations, issued the final notification. It can, thus, be seen that the decision of the State Government in fixing the minimum wages is based on the recommendations of the Advisory

Board. It is needless to state that the Advisory Board was consisting equal number of representatives of employers and the employees, apart from independent members. It is pertinent to note that the recommendations of the Advisory Board are unanimous. It is, therefore, presumed that the Advisory Board had also taken into consideration the interest of the employers while making its recommendations. It is further to be noted that none of the petitioners have made any representation to the State Government. We therefore, find that the petitioners, who had an opportunity of pointing out their point of view to the State Government, have failed to avail of the said opportunity. We are, therefore, afraid as to whether the petitioners can be permitted to agitate the grievance which they could have very well raised before the State Government and which the State Government was bound to consider. In any event, since the Advisory Board consisted of the representatives of the employers, it will have to be presumed that the point of view of the employers has also been taken into consideration by the Advisory Board.

44. One more aspect that needs to be taken into consideration is that the power vested u/s 5 of the said Act, is with the State Government and not in any subordinate official. The presumption would, therefore, be that such power is fairly exercised by the State. The burden would be on a party who challenges that the said power has been exercised arbitrarily, to establish the same. We are of the view that the petitioners have failed to discharge the burden that power so vested in the State Government has been exercised in an arbitrary manner.

45. As stated hereinabove, Section 3 of the said Act mandates the State Government to review the minimum wages fixed at such intervals as it may thinks fit, but not exceeding five years. In normal circumstances, therefore, the State Government was expected to review the minimum wages prior to five years and revise it, if necessary. However, in the present case, though initially, the minimum rates of wages were fixed in the year 1996, and though the State was expected to review it prior to 2001, the draft notification was issued in 2003 and the final notification fixing the minimum rates of wages was published in the year 2004. It can, thus, be seen that the State has reviewed the rates after 7 years and revised the same after a period of 8 years. In the additional affidavit filed on behalf of the State Government, it has been averred as under:

...It would not be out of place to mention here that the employers are paying more than minimum wages to their direct employees and are depriving the workmen working through contractors. Therefore the employers are discriminating and depriving its contract/casual labours working under their control and supervision working in the same premises.

The said allegations have not been controverted. It is further stated in the affidavit as under:

I say and submit that, on the basis of the record available, it is seen that the employers of Zone-III. Rural areas are paying its workmen as per notification

dated June 30, 2004, impugned in the petition. These rural areas are Wada & Palhkhar taluka, Mahad taluka Dist. Raigad, Lohara Dist. Yavatmal, Chandrapur, Koradi, Khaperkheda, Distt. Nagpur Paras, Distt. Akola Dhanegaon, Distt. Nanded, Chittegaon, Distt. Aurangabad and M.I.D.C. Nasik.

The affidavit further states as under:

I further say and submit that, the minimum. wages in respect of residuary scheduled employment is lowest minimum wages as compared to other scheduled employment.

These allegations have also gone uncontroverted. It can, thus, be seen that some of the petitioners are themselves paying higher rates to workers employed by them, who are not in organized sector. The petitioners are making grievance only insofar as payment of minimum wages to the workers in unorganized sector are concerned. It is further to be noted that the minimum wages in respect of the scheduled employed with which we are concerned, are the lowest as compared to other scheduled employments. It is further to be noted that most of the industries covered under the said scheduled employment including the industries in the Vidarbha region, are paying the minimum wages to their employees at the rates fixed under the impugned notification. We may further note that no material has been placed by any of the petitioners to show that the minimum wages fixed are basically wrong. In this respect, we may refer to the observations of the Apex Court in the case of C.B. Boarding & Lodging (supra) which reads thus Chandra Bhavan Boarding and Lodging, Bangalore Vs. The State of Mysore and Another, :

13. Our attention was not drawn to any material on record to show that the minimum wages fixed are basically wrong. Prima facie they appear to be reasonable. We are not convinced that the rates prescribed would adversely affect the industry or even a small unit therein. If they do, then the industry or the unit as the case may be has no right to exist. Freedom of trade does not mean freedom to exploit. The provisions of the Constitution are not erected as the barriers to progress. They provide a plan for orderly progress towards the social order contemplated by the preamble to the Constitution. They do not permit any kind of slavery, social economic or political....

