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In the Karnataka High Court

Case No : Writ Appeal No''s. 7170 to 7172 and 7935 to 7947 of 1999 and 3553 to 3579 of 2000

Mangalore Ganesh Beedi and Allied Beedi Factories Workers Association — APPELLANT

Vs

State of Karnataka and Others — RESPONDENT

Date of Decision : 03-06-2003

Acts Referred:
Constitution of India, 1950 — Article 226, 39, 43
Minimum Wages Act, 1948 — Section 3, 5, 5 (1) (b)

Citation : (2003) 5 KarLJ 26 : (2003) 3 KCCR 197 SN : (2003) 3 LLJ 861

Hon'ble Judges : S.R. Nayak, J;K. Ramanna, J

Bench : Division Bench

Advocate : M.C. Narasimhan, for the Appellant; M.C. Narasimhan, for Respondent-3 in W.A. No. 3553 of 2000, for Respondent No, 2 in W.A. Nos. 3554 to 3557, 3559 to 3565 and 3577 to 3579 of 2000, G. Nagarajulu Naidu, A.G.A. for Respondents 1 to 4, K. Channabasappa, for Respondent-2, P.D. Vishwanatha, for Respondent-2 in W.A. Nos. 7935 and 7946 of 1999, B.C. Prabhakar, for Respondent-2 in W.A. Nos. 7936, 7939 and 7945 of 1999, Kasturi Associates for Respondent-1 in W.A. Nos. 3553, 3554, 3556 to 3561 and 3563 to 3579 of 2000 and for Respondent-2 in W.A. Nos. 7170 to 7172 and 7935 to 7947 of 1999, K.S. Subramanya and V.H. Upadhyaya for Respondent-3, Kaleemulla Shariff, for Respondent-1 in W.A. No. 3565 of 2000 and for Respondent-2 in W.A. Nos. 7170 to 7172 and 7935 to 7947 of 1999, K.D. Channabasappa, for Respondent-2 in W.A. No. 3553 of 2000; A.G. Holla, for Respondent-1 in W.A. No. 3562 of 2000 and T.S. Ananthram, for Respondent-3 in W.A. No. 3574 of 2000, for the Respondent

Judgement

1. A learned Single Judge of this Court by a common order impugned in these writ appeals has allowed writ petitions filed by management of Beedi Manufacturing Industries and quashed notification dated 24-10-1996 issued by the Government of Karnataka under Sections 3 and 5 of the Minimum Wages Act, 1948 (for short, ''the Act'') revising the rates of minimum wage in the Beedi Manufacturing Industries. Being aggrieved by the said judgment of the learned

Single Judge, the State of Karnataka and the concerned Trade Unions representing the workforce in the Beedi Manufacturing Industries have filed these writ appeals.

2. Beedi industries is spread throughout the State of Karnataka and the employees in the said industry number more than 8 lakhs. Employment in Beedi Manufacturing Industries is a scheduled employment as per the provisions of the Act. u/s 3 of the Act, the appropriate Government is empowered to fix and revise minimum wages in the scheduled employment. This is an obligation in terms of the provisions of Section 3 of the Act.

3. The Government of Karnataka issued draft notification bearing No. LD 249 LMW 91, dated 9-5-1995 u/s 5(1)(b) of the Act and the same was published in the Karnataka Gazette Special Issue vide Part IV, Section 2-C(ii), dated 31-7-1995 notified suggestions/objections from the affected/likely to be affected persons to the revision of minimum rates of wages in respect of workers employed in Beedi industry in the State of Karnataka. Karnataka Beedi Industries'' Association (Regd.) submitted its suggestions/objections vide its letter dated 26-9-1995. The Government of Karnataka after receipt of objections and suggestions sought the opinion/comments of the Labour Department and sectored its opinion. The opinion of the Labour Department as well as ejections/ suggestions received from the Karnataka Beedi Industries Association (Regd.) and others were placed before the Karnataka State Minimum Wages Advisory Board (for short, "the Advisory Board") by the Government for its consideration. The Advisory Board after considering the suggestions and objections received and the opinion of the Labour Department has recommended revision at the rate of 3 paise per point for every increase of Consumer Price Index over and above 1513 points for the purpose of payments of Variable Dearness Allowance (VDA). The State Government after considering the recommendation of the Advisory Board have revised the minimum rates of wages to come into effect from 1-11-1996 for workers employed in any employment in Beedi Manufacturing Industries in exercise of power conferred on them under Sub-section (1)(b) of Section 3 read with Sub-section (2) of Section 5 of the Act and the same was published in the Karnataka Gazette, Notification No. LD 2''49 LMW 93, Bangalore, dated 24th October, 1996 fixing revision at the rate of 3 paise per point for every increase of Consumer Price Index.

4. The managements of the Beedi Manufacturing Industries, being, aggrieved by the above revision of minimum wage effected by the Government of Karnataka preferred Writ Petition No. 1793 of 1997 and batch assailing the validity of the notification dated 24-10-1996. During the pendency of the writ petitions, LA. No. II was filed by the management to take additional ground, such as: (i) that the constitution of the Advisory Board was not in accordance with law; (ii) that the Government having constituted a tripartite committee vide notification dated 24-2-1994 could not have acted upon the recommendation of the Advisory Board and it ought to have awaited the report of the tripartite committee; (iii) that

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there was no application of mind by the Government to the relevant factors before revising the minimum wage; (iv) that the revision of the minimum wage suffers from the vice of arbitrariness and unreasonableness. The petitioners, also filed another interlocutory application to implead the Director of Statistics, Government of Karnataka as respondent 4 on the ground that the neutralization of Dearness Allowance was done by the Government on the basis of the recommendation of the Director of Statistics.

5. Opposing the writ petitions, the Trade Unions representing the workmen in the Beedi Manufacturing Industries have filed their statements of objection contesting the correctness of the contentions of the petitioners and supporting the impugned notification and the revision of the minimum wages.

6. Before the learned Single Judge, on behalf of the management, it was contended that the Government did not take into account relevant factors such as the capacity of the management to pay the minimum wage, the cost of raw materials required for the manufacture of Beedis. It was also contended that the neutralization of Dearness Allowance under no circumstance can be more than 100% and that neutralization effected in the impugned notification tantamounts to 124,04 per cent. It was also contended that in fixing the minimum wage, the Government of Karnataka did not take into account the minimum wages fixed for the workers in the Beedi Manufacturing Industries in the States of Madhya Pradesh, Maharashtra, Andhra Pradesh, Tamil Nadu etc., and, therefore, it would encourage migration of Beedi Manufacturing Industries to those States. It was also contended that though the impugned notification was issued in the month of January 1997 it was brought into force with retrospective date, i.e., with effect from 1-11-1996 and that action is per se illegal. It was also contended that whereas the draft notification indicated Variable Dearness Allowance at 2 paise per point over and above 1513 points, the final notification enhanced Variable Dearness Allowance to 3 paise without any reason and, therefore, it is illegal. It was also contended on behalf of the management that the Beedi Industry has not been effectively consulted by the Government before revising the minimum wage as required u/s 5(1)(b) of the Act. On behalf of the workmen, it was contended that" the contentions raised on behalf of the management were factually incorrect; the objections of the management have been considered by the Government in its Labour Department as well as by the Advisory Board; financial capacity of the management to pay revised minimum wage is totally an irrelevant consideration; the neutralization of the Dearness Allowance could be more than 100%.

7. The learned Single Judge having felt that the Government has not placed any material to disclose that its decision was arrived by "an intelligible, rational and candid consideration of the report of the committee and the representation of the employer by a disinterested and open minded authority" and that there is no material to show that "the principles stated in Aspinwal and Co. Ltd. and Others Vs. State of Karnataka and Others, , have been kept in mind by the Government

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while fixing the minimum wages", allowed writ petitions and quashed the impugned notifications. Hence, these writ appeals by the State Government as well as by the Trade Unions representing the workmen in the Beedi Manufacturing Industries.

8. We have heard M/s. M.C. Narasimhan, K Subramanyan and Anantharaman for Trade Unions and M/s. K Kasturi and A.G. Holla, learned Senior Counsels appearing for the managements of the Beedi Manufacturing Industries. Sri M.C. Narasimhan while assailing the correctness of the judgment of the learned Single Judge and supporting the notification contended that the managements had not placed any materials before the Advisory Board to quantify the correct minimum wages payable; that the wages fixed under impugned notification is the need based fixation; the allegation that the wage fixed is fair wage and not minimum wage, is baseless and incorrect; while fixing the minimum wage under the Act, the capacity of the industry to pay the wages fixed is totally an irrelevant consideration; the managements of the Beedi industries have been effectively consulted before revising the minimum wages; there is no hard and fast rule that under no circumstance, neutralization of Dearness Allowance can be more than 100%. Sri Subramanyan, learned Counsel appearing for a set of workmen pointed out that the minimum wage now fixed under the impugned notification is below poverty line and, therefore, no exception can be taken to the same. Sri Kasturi and Sri Holla, on the other hand, would reiterate the same contentions urged before the learned Single Judge and support the order of the learned Single Judge. They would maintain that while fixing or revising the minimum wages, the appropriate Government cannot totally ignore the financial burden of the employers in paying the minimum wage; fixing of minimum wage in the present case is arbitrary; neutralization of Dearness Allowance under no circumstance can be more than 100%; the Government and Advisory Board did not consider the objections of the employers; if the impugned notification is upheld, it would result in closure of Beedi Manufacturing Industries and such a consequence should be avoided by the Court; in fixing the minimum wage, the Government did not comply with the procedure prescribed u/s 5 of the Act; there was no consultation between Government and the Advisory Board; comparative minimum wage structures existing in the States of Madhya Pradesh, Uttar Pradesh, West Bengal, Orissa, Maharashtra, Andhra Pradesh and Kerala are not taken into account. It was lastly submitted by Sri Holla that if the impugned notification is upheld it will have disastrous consequence and the Beedi Manufacturing Industries will be forced to close inasmuch as additional liability flowing from the impugned notification will be in the order of one thousand errors and more.

9. Having heard the learned Counsels for the parties, the only question that arises for our consideration and decision is whether the managements of the Beedi Manufacturing Industries have made out any valid ground on the basis of which this Court under Article 226 of the Constitution could quash the notification impugned in the writ petitions. Before dealing with the above question posed to

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ourselves, it will be profitable to have a glimpse of the historical background which led to the enactment of the Act and the objects sought to be achieved by the Act.

10. Long back it was realised by the States in comity of nations who are wedded to the concept of social welfare and interested in the establishment and progression of an egalitarian society that in the emerged system of economy, the concept of wages can never be absolute and shall have to be viewed comparatively and, therefore, the periodical revision of minimum wages and wage structure is absolutely necessary. The International Labour Conference in 1928 in its 11th session recommended the establishment of Minimum Wages Fixing Convention. This establishment lays down the procedure for wage fixing machinery. As per the recommendation of the Convention it is necessary for the employers and the employees to associate themselves on equal terms so that the minimum wages fixed should be binding on both the parties. Such a machinery should take up the work of investigating the relevant conditions of trade and industries that may lead to the fixation of minimum wages.

11. According to the Universal Declaration of Human Rights, everyone as a member of society has the right to social security and is entitled to realisation, through national efforts and international co-operation and in accordance with the organisation and resources of each State, of economic, social and cultural rights indispensable for one''s dignity and the free development of one''s personality. Likewise everyone has the right to a standard of living, adequate for the health and well-being of oneself, including food, clothing, housing and medical care and necessary social services and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood or circumstances beyond one''s control. In a country like India the question of fixation of minimum wages is very important as labour is still cheap and unorganized. Although collective bargaining has assumed shape in certain highly organised industries it can safely be said that the labour as a whole in different walks of life and industry is not capable of putting a face of collective bargaining and look after its own interests. The conditions of employment vary from State to State and occupation to occupation. Amongst the problems relating to industrial labour in India standardization of wage rates and fixation of minimum wages is the most important one. It would be difficult to conceive of industrial peace without the fixation of proper wages.

12. Continued and unprecedented labour unrest in the year 1923 forced the Government of India to appoint the Royal Commission on Indian Labour "to enquire into and report in the existing conditions of labour in industrial undertakings and plantations in British India on the health, efficiency and standard of living of workers and in the relation between employers and employed and to make recommendations". The Commission considered the question of fixing the minimum wages for Beedi making, wool cleaning, mica factories, shellac manufacturing and tanning. It recommended investigation and

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necessary legislation thereafter. It recommended the establishment of a statutory wage board for fixing wages in tea plantations. The Royal Commission found that the statistical material on wages was inadequate. No steps however were taken for any legislative measure to implement the recommendations of the Royal Commission. The Rege Committee appointed in 1944 by the Government of India found as a result of their survey that the basic wage level in most Indian industries was extremely low. Later, the Central Pay Commission appointed by the Government of India, 1946, recommended that the Government should take some step forward in giving effect to the "living wages" principle in dealing with the employees who are virtually on the "poverty line" and came to the conclusion that in no case a man''s wages should be less than a living wage. In the meanwhile, simultaneously with the appointment of the Central Pay Commission the Government of India introduced the Minimum Wages Bill in the Indian Legislative Assembly, on February 11, 1946, The Bill was referred to the Select Committee in March 1947, which was reconstituted in November 1947. Certain amendments were made by the Committee and several new clauses were also added. The Committee submitted its report on January 28, 1948. It was pointed out by the Labour Minister that no industry including agriculture if it entailed the exploitation of the working classes and could not afford the working minimum wages would be permitted to operate; the mention of certain industries in the Schedule, with power to the ;State Government to add more categories of employment therein where the appropriate Government could fix up minimum wages, was with the aim to stop exploitation of sweated labour. The Bill was passed by the Dominion Legislature on February 9, 1948.

13. With the advent of development of socio-economic culture and the concept of social justice, the basic features of wages have undergone progressive change. In the modern system of economy the concept of wages can never be absolute and shall have to be viewed comparatively. The periodical revision of minimum wages and wage structure is, therefore, absolutely necessary. That is why the Act does not define minimum wages, while a good deal of discussion could be found in different reports on what constitutes "subsistence wages", "minimum wages", "fair wages" and "living wages", a precise definition of any of the terms has not been found feasible and practicable and they have to be defined with reference to time and place and taking into account all the relevant attendant factors and circumstances. In other words, they cannot be defined so as to be applicable to all places and all times to come. The fixation of minimum wages is the first step to carry on wages to living wages, which is one of the "Directive Principles of State Policy". Article 43 of the Constitution lays down that "the State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. . .". It is because of this that the Act authorises the Central and the State Governments to fix minimum rates of wages and also to establish a machinery for the revision of such wages. So long as the

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stage of a living wage is not reached it would be the duty of the Government to continue its efforts in that direction.

14. The Constitution of India, inter alia, has solemnly resolved to secure economic justice to the people of India, and with that end in view has laid down certain directive principles to be observed in the governance of the country. The object of the Act is to provide social justice to the workmen employed in the scheduled employment by prescribing minimum rates of wages. The minimum rates of wages should be fixed in respect of scheduled employments keeping in mind the twin objects of providing sustenance and maintenance of the worker and his family and preserving his efficiency as a worker in view. Though the directive principles of State policy enshrined in the Constitution are not enforceable by any Court, it is the duty of the State to apply these principles in its governance which includes making laws also. According to Articles 39, 39(e), 42 and 43 of the Constitution, the State shall direct its policy towards securing, that the citizens have the right to an adequate means of livelihood, that there is equal pay for equal work for both men and women and that the health and strength of workers are not abused. The preamble of the Constitution coupled with the directive principles constitutes the conscience of the Constitution; in other words, the constitutional policy of the Republic of India.

15. If the labourers are to be secured in the enjoyment of minimum wages and they are to be protected against exploitation by their employers, it is absolutely necessary that restraint should be imposed on the freedom of contract and such restrictions cannot, in any sense, be said to be unreasonable. The Act, it is held, is not repugnant to the provisions of the Constitution vis-a-vis the fundamental right to carry on any business. The restrictions imposed under the Act are reasonable and in public interest. The employers cannot be heard to complain if they are compelled to pay minimum wages, even though the labourers, on account of their poverty and helplessness or disabilities, are willing to work on lesser wages.

16. The concept of a minimum wage is a wage which is somewhat intermediate to a wage which is just sufficient for bare sustenance and a fair wage. The concept of minimum wage includes not only the wage sufficient to meet the bare sustenance of an employee and his family. It also includes expenses necessary for his other primary needs such as medical expenses and education for his children etc. The concept of minimum wage is a dynamic concept and, therefore, is likely to undergo a change with the growth and development of economy and also with the change in the standard of living. It is not a static concept. Therefore, its concomitants must necessarily increase with the progress of the society. It is likely to differ from place to place and from industry to industry. That is clear from the provisions of the Act itself and is inherent in the very concept of minimum wage.