In the present case also, we do not find that the minimum wages so prescribed can be considered to be unreasonable. In any case, no material is placed on record so as to point out that the rates so fixed are basically wrong.

46. Now let us consider as to what is the scope of judicial review in the matters like fixation of minimum wages. The Constitution bench in the case of U. Unichoyi (supra) has observed thus:

...When a Committee consisting of the representatives of the industry and the employees considers the problem and makes its recommendations and when the said recommendations are. accepted by the Government, it would ordinarily not

be possible for us to examine the merits of the recommendations as well as the merits of the wage structure finally notified by the Government.

The Apex Court in the said case further observed thus:

...In any event these are considerations which ordinarily cannot be entertained by us because obviously we are not sitting in appeal over the recommendations of the Committee or the notification following upon them.

The Apex Court in the case of Ministry of Labour and Rehabilitation and Another Vs. Tiffin's Barytes Asbestos and Paints Ltd. and Another, has observed thus:

...We also wish to emphasise that notifications fixing minimum wages are not to be lightly interfered with under Article 226 of the Constitution on the ground of some irregularities in the constitution of the committee or in the procedure adopted by the committee. It must be remembered that the committee acts only as a recommendatory body and the final notification fixing minimum wages has to be made by the Government. A notification fixing minimum wages, in a country where wages are already minimal should not be interfered with under Article 226 of the Constitution except on the most substantial of grounds. The legislation is a social welfare legislation undertaken to further the Directive Principles of State Policy and action taken pursuant to it cannot be struck down on mere technicalities.

We find that the rates of wages proposed in the draft notification were on the basis of norms laid down by the Apex Court in the case of the Standard Vacuum Refining Company (*supra*) and on the basis of the consumer price index and as such was a relevant consideration. In our jurisdiction under Article 226 of the Constitution of India, we cannot sit in appeal over the rates fixed by the State Government. The limited scope of judicial review would be only to find out as to whether the considerations which weighed with the State Government while fixing the rates, were relevant or not. We find that the considerations which weighed with the State Government were relevant. We may also gainfully refer to the observations of the Apex Court in the case of Cynamide India Ltd. which reads thus:

4. We start with the observations. Price fixation is neither the function nor the forte of the Court. We concern ourselves neither with the policy nor with the rates. But we do not totally deny ourselves the jurisdiction to enquire into the question, in appropriate proceedings, whether relevant considerations have gone in and irrelevant considerations kept out of the determination of the price. For example, if the Legislature has decreed the pricing policy and prescribed the factors which should guide the determination of the price, we will, if necessary, enquire into the question whether the policy and the factors are present to the mind of the authorities specifying the price. But our examination will stop there. We will not go further. We will not deluge ourselves with more facts and figures. The assembling of the raw materials and the mechanics of price fixation are the concern of the executive and we leave it to them. And, we will not reevaluate the

considerations even if the prices are demonstrably injurious to some manufacturers or producers. The Court will, of course, examine if there is any hostile discrimination. That is a different "cup of tea" altogether.

32. The learned Counsel argued that there were several patent errors which came to light during the course of the hearing in the High Court. He said that obsolete quantitative usages had been taken into consideration, proximate cost data had been ignored and the data relating to the year ending November, 1976 had been adopted as the basis. It was submitted that there were errors in totalling, errors in the calculation of prices of utilities, errors in the calculation of net-worth and many other similar errors. As we pointed out earlier, these are all matters which should legitimately be raised in the review application, if there is any substance in them. These are not matters for investigation in a petition under Article 226 of the Constitution or under Article 32 of the Constitution. Despite the pressing invitation of Shri Diwan to go into facts and figures and his elaborate submissions based on facts and figures, we have carefully and studiously refrained from making any reference to such facts and figures as we consider it outside our province to do so and we do not want to set any precedent as was supposed to have been done in Premier Automobiles though it was not so done and, therefore, needed explanation in later cases.

It can, thus, be seen that since we do not possess any expertise in the matter, it will not be permissible for us to go into the niceties of the calculations and the facts and figures which have been brought to our notice. The limited scope of enquiry would be as to whether the decision of the State Government was taken on the basis of the consideration which are relevant and underlying the policy, aims and objects of the Act or as to whether the decision is vitiated by irrelevant considerations.