17. In The Workmen represented by Secretary Vs. The Management of Reptakos Brett and Co. Ltd. and another, , the Supreme Court reiterated the following five

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norms for the fixation of minimum wage evolved by the Tripartite Committee of the Indian Labour Conference held in New Delhi in 1957 and approved by the Supreme Court in Standard Vacuum Refining Co. of India Vs. Its Workmen and Another, : (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 per capita consumption of 18 yards per annum which would give for the average worker''s 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; and (v) Fuel, lighting and other ''miscellaneous'' items of expenditure should constitute 20 per cent of the total minimum wage. Keeping in view the socio-economic aspect of the wage structure, the Supreme Court observed that it was 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.

The Supreme Court further observed:

"The wage structure which approximately answers the above six components is nothing more than a minimum wage at subsistence level. The employees are entitled to the minimum wage at all times and under all circumstances. An employer who cannot pay the minimum wage has no right to engage labour and no justification to run the industry".

18. In Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others, , the Supreme Court considered the concept of "minimum wage" as contained in the report of the Committee on Fair Wages, part of which runs as follows:

"As a rule, though the ''living wage'' is the target, it has to be tempered, even in advanced countries, by other considerations, particularly the general level of wages in other industries and the capacity of industry to pay. This view has ;been accepted by the Bombay Textile Labour Enquiry Committee.. . .".

Thereafter, the Supreme Court proceeded to observe:

"In India, however, the level of national income is so low at present that it is generally accepted that the country cannot afford to prescribe by law a minimum wage which would correspond to the concept of living wage. . . . We consider that a minimum wage must provide not merely for the bare subsistence of life but for the preservation of the efficiency of the worker. For this purpose, the minimum wage must also provide for some measure of education, medical requirements and amenities".

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The Supreme Court furthermore added:

"There is also a distinction between a bare subsistence or minimum wage and a statutory minimum wage. The former is a wage which would be sufficient to cover the bare physical needs of a worker and his family, that is, a rate which has got to be paid to the worker irrespective of the capacity of the industry to pay. If an industry is unable to pay its workmen at least a bare minimum wage it has no right to exist. . . .".

19. The Supreme Court further observed that the statutory minimum wage might be higher than the bare subsistence wage and that minimum wage may provide for measure of education, medical requirements and amenities as per connotation of ''minimum rate of wages'' in Section 3 of the Act.

20. In Crown Aluminium Works Vs. Their Workmen, , the Supreme Court dealing with the problem of industrial adjudication dealt also incidentally with the Minimum Wages Act which it described as a piece of labour welfare legislation. The Supreme Court had observed:

"In India as well as in England and other democratic welfare States great inroad has been made on this view of the Common Law by labour welfare legislation such as the ''Minimum Wages Act'' and the Industrial Disputes Act. With the emergence of the concept of a welfare State, collective bargaining between trade unions and capital has come into its own and has received statutory recognition; the State is no longer content to play the part of a passive onlooker in an industrial dispute.

The old principle of the absolute freedom of contract and the doctrine of laissez faire have yielded place to new principles of social welfare and common good. Labour naturally looks upon the constitution of wage structures as affording "a bulwark against the dangers of a depression, safeguard against unfair methods of competition between employers and a guaranty of wages necessary for the minimum requirements of employees"".

It was further pointed out:

"There can be no doubt that in fixing wage structures in different industries, industrial adjudication attempts, gradually and by stages though it may be, to attain the principal objective of a welfare State, to secure "to all citizens justice, social and economic". To the attainment of this ideal the Indian Constitution has given a place of pride and that is the basis of the new guiding principles of social welfare and common good".

21. To the same effect is the observation of K.S. Hegde, J., speaking for the Bench of the Supreme Court in the case of Chandra Bhavan Boarding and Lodging, Bangalore Vs. The State of Mysore and Another, . While delivering the judgment of the Court, His Lordship pointed out that.-

"Freedom of trade does not mean freedom to exploit. The provisions of the

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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. It is a fallacy to think that under our Constitution there are only rights and no duties. While rights conferred under Part III are fundamental, the directives given under Part IV are fundamental in the governance of the country. We see no conflict on the whole between the provisions contained in Part III and Part IV. They are complementary and supplementary to each other. The provisions of Part IV enable the Legislatures and the Government to impose various duties on the citizens. The provisions therein are deliberately made elastic because the duties to be imposed on the citizens depend on the extent to which the directive principles are implemented. 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".

Thus, it is quite clear that the object of the Act is to prevent the exploitation of the workers and for that purpose, it aims at fixation of minimum wages which the employers must pay. The Legislature undoubtedly intended to apply the Act to those industries or localities in which by reason of causes such as unorganized labour or absence of machinery for regulation of wages, the wages paid to workers were, in the light of general level of wages, and subsistence level, inadequate.

22. A notification fixing minimum wages, in a country like ours where wages are already minimal should not be interfered with under Article 226 except on the most substantial of grounds. The Act 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 such as some irregularities in constitution of, or in procedure followed by the committee appointed under Sections 5(1)(a) and 9. In Sree Kalyanarama Company Mine v. Government of India (1980) 56 FJR 79, the minimum wages notification was impugned, inter alia, on the ground that the increase in the minimum wages fixed by that notification as compared to the earlier one was disproportionate and highly unreasonable. Rejecting that plea, a Division Bench of Andhra Pradesh High Court observed:

". . . . It is not competent for this Court to go into and say as to what is the minimum wages vis-a-vis a particular industry or for that matter, vis-a-vis a particular category of employees. It is well-settled that it is perfectly competent for the concerned authorities to fix the minimum wage if it is in compliance with statutory requirements".

23. The fixation of minimum rates of wages in respect of any scheduled employment by the appropriate Government is an administrative act which is final and not subject to judicial review on the question of the quantum of wages fixed on humanitarian ground. The notification fixing the minimum wages can be

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interfered by the Court only where the fixation of minimum wages by the appropriate Government is ultra vires the Act.

24. In Kamani Metals and Alloys Ltd. Vs. Their Workmen, , the Supreme Court held that.-

"Broadly speaking the first principle is that there is a minimum wage which, in any event, must be paid, irrespective of the extent of profits, the financial condition of the establishment or the availability of workmen on lower wages. This minimum wage is independent of the kind of industry and applies to all alike big or small. It sets the lowest limit below which wages cannot be allowed to sink in all humanity".

25. In the case of U. Unichoyi and Others Vs. The State of Kerala, , the Supreme Court stated the purpose of the Act thus:

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

26. Further, in the same case, the Apex Court while considering the components of minimum wages in the context of the Act and after considering the evidence led before the Committee on Fair Wages in that case observed as under:

"The Committee came to the conclusion that a minimum wage must provide not merely for the bare subsistence of life but for the preservation of the efficiency of the worker, and so it must also provide for some measure of education, medical requirements and amenities. The concept about the components of the minimum wage thus enunciated by the Committee has been generally accepted by industrial adjudication in this country. Sometimes the minimum wage is described as a bare minimum wage in order to distinguish it from the wage structure which is ''subsistence plus'' or fair wage, but too much emphasis on the adjective ''bare'' in relation to the minimum wage is apt to lead to the erroneous assumption that the maintenance wage is a wage which enables the worker to cover his bare physical needs and keep himself just above starvation. That clearly is not intended by the concept of minimum wage. On the other hand since the capacity of the employer to pay is treated as irrelevant it is but right that no addition should be made to the components of the minimum wage which would take the minimum wage near the lower level of the fair wage, but the contents of this concept must ensure for the employee not only his subsistence and that of his family but must also preserve his efficiency as a worker. The Act

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contemplates that minimum wage rates should be fixed in the scheduled industries with the dual object of providing sustenance and maintenance of the worker and his family and preserving his efficiency as a worker".

27. Thus, it is well-settled that the notification fixing the minimum wages cannot lightly be interfered with by the High Court under Article 226 and that the High Court can interfere with such notification only where it finds the concerned appropriate Government has exceeded its jurisdiction and/or acted ultra vires the provisions of the Act.

28. Before dealing with the points raised by the learned Counsels for the parties, it is necessary to refer briefly to the salient features of the Act. The Act was passed in 1948 because it was thought expedient to provide for fixing minimum rates of wages in certain employments. u/s 3 the appropriate Government is empowered to fix minimum rates of wages in regard to employments as therein specified, and review the same at such intervals as specified by Section 3(1). Section 3(3) contemplates that in fixing or refixing minimum rates of wages different minimum rates of wages may be fixed for different scheduled employments, different classes of work in the same scheduled employments, adults, adolescents, children and apprentices, and different localities. u/s 4 any minimum rate of wages fixed or revised may, inter alia, consist of a basic rate of wages and a special allowance at a rate to be adjusted, or 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 rate where so authorised or an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions if any. Section 5 prescribes the procedure for fixing and revising minimum wages. Section 12(1) imposes on the employer the obligation to pay the minimum rates of wages prescribed under the Act. Section 22 provides for penalties for offences and Section 22A makes a general provisions for punishment of offences not otherwise expressly provided for. u/s 25 any contract or agreement whether made before or after the commencement of this Act which affects an employee''s right to a minimum rate of wages prescribed under the Act shall be null and void so far as it purports to reduce the said minimum rate of wages. Section 27 empowers the appropriate Government, after giving notification as prescribed, to add to either part of the Schedule any employment in respect of which it is of opinion that minimum rates should be fixed and thereupon the Schedule shall be deemed to be amended accordingly in regard to that State.

29. The definition of the word "wages" and the manner prescribed under Sections 3 and 4 of the Act for fixing the wages would make it clear that "minimum wage" is one unit of fixed amount and for fixing the same, the authority is required to take into consideration various components of costs so that the worker gets minimum remuneration which can provide for sustenance and maintenance of the worker and his family and preserve his efficiency.

Section 2(h) defines "wages" as under:

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"2(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 special expenses entailed on him by the nature of his employment; or

(v) any gratuity payable on discharge".

30. Section 3, inter alia, provides that the appropriate Government shall in the manner provided, fix the minimum rates of wages payable to the employees employed in any employment specified in Part I or in Part II of the Schedule and in an employment added to either part by a notification u/s 27 and the said minimum wages are required to be reviewed at such intervals as the appropriate Government may think fit, but it is required to be reviewed and revised within 5 years.

31. Section 4 of the Minimum Wages Act reads as follows:

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

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

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

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

(2) The cost of living allowance and the cash value of the concessions in respect

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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".

32. It is well-settled that minimum wage must provide not merely for the bare subsistence of life but for the preservation of the efficiency of the worker and so it must also provide for some measure of education, medical requirements and amenities of himself and his family. While fixing the minimum wages, the capacity of the employer to pay is treated as irrelevant and the Act contemplates that rates of minimum wage should be fixed in scheduled industries with a dual object of providing sustenance and maintenance for the worker and his family and preserving his efficiency as a worker. So it is required to take into consideration the cost of bare subsistence of life and preservation of efficiency of the workers and for some measure of education, medical requirements and amenities. This cost is likely to vary depending upon the cost prevailing in the market of various items. If there are inflationary conditions prevailing in the country, then minimum wages fixed at a particular point of time would not serve the purpose. Therefore, Section 4 contemplates that minimum wages fixed at a particular point of time should be revised from time to time. Section 4 postulates that minimum wage fixed or revised by the appropriate Government u/s 3 may consist of basic rates of wages and special allowance at a rate to be adjusted at such intervals in such manner as the appropriate Government may direct to accord as nearly as practicable with a variation in the cost of living index number applicable to such workers; alternatively, it permits the fixation of 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 concessional rates where so authorised or in the alternative, it permits an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of concessions, if any.

33. The object of Section 4 is to see that minimum wage can be linked with increase in cost of living so that increase in cost of living can be neutralized or all-inclusive rates of minimum wages can be fixed. From the combined reading of Sections 3 and 4, it becomes clear that what is fixed is total remuneration which should be paid to the employees covered by the Schedule and not for payment of costs of different components which are taken into consideration for fixation of minimum rates of wages. The concept of minimum wages does take in the factor of the prevailing cost of essential commodities whenever such minimum wage is to be fixed. The idea of fixing such wage in the light of the cost of living at a particular juncture of time and of neutralising the rising prices of essential commodities by linking up scales of minimum wages with the cost of living index is provided for in Section 4.

34. The term "cost of living index number" is defined u/s 2(d) of the Act. It is defined as follows:

"2(d) ''Cost of living index'' number in relation to employees in any scheduled

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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".

The consumer price index numbers are also known as cost of living index numbers which are generally intended to represent the average change over time in the prices paid by the ultimate consumer of a specified basket of goods and services. The need for constructing consumer price index numbers arises because the general index numbers fail to give an exact idea of the effect of change in the general price level on the cost of living of different classes of people since a given change in the prices affect different classes in different manners.

35. The concept "cost of living allowance" is popularly called as dear-ness allowance. The Act makes no specific mention of the term "dearness allowance", but it refers to an allowance paid on rise of cost of living. Variable dearness allowance is part and parcel of wages. Once the rates of minimum wages are prescribed under the Act, whether as all-inclusive u/s 4(1)(iii) or by combining basic plus dearness allowance u/s 4(1)(i), they are not amenable to split up. It is one pay package. Neither the scheme nor any provision of the Act provides that the rates of minimum wages are to be split up on the basis of the cost of each of the necessities taken into consideration for fixing the same. Section 2(h) which defines the term "wage" specifically provides that the value of the items given thereunder is not required to be computed for finding out whether the employer pays minimum wages as prescribed under the Act. Therefore, while deciding the question of payment of wages, the Competent Authority is not required to bifurcate each component of the costs of each item taken into consideration for fixing minimum wages, as lump sum amount is determined for providing adequate remuneration to the workman so that he can sustain and maintain himself and his family and also preserve his efficiency as a worker. In other words, dearness allowance is part and parcel of cost of necessities of life. In cases where the minimum rates of wages is linked up with VDA, it would not mean that it is a separate component which is required to be paid separately nor can it be said that such component does not form a part of the minimum wage.

36. The Supreme Court in Airfreight Ltd. Vs. State of Karnataka and Others, , has opined that where the minimum rate of wages is linked with VDA, it would not mean that it is a separate component which is required to be paid separately where the employer pays a total pay package which is more than the prescribed minimum rate of wages. The Supreme Court in the said judgment held as follows:

"24. But while deciding the question of payment of minimum wages, the Competent Authority is not required to bifurcate each component of the costs of each item taken into consideration for fixing minimum wages, as lumpsum amount is determined for providing adequate remuneration to the workman so that he can sustain and maintain himself and his family and also preserve his

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efficiency as a worker. Dearness Allowance is part and parcel of cost of necessities. In cases where the minimum rate of wages is linked up with VDA, it would not mean that it is a separate component which is required to be paid separately where the employer pays a total pay package which is more than the prescribed minimum rate of wages".

Further, the Supreme Court held:

"Minimum rate of wages fixed under the Act is remuneration payable to the worker as one package of fixed amount. In cases where minimum wage is linked with the cost of living index, the amount paid on the basis of dearness allowance is not to be taken as an independent component of the minimum wages but as part and parcel of the process of computing the rates of minimum wages which is to be determined after taking into consideration the cost of various necessities".

37. It is well-settled that the capacity of the employer to pay minimum wage is totally irrelevant consideration while fixing or revising the minimum wages. The Supreme Court in U. Unichoyi''s case, supra, held that the scope and purpose of the Act is different and that principle of capacity of industry to pay has no relevance in fixation of minimum wages under the Act. The Court also observed that the Act is introduced for fixation of minimum wages irrespective of capacity of the industry. The said view was reiterated by the Supreme Court in a catena of decisions. The Supreme Court in U. Unichoyi''s case, supra, while rejecting the contention that when the statute purports to prescribe a minimum wage, in effect, it directs fixation of a statutory minimum wage and as such, capacity to pay must be considered before the said minimum wage is fixed observed thus:

"(14) Mr. Nambiar contends that when the statute purports to prescribe a minimum wage in effect it directs the fixation of a statutory minimum wage and as such, capacity to pay must be considered before such minimum wage is fixed. His argument is that in any event the impugned notification statutorily prescribes such minimum wage rates for the tile industry in the State of Kerala and as such the rates so recommended do not constitute merely the industrial and economic minimum as understood by industrial adjudication but it constitutes a statutory minimum which can be fixed only after taking into account the employers'' capacity to pay the same. In support of this argument Mr. Nambiar has strongly relied on some observations made by this Court in the case of Express Newspapers (Private) Limited''s case, supra. We will presently refer to the said observations but in appreciating the nature and effect of the said observations it is necessary to recall that in that case the Court was dealing with the problem of fixation of wages in regard to Working Journalists as prescribed by Section 9 of the Working Journalists and Other Newspaper Employees'' (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955). Section 9 of the said Act required that in fixing rates of wages in respect of working journalists the Board had to have regard to the cost of living, the prevalent rates of wages for comparable employments, the circumstances relating to newspaper industry in different regions of the country and to any other circumstance which to the

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Board may deem relevant. It was held that the wage structure contemplated by Section 9 was not the structure of minimum wage rates, it was a wage structure permitted to be prescribed by that statute after taking into account several relevant facts and the scheme of that Act showed that the wage structure thus contemplated was very much beyond the minimum wage rates and was nearer the concept of a fair wage. That is why the Court took the view that the expression "any other circumstance" specified by Section 9 definitely included the circumstance, namely, the capacity of the industry to bear the burden and so the Board was bound to take that factor into account in fixing the wage structure. It appeared to the Court that this important element had not been considered by the Board at all and that introduced a fatal infirmity in the decisions of the Board. Thus, the wage structure with which the Court was concerned in that case was not the minimum wage structure at all. It is essential to remember this aspect of the matter in appreciating the argument urged by Mr. Nambiar on the strength of certain observations made by this Court in the course of its judgment.