47. Shri Thakur, the learned Counsel appearing on behalf of the petitioners, also urged before us to take into consideration the change in economic situation. According to him, due to globalization, the competition has increased and if the employees are required to be paid higher wages, survival of the industries itself would be at stake. We do agree with the proposition advanced by the learned Counsel, but then there is another side to the coin also. We will also have to take into consideration that due to liberalization of economy and opening of the doors of the country to the foreign investments and consequent globalization, the condition of the Indian economy in the past decade has steadily improved. We cannot be oblivious to the fact that in the past decade, India's per capita income has reached at highest level in the country's history. We also cannot ignore that there is steady annual growth in the GDP. We also, cannot ignore that the salary structures in the last decade have also steadily increased and at present are one of the best ones. We ask ourselves as to whether, when the economic health of the country has demonstrably improved, the workers from the unorganised sectors, who come from the lowest strata of the society should be denied even bare minimum wages necessary for survival. We ask the question to ourselves as

to whether an amount of Rs. 90/- to Rs. 100/- per day would be sufficient enough for minimal food requirement of a family consisting of four persons, for a clothing requirement of 72 yards of clothes per annum, for paying the rent of his shelter, for fuel, lighting and other miscellaneous items of expenditure, for children's education, medical requirement, minimum recreation including festivals, ceremonies, and provisions for old age, marriages, etc. As held by the Apex Court, a wage structure which answers the above six components, is nothing, but a minimum wages at subsistence level. The Apex Court has, time and again, held that the concept of minimum wages is not static and that it has to change with the times and that the concept of minimum wages has to undergo a change with the growth of our economy and change in the standard of living. Though the fruits of the economic growth or standard of living in the country may not be passed on to a worker who forms part of the lowest strata of the society, but could he be denied atleast an amount necessary for bare survival of his family. That would frustrate the mandate of Article 43 of the Constitution of India.

48. Before concluding, we may quote the observations of the Apex Court in the case, of C.B. Boarding & Lodging (*supra*) which read thus:

13. ...The mandate of the Constitution is to build a welfare society in which justice social, economic and political shall inform all institutions of our national life. The hopes and aspirations aroused by the Constitution will be belied if the minimum needs of the lowest of our citizens are not met.

49. In the conclusion, we find that the draft notification which was issued as per the proposal of the Commissioner of Labour, proposes the rates of minimum wages, on the basis of the norms approved by the Apex Court in the case of Standard Vacuum Refining Company (*supra*) and the cost of living index which has been notified by the competent authority by adopting scientific method. We therefore, find that the rates were proposed on the basis of relevant considerations." We further find that the final notification has been notified after consulting the Advisory Board and on the basis of the report of the Advisory Board, which report was made after considering the representations made to the State Government. We further find that the Advisory Board was properly constituted and had equal number of representatives of the employers as well as the employees and that the recommendations of the Advisory Board were unanimous. We further find that the petitioners, though had an opportunity to make representations in pursuance of the draft notification, have not availed of such opportunity. In any event, since the Advisory Board consisted of employers' representatives, it will have to be presumed that the interest of the employers was also taken into consideration. We find that since the power exercised u/s 5(1) of the said Act was exercised by the State Government, it will have to be presumed that it was exercised bona fide and validly and that the petitioners have failed to discharge their burden to rebut the said presumption. We find that the wages fixed by the notification impugned are the lowest as compared to

other scheduled employments. We further hold that the petitioners have failed to place any material on record to establish that the minimum wages so fixed are basically wrong. Though we cannot sit in appeal on the notification of the State Government fixing minimum rate of wages, we find that the wages so fixed cannot be held to be unreasonable.

50. We, therefore, hold that the petitioners' challenge to the validity of the impugned notifications fails. As such, the petitions are dismissed. Rule, is discharged. However, in the facts and circumstances of the case, there shall be no order as to costs.

Later on

51. Shri Puranik, the learned Counsel appearing on behalf of the petitioners, makes a request that the judgment delivered by us be stayed for eight weeks.

52. Taking into consideration the view we have taken, we are not inclined to grant stay to the judgment delivered by us.

53. However, Smt. Jog, learned A.G.P. makes a statement that since the petitions are pending for a period of 1 1/2 year and since the stay was operating in the petitions for a considerable length of time, respondent State will not take any coercive step against the petitioners for a period of eight weeks from today.