(15) In the course of his judgment, Bhagwati, J., who spoke for the Court, has elaborately considered several aspects of the concept of wage structure including the concept of minimum wage. The conclusion of the Fair Wage Committee as to the content of the minimum wage has been cited with approval (p. 83 of SCR : at p. 601 of AIR). Then a distinction has been drawn between a bare subsistence or minimum wage and a statutory minimum wage, and it is observed that the statutory minimum wage is the minimum which is prescribed by the statute and it may be higher than the bare subsistence or minimum wage providing for some measure of education, medical requirements and amenities (p. 84 of SCR) : (at p. 602 of AIR). This observation is followed by a discussion about the concept of fair wage; and in dealing with the said topic the Minimum Wages Act has also been referred to and it is stated that the Act was intended to provide for fixing minimum rates of wages in certain employments and the appropriate Government was thereby empowered to fix different minimum rates of wages as contemplated by Section 3(3). Then it is stated that whereas the bare minimum or subsistence wage would have to be fixed irrespective of the capacity of the industry to pay the minimum wage thus contemplated postulates the capacity of the industry to pay and no fixation of wages which ignores this essential factor of the capacity of the industry to pay could ever be supported. Mr. Nambiar contends that the last part of the observation refers to the minimum wage prescribed by the Act and it requires that before prescribing the said wage the capacity of the industry must be considered. We do not think that this argument is well-founded. It would be noticed that in considering the distinction drawn between the minimum wage fixed by industrial adjudication and the minimum wage prescribed by a statute which is called statutory minimum it has been made clear that the latter can be higher than the bare subsistence or minimum wage and as such is different in kind from the industrial minimum wage. We do not think that the observation in question was intended to lay down the principle

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that whereas the minimum wage can be laid down by an industrial adjudication without reference to an employer''s capacity to pay the same it cannot be fixed by a statute without considering the employer''s capacity to pay. Such a conclusion would be plainly illogical and unreasonable. The observations on which Mr. Nambiar relies do not support the assumption made by him and were not intended to lay down any such rule. Cases are not unknown where statutes prescribe a minimum and it is plain from the relevant statutory provisions themselves that the minimum thus prescribed is not the economic or industrial minimum but contains several components which take the statutorily prescribed minimum near the level of the fair wage, and when that is the effect of the statutory provision capacity to pay may no doubt have to be considered. It was a statutory wage structure of this kind with which the Court was dealing in the case of Express Newspapers (Private) Limited, supra, because Section 9 authorised the imposition of a wage structure very much above the level of the minimum wage and it is obvious that the observations made in the judgment cannot, and should not, be divorced from the context of the provisions with respect to which it was pronounced. Therefore, we feel no hesitation in rejecting the argument that because the Act prescribes minimum wage rates it is necessary that the capacity of the employer to bear the burden of the said wage structure must be considered. The attack against the validity of the notification made on this ground must therefore fail".

38. While fixing the minimum wages the State is only discharging constitutional obligation imposed upon it by the directive principles of State policy. This performance of a sacred constitutional duty towards the economically weaker sections of the society cannot be allowed to be defeated on a theory of the capacity of the industry to pay which is a judicial blast placed on the meaning of Article 19(1)(f) and 19(1)(g) of the Constitution of India. The theory of capacity of industry to pay has no application to the State activity in fixing minimum wage. It can scarcely be disputed that securing of living wages to labourers which ensures not only bare physical subsistence but also 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 the Constitution. The material provisions of the Act contained in Sections 3, 4 and 25 are held to be constitutionally valid by a Constitution Bench of the Supreme Court in Bijay Cotton Mills Ltd. Vs. The State of Ajmer, . In that case, the Supreme Court held that the restrictions imposed by Sections 3, 4 and 25 of the Act, though they interfere to some extent 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 by the terms of Clause (6) of Article 19. The Supreme Court thus:

"If the labourers are to be secured in the enjoyment of minimum wages and they are to be protected against exploitation by their employers, it is absolutely necessary that restraints should be imposed upon their freedom of contract and such restrictions cannot in any sense be said to be unreasonable. On the other

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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".

39. Minimum rate of wages fixed under the Act is remuneration payable to the worker as one package of fixed amount and that in cases where the minimum wage is linked with the cost of living index, the amount paid on the basis of dearness allowance is not to be taken as an independent component of minimum wages but as part and parcel of the process of computing the rates of minimum wages which is to be determined after taking into consideration the cost of various necessities of life at a particular point of time and place. It may not be permissible or possible for the Court to precisely say what all should go into decision making in fixing minimum wages. The Court lacks necessary expertise to decide what should be the minimum wages in any particular industry. The Court should not be called upon to embark on an investigation into questions which are appropriately the functions of the Government. The appropriate Government is assisted in the process of fixing the minimum wages by its own machinery and even more either by the advice of a competent committee u/s 5(1)(a) of the Act or a well-informed Advisory Board consisting of representatives of the employers and employees and independent persons u/s 5(2). In Malayalam Plantations Limited and Others Vs. State of Kerala and Others, , a Full Bench of the Kerala High Court held:

"If prima facie the fixation appears to be fair there is nothing more for the Court to do. If the wage structure prevalent in the industry is more or less in line with the minimum wages fixed from time to time as revised by settlements and there has only been reasonable modification to this structure in the minimum wage revisions it would be difficult to say that prima facie the revisions are bad. This Court exercising its jurisdiction under Article 226 of the Constitution is not sitting as an Appellate Authority and is not sitting in judgment over the views of the appropriate Government. Keeping in view the limited sphere of this Court''s jurisdiction, we feel unless jurisdictional error is shown interference may not be possible".

40. We are in respectful agreement with the above holding of the Kerala High Court. In Secunderabad Club Vs. State of Andhra Pradesh, , the appellants therein filed W.P. No. 9248 of 1991 and batch assailing various final notifications issued in 1991 by the Government of Andhra Pradesh in exercise of the power conferred under Sections 3(1) and 5(2) of the Act revising the minimum rates of wages payable to various categories of employees in different establishments as specified in Part I of the Schedule. One of the contentions was that the neutralisation rate is more than 100% and therefore notification could not be sustained. A learned Single Judge of Andhra Pradesh High Court rejected that contention and dismissed the writ petition by his order dated January 29, 1994. The Writ Appeal No. 292 and Batch of 1994 filed against the said judgment of the learned Single Judge was also dismissed by a Division Bench of this Court in

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Secunderabad Club''s case, supra. In that context, the Division Bench observed thus:

"In respect of the present case, it cannot be denied that there was material in the form of notifications issued earlier in respect of same scheduled employments. It cannot, therefore, be said that the procedure followed by the Government in issuing draft notifications, calling for objections from the employers and employees and appointing advisory committee is not proper and is in anyway contrary to Section 5(1) of the Act".

41. In K. Sobhanachalam v. State of Andhra Pradesh, 1978 Lab. I.C. (AP) 33, Andhra Pradesh High Court held that unless the formula followed by the Advisory Board to work out the figures in minimum wages is totally arbitrary or capricious, the High Court will not interfere with such figures.

42. In the premise of the above noticed well-settled principles governing fixation and revision of minimum wages, let us consider the contentions put before us on behalf of the management of the Beedi Manufacturing Industries.

43. The argument of the learned Counsel for the management that while fixing the minimum wage, the Government cannot ignore totally the capacity of the employers to pay the minimum wage is based on some observations made by Supreme Court in the case of Express Newspapers (Private) Limited, supra. The observations made in the case of Express Newspapers (Private) Limited, supra, were in fact considered by the Constitution Bench of the Supreme Court in U. Unichoyi''s case, supra, in paras 14 and 15 of the judgment which have been extracted above and rejected the argument advanced therein that in fixing the minimum wage the appropriate government is bound to take into account the capacity of the employer to bear the burden of the revised wage structure. It needs to be noticed that P.B. Gajendragadkar, J., was member of the Bench both in the case of Express Newspapers (Private) Limited, supra, and in the case of U. Unichoyi, supra. In addition, in umpteen number of cases, (i) Chandra Bhawan Boarding and Lodging, supra, (ii) Kamani Metals and Alloys Limited, supra, (iii) Sangam Press Limited Vs. The Workmen, , (iv) Bijay Cotton Mills Limited, supra, (v) Hydro (Engineers) Pvt. Ltd. Vs. The Workmen, , Airfreight''s case, supra, Jaydip Industries, Thana Vs. The Workmen, , to cite a few, it was held that the capacity of the industry or of an individual employer to pay the rates of minimum wages, is immaterial and irrelevant. Therefore, the contention of the learned Counsel for the management that the Government of Karnataka ought to have taken into account the capacity of the Beedi Manufacturing Industries to pay the rates of revised minimum wage while fixing the minimum wage is not acceptable to us.

44. We also do not find merit in the contention of the management that there was no required consultation with the management of the affected industries and the Advisory Board and objections/suggestions raised/filed by the affected industries are not appropriately considered. In this case the Government of

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Karnataka has adopted procedure envisaged in Clause (b) of Sub-section (1) of Section 5 of the Act for the purpose of revising the minimum wage. The Section 5(1)(b) of the Act reads as follows:

"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 appropriate Government shall either-

(a) ....

(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".

45. Since the Government has followed the procedure envisaged under Clause (b), it is true, it becomes necessary for the Governments to consider all representations received by it before the dates specified in the notification under Clause (b). The question is whether the Government has considered the objections/suggestions received by it before the cut off date prescribed under the draft notification. It is satisfactorily shown to us that the Government in fact considered the representations/suggestions received by it and it placed the same along with the opinion secured by it from the Labour Department before the Advisory Board for its consideration before issuing the final notification. In the affidavit filed on behalf of the Government of Karnataka sworn to by Secretary to Government, Labour Department, it is stated thus:

"3. I state that I have gone through the records of the State Government in publishing the final notification dated 24-10-1996 vide Notification No. LD 249 LMW 1993 and by notice before publishing the final notification. Before publishing the final minimum wages notification to the Beedi Industry, Government has published a Draft Notification on 31-7-1995 calling for objections and suggestions if any from the concerned persons i.e., employers and employees. After receiving the said objections and suggestions, the Labour Department has offered its comments for each and every such objections and suggestions to the Government. All such objections/suggestions and Department''s comments has been placed before the Karnataka Minimum Wages Advisory Board for detailed deliberations and the Minimum Wages, Advisory Board has submitted its recommendations to Government for revision of minimum wages to this industry. Therefore, Government has followed all the procedures laid down under Sections 3 and 5 of the Act relating to the revision of minimum wages to this industry. The Minimum Wages Advisory Board has recommended 3.5 Ps. per point for every increase of Consumer Price Index over and above 1513 points for the purpose of payment of Variable Dearness Allowance. Whereas, the Government in the final notification has published the rate of 3 Ps. per point for every increase of Consumer Price Index. This clearly

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shows that the Government has considered the objections/suggestions of both the employers and the Trade Unions representatives and has also applied its mind while revising the minimum wages in Beedi Industry. This clearly shows that the procedures laid down under the Minimum Wages Act has been strictly adhered to".

46. In addition, in the impugned notification (final notification) dated 24th October, 1996 it is stated thus:

"Accordingly, suggestions/objections received were considered and placed before the Karnataka State Minimum Wages Advisory Board. The Advisory Board submitted its recommendations to the Government after considering the issue. The State Government after considering the above, have revised the minimum rates of wages to come into effect from 1-11-1996 for workers employed in any employment in Beedi Manufacturing Industry".

Therefore, even according to the author of the impugned notification, the representations/suggestions received by the Government have been considered by the Government and that fact is clearly stated in the final notification.

47. The procedure contemplated by Sub-section (1)(b) of Section 5 is legislative and not quasi-judicial and the persons filing any objections against the proposals are not entitled as of right to any oral hearing in support of their objections. Even the requirement of specification of a cut off date for receiving objections or a date on which the proposals are to be taken into consideration does not imply an oral hearing. The purpose of this requirement is to grant the person concerned an opportunity to file objections/representations. The provisions of Section 5(1)(b) only contemplates of an opportunity of hearing through representation. In Sree Kalyanarama Company Mine''s case, supra, the minimum wages notification was impugned by mica mineowners, inter alia on the ground that despite their request, they had not been given an opportunity of personal hearing before the Advisory Board. They pleaded that affording such opportunity was all the more necessary when no representatives of theirs were on the Advisory Board. Rejecting these contentions, a Division Bench of the Andhra Pradesh High Court observed that there was no statutory provision for such hearing. The Division Bench added:

". . . . In fact, the very purpose of issuing draft notification calling for claims or objections from the concerned employers, is to give an opportunity to the employers to put forth their objections or claims if any, and it is only thereafter that those objections are taken into reckoning by the concerned authorities before issuing the final notification".

48. Since the minimum wage fixation, is a legislative act, an appropriate Government is not required to give reasons for either accepting or rejecting the objections/suggestions made by the affected persons. A Division Bench of Allahabad High Court in Uttar Pradesh Cinema Exhibitors Federation v. State of Uttar Pradesh 1977 Lab. I.C. 993 (All.), held that since the procedure

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contemplated by Section 5(1)(b) is not quasi-judicial, absence of reasons would not have the effect of vitiating the notification revising the rates of minimum wages.

49. We also do not find any merit in the contention of the management that the Government of Karnataka acted ultra vires the Act in bringing into force the final minimum wage notification with retrospective effect. In Mizar Govinda Annappa Pai Vs. State of Karnataka, , this Court was called upon to decide the question whether the State Government in exercise of its powers u/s 5(2) of the Act, had the power to issue a notification revising the minimum wages with retrospective effect. Answering the question in affirmative this Court held:

". . . the decision on this point should be rendered after taking into consideration the scheme and object of the Act. The scheme for the revision of the wages,. . . is found in Section 5(1) of the Act. The appointment of the Committees under that sub-section is governed by Section 9 of the Act. u/s 9, each of the Committees, Sub-Committees and the Advisory Board shall consist of persons to be nominated by the appropriate Government representing employer and employees in the scheduled employments, who shall be equal in numbers, and independent persons not exceeding one-third of the total number of members; one of such independent persons is appointed the Chairman by the appropriate Government. This Committee in practice undergoes considerable change from time to time either by resignation, or by death or by incurring disqualification by not attending 3 consecutive meetings fixed for the deliberations of the Committee. So the very process of the proper constitution of the Committee takes time and therefore any delay in the proper constitution of the Committee and consequent delay in revising the wages cannot enure to the benefit of the employer and to the disadvantage of the employees. If it is held the Government has got the power to issue the notification only with prospective effect, then the rights of the workman for the increased wages consequent on the revision could be denied by procrastination in the issue of the notification and in the deliberations of the Committee. That could not have been the intention of the Parliament while constituting the Committee for revision of wages and that is the reason why u/s 5(2), the words unless ''such notification otherwise provides'' were introduced. That power could be recognised by implication also if the scheme of the Act is kept in view. It should also be noticed that as observed by this Court in Jyothi Home Industries Vs. State of Karnataka and Others, , the connotation of ''minimum wages'' is not, contractual but statutory. The employer would be bound u/s 3 of the Act, by the minimum wages fixed or revised. Revision of wages is one mode of fixing the minimum rate of wages at the rate higher than what was fixed earlier under the Act. If this scheme of the Act is understood then it will not be difficult for this Court to adopt the purpose approach in interpreting Section 5(2) and to come to the conclusion that the words ''otherwise provides'' are both prospective and retrospective.

In the circumstances, without going into the correctness of the decision of the

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Madhya Pradesh High Court and the Calcutta High Court on this point, it could be held that a power is conferred on the State Government u/s 5(2) to make a notification revising the wages with retrospective effect.

Those decisions do not take into consideration the scheme of the Act or the object but rest on the plain language of Section 5(2). The terms of the settlement between the parties support the case of the management as also the case of the workmen but it would not be proper while construing the provisions of a statute to call in aid the terms of a settlement under another enactment namely the Industrial Disputes Act. Therefore, it is not open to the petitioners to challenge the impugned notification on the ground that the parties had intended not to give retrospective effect to that notification".

We are in respectable agreement with the above view of the learned Single Judge of this Court.

50. In Gaganendra Kumar Ghose v. State of West Bengal 1977 Lab. I.C. 618 (Cal.), while refusing to interfere with the impugned minimum wages notification dated June 3, 1975 which had been brought into force with effect from January 1, 1975, a Single Judge of the Calcutta High Court considered the judgments in M/s. Hydro (Engineers) Private Limited, supra and Kamani Metals and Alloys Limited., supra and held:

"These two decisions of the Supreme Court suggest that the provision of Section 5(2) may be given retrospective operation, for, otherwise, the Industrial Tribunal would have been bound by the said provision and there would not have been any discretion on the part of the Tribunal to give retrospective effect from the date earlier than the date of award. It is no doubt true that in those two decisions, the Supreme Court was considering the power of the Tribunal but Section 5(2) relates to the power of the appropriate Government. But as stated already, if Section 5(2) is mandatory, in that case the Supreme Court would not have upheld the exercise of discretion by the Tribunal in giving retrospective effect to the minimum wages fixed by it from a date earlier than the date of the award. Be that as it may, even assuming that Section 5(2) is mandatory and that the Government was not justified in '' giving retrospective effect to the rates of minimum wages fixed by it from January 1, 1975, I do not find that in the facts and circumstances of the case there is any reason to exercise my discretion in favour of the petitioners by directing that the minimum wages fixed by the impugned notification shall take effect from the date of the publication of the notification".

We are in respectable agreement with the view taken by a learned Single Judge of this Court in the case of Mizar Govinda Annappa Pai, supra and the judgment of the Calcutta High Court in the case of M/s. Hydro (Engineers) Private Limited, supra.

51. There is also no merit in the contention that the appropriate Government cannot fix minimum wage at a higher rate that that proposed in the draft

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notification. In the case of Chandra Bhawan Boarding and Lodging, supra, the Government after considering the written as well as the oral presentations made by the parties in response to the proposal for fixing minimum wages for certain categories of employees in certain employments, the Government of Mysore issued the minimum wages notification dated 1st June, 1967, fixing the minimum wages somewhat higher than that proposed. When the said notification was impugned, inter alia, on the ground that in enhancing the minimum wages rates the Government had violated the principles of natural justice, the Supreme Court while rejecting that contention was pleased to observe thus:

". . . We have .... no doubt that reasonable opportunity had been given to all the concerned parties to represent their case. We are unable to agree that the impugned order is vitiated because of the Government''s failure to constitute a committee u/s 5(1)(a). We see no substance in the contention that the Government is not competent to enhance the rate of wages mentioned in the proposals published. If it has power to reduce those rates, as desired by the employers, it necessarily follows that it has power to enhance them. There is no merit in the contention that the Government must go on publishing proposals after proposals until a stage is reached where no change whatsoever is necessary to be made in the last proposal made".

52. In Basti Ram Narain Das Vs. State of Andhra Pradesh and Another, , the contention of the employers was that without making another notification and without affording another opportunity to the employers the Government could not fix the minimum wages more than that mentioned in the draft proposals. Rejecting this contention, a Single Judge of the Andhra Pradesh High Court observed:

". . . . Draft proposals are only tentative and representations are received not merely from the employers but also from the employees. In the ordinary course of events the employer must expect the employees to make representations for enhanced minimum wages just as the employees may expect that the employers would make representations for reduced minimum wages. Any representations made by the parties must contemplate and take into account possible enhancement or reduction".

The Single Judge took notice also of the fact that the minimum rates which were finally fixed were the rates approved by the Advisory Board which included the representatives of the employers.

53. The above judgment of the learned Single Judge was subsequently affirmed by a Division Bench of the same High Court in T.G. Lakshmaiah Setty and Sons, Adoni v. State of Andhra Pradesh 1981 Lab. I.C. 690 (AP). Further, in Issardas and Brothers v. State of Rajasthan 1981 Lab. I.C. 294 (Raj.), following the judgment of the Apex Court in Chandra Bhawan Boarding and Lodging, Rajasthan High Court held that fixing the minimum wages a bit higher than those as shown in the proposal would not have the effect of vitiating the minimum wages

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notification. In Gulamahamed Tarasaheb and Others Vs. State of Bombay and Others, , a Division Bench of the Bombay High Court held that after receiving representations if the Government intend to raise the proposed rates of minimum wages, they need not publish fresh proposals for the purpose and that there is nothing in Section 5 or any other provision of the Act which prevents the Government from either reducing or increasing the rates of minimum wages which they might publish as their proposals u/s 5(1)(b). The Calcutta High Court in Gaganendra Kumar Ghose''s case, supra, held that Section 5(2) does not envisage affording of any further opportunity to the employers to submit their representations in a case where the Government after considering the representations received by it, decides to fix the minimum rates of wages higher than originally proposed by it.

54. We also do not find any merit in the contention of the management that the Government of Karnataka ought to have taken into account the rates of minimum wage prevailing in the neighbouring States while fixing the minimum wage for employees of the Beedi Manufacturing Industries. In the writ petitions it is alleged that the neighbouring States like Madhya Pradesh, Maharashtra, Andhra Pradesh, Tamil Nadu, contribute about 60% of total production of Beedi in the country and that the total of minimum wages, that is, basic wage and Dearness Allowance is not as high as what is prescribed under the impugned notification. It is stated that the total wages inclusive of Dearness Allowance payable in Madhya Pradesh is Rs. 29.64/-, in Maharashtra it is Rs. 32.08/-, in Andhra Pradesh it is Rs. 35.15 and in Tamil Nadu it is Rs. 35.15, whereas in Karnataka, the minimum wage comes to Rs. 36.85. We do not find any legal basis to support the contention of the management. Similar contention was advanced before, the Supreme Court in U. Unichoyi''s case, supra. In that case while attacking the merits of the notification on the ground that the wage rates fixed by it are undoubtedly high, it was contended that the minimum wage rates prescribed by the neighbouring State as well as the wage rates prevailing in other industries in Kerala State were low. It was pointed out that the wage rates awarded by the industrial adjudication and even the claims made by the employees themselves would tend to show that what has been awarded by the notification is higher than the prescribed minimum wages. That contention was rejected by the Constitution Bench of the Supreme Court by holding;

"It is not possible for us to entertain this contention. The determination of minimum wages must inevitably take into account several relevant factors and the decision of this question has been left by the Legislature to the Committee which has to be appointed under the Act. We have already referred to the composition of the Committee and have reviewed very briefly its report. 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 notification

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has accepted the recommendations of the Committee to categorise the workers and that obviously was overdue. The fact that wages paid in other industries in Kerala, or in other States in comparable concerns, are lower would have been relevant for the Committee to consider when it made its recommendations. In appreciating the effect of the prevalence of lower rates it may also be relevant to bear in mind that in some places and in some industries labour is still employed on wages much below the standard of minimum rates. In fact, in its report the Committee has pointed out that in Kerala the bargaining position of the workers has all along been very weak and wages have tendered to remain in a deplorably low level. Therefore, the fact that lower wages are paid in other industries or in some other places may not necessarily show that the rates prescribed by the notification are unduly high. 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".

55. Therefore, it is quite clear while fixing the minimum wage in a State, the prevailing rates of minimum wage in other States need not be considered as a relevant factor and the minimum wage has to be deter mined in a State having regard to all relevant factors and circumstances in which a particular scheduled industry operates in that State. In forming this opinion, we may also derive support from the judgments in Madhavan and Others Vs. State of Kerala, and Uttar Pradesh Cinema Exhibitors Federation''s, case, supra.

56. This takes us to the last contention of the learned Counsel for the management that since the increase of neutralization of Variable Dear-ness Allowance is more than 100%, such increase cannot be sustained in view of the judgment of this Court in M/s. Aspinwal and Company Limited''s case, supra, and the judgment of the Supreme Court in Management of Shri Chalthan Vibhag Khand Udyog Sahakari Mandli Ltd. Vs. G.S. Barot, Member, Industrial Court and Another, and the judgments of Bombay High Court in Sangli District Powerloom Owners Association Limited v. State of Maharashtra 1995 III LLJ (Supp.) 779 and judgment of the Gujarat High Court in Saurashtra Paper and Board . Mills Private Limited, Rajkot v. State of Gujarat 1995 III LLJ (Supp.) 540. Before dealing with the above contention of the management, it needs to be noticed at the threshold that the long-standing method/procedure adopted by the Government u/s 5 of the Act has been that the Government would issue draft notification proposing the rates of minimum wages and such notification was published in the Government Gazette calling for objections. On receipt of the objections the Government would place draft notification and objections received before the Advisory Board constituted u/s 7 of the Act. The Advisory Board would deliberate on the materials placed before it and take into account all relevant facts and circumstances, if any, of the Government would tender its advice to the State Government. The State Government on consideration of the advice of the Advisory Board would issue final notification fixing the rates of minimum wages and in doing so, the State Government would take into account the

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representations/objections received and the advice given by the Advisory Board. Up to about 1980-81, the minimum wage rates were revised in an ad hoc manner keeping in view the rise in Consumer Price Index Number. Thereafter the Draft Notification issued by the Government would propose to have a basic wage and Variable Dearness Allowance. The said method adopted by the State Government had one unique feature, namely, that Variable Dearness Allowance was at the same rate applicable to all employees. The said method had also envisaged different amounts of Dearness Allowance within an employment depending upon the basic pay drawn. The result was that the Dearness Allowance varied with reference to the Consumer Price Index Number (State Annual Price) as well as the rate of basic wage. Higher the basic wage, higher the amount of Dearness Allowance. In M/s. Aspinwal and Company Limited''s case, supra, although the learned Single Judge was pleased to uphold the general pattern/method adopted by the State Government in issuing notification pointed out that in some cases the rate of Dearness Allowance fixed was highly excessive inasmuch as it provided for 300% neutralization. In that view of the matter, the learned Judge directed the State Government to revise the Dearness Allowance fixed in the notification. Accordingly, the Government of Karnataka issued fresh notification provided for a different rate of allowance etc. These notifications were also assailed by the employees before this Court in the case of Karnataka Film Chamber of Commerce Vs. State of Karnataka, .

57. As the Consumer Price Index Number went on increasing, the workmen began to complain that the rates of minimum wages fixed in the notifications were inadequate. Therefore, in the year 1990-91, the State Advisory Board (which had been reconstituted and which included the Director of Statistics to the Government as an independent member) held discussion on the grievance of the workmen and unanimously resolved that the minimum wage must be based on the poverty line calculation. At this stage itself, it may be relevant to note that the poverty line calculation is the basis adopted by Planning Commission in planning activity. The object of the method is to reduce the level of poverty in the country and improve the living conditions of workers. In that regard, the level of poverty is quantified in terms of the poverty line calculations. It is shown that the said Advisory Board adopted a poverty line calculation method for determining the minimum wage since the year 1991. The same method has been adopted by the Advisory Board and the State Government in fixing the minimum wage vide the impugned notification. It is stated by the Unions in their pleading that the Advisory Board consists of five representatives of employers, five representatives of workmen and five independent members and all of them said to be experts in their field of activities and in the fields of knowledge which have a bearing on the decision-making. It is also stated that the method adopted by the Advisory Board has had the unanimous approval of the representatives of employers as well as the representatives of workers apart from the approval of five independent members. In that view of the matter the unanimous opinion of the Advisory Board which consists of experts cannot lightly be interfered with by

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the Court. It is also pointed out that the rates of Dearness Allowance proposed by the Advisory Board was 3.5 paise per point. Despite this recommendation, the appropriate Government reduced it to 3 paise per point.

58. The High Court while reviewing the validity of minimum wages notification issued u/s 5 cannot assume the role of an Appellate Authority and reappreciate each and every factor which has gone into the fixation of minimum wages or the mode and method adopted by the expert body like the Advisory Board to find out what is the minimum wage payable to the employees in a scheduled industry which is intended to achieve a laudable social objective to improve their standard of living step-by-step and if the Court were to do so, the Court will be out-stepping its legitimate domain of judicial power and usurp the power which legitimately belongs to the concerned and the appropriate Government. Nowhere in the pleading, the petitioner-Association has shown how the neutralization formula adopted by the Government is not in accordance with the law.

59. In M/s. Aspinwal Company Limited''s case, supra, this Court among other contentions was called upon to decide the challenge to the rate of dearness allowance on the ground that it was highly excessive and, therefore, invalid. In that case, the learned Single Judge referring to the judgment of the Supreme Court in Bengal Chemical and Pharmaceutical Works Ltd. Vs. Its Workmen, , summed up the principles which are as follows:

"1. Full neutralisation is not normally given, except to the very lowest class of employees.

2. The purpose of dearness allowance being to neutralise a portion of the increase in the cost of living, it should ordinarily be on a sliding scale and provide for an increase on the rise in the cost of living and a decrease on a fall in the cost of living.

3. The basis of fixation of wages and dearness allowance is industry-cum-region.

4. Employees getting the same wages should get the same dear-ness allowance, irrespective of whether they are working as clerks or members of subordinate staff or factory workmen.

5. The additional financial burden which a revision of the wage structure or dearness allowance would impose upon an employer, and his ability to bear such burden, are very material and relevant factors to be taken into account".

60. Having summed up the principles, the learned Judge proceeded to hold:

"Out of the five principles, the exception set out to the first principle is applicable to whom the minimum wages are fixed under the Act for, under the Act, wages are fixed for the lowest strata of employees (See Killick Nixon Limited Vs. Killick and Allied Companies Employees'' Union,). The rates of minimum wages fixed are necessary for their subsistence. With the increase of cost of living, they would be unable to subsist. Unlike persons drawing higher salary, they will have

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no surplus money to make any adjustment, i.e., by cutting down expenses, other than those required for food and clothing and other non-essential expenses. Therefore, cent per cent neutralisation is a must and that is what is required to be provided by Section 4(1)(i).

As far as principles 2 and 4 are concerned, they are also relevant to the fixation of rates of dearness allowance under the Minimum Wages Act. The impugned notification shows that the said bases have been adopted in fixing the rates of dearness allowance. The third principle is also relevant, but it goes with the fourth principle and the minimum wages have to be fixed, having due regard to the nature of the employment and its location wherever relevant as has been done in the impugned notification, as a result of which employees who get similar rate of basic minimum wages, would also be getting similar rate of dearness allowance.

Question however is whether the fifth principle is also relevant to the fixation of the rates of dearness allowance as part of statutory minimum wages for there is a distinction between bare minimum wages and statutory minimum wages as is evident from the judgment of the Supreme Court in the case of Express Newspapers, supra. Relevant portion reads:

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

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

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

In U. Unichoyi''s case, supra, the Supreme Court reiterated the ratio in Express Newspapers (Private) Limited''s case, supra, and observed that hardship caused to an individual employer to meet the liability was not a relevant consideration. The judgment of the Supreme Court in M/s. Hydro (Engineers) Private Limited''s case, supra, however indicates that for fixing statutory minimum wages also the

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financial capacity of the industry may not be a relevant consideration. However, what is authorised to be fixed u/s 3 read with Section 4 of the Act as statutory minimum wages should be such as would be sufficient not merely for the subsistence of the life of the employee but also for preservation of the worker and so must provide for some measure of education, medical expenses and amenities. It is settled law that in fixing minimum wages, a family of three members has to be taken as the basis (see Chandra Bhawan''s case, supra).

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

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

61. On facts the learned Judge found 250% neutralisation of VDA and, therefore, held that the impugned notification is arbitrary and contravenes Section 4(1) of the Act. We are at a loss to understand how the said judgment of a learned Single Judge of this Court, in any way, would advance the case of the petitioners herein. The petitioners should fail on the basis of fact itself. As pointed out supra, according to Advisory Board and the Government for the reasons set out by them, the rate of neutralisation works out to 33% only. Secondly, as a statement of law which cannot admit any exception, it cannot be said that under no circumstance in fixing or revising the minimum wages to the employees of the scheduled industries, the rate of neutralisation should not exceed 100%. Such a contention may be a tenable contention only where the Court finds that the ''minimum wage'' fixed is actually not a ''minimum wage'', but it is either ''fair wage'' or ''living wage''. It is neither pleaded nor otherwise substantiated by the petitioners that the minimum wages fixed under the impugned notification inclusive of all components, that is to say, including neutralisation of VDA cannot be regarded as minimum wages within the meaning of that term and in contemplation of the Act.

62. In Karnataka Film Chamber''s case, supra, a learned Single Judge of this Court on consideration of the earlier judgment in M/s. Aspinwal and Company

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Limited''s case, supra, on which the learned Counsel for the, management had placed strong reliance and referring to two alternative formulae available for neutralization of Variable Dearness Allowance and pointing out that there were two different methods for working out neutralization factors, held, according to us, quite rightly, that the judgment in M/s. Aspinwal and Company Limited''s case, supra, does not indicate that the method of neutralization as proposed by the workmen was in accordance with law.

63. In Management of Shree Chalthan Vibhag Khand Udyog Sahakari Mandli Limited''s case, supra, on the expiry of the Second Wage Board''s Report for Sugar Industry in Uttar Pradesh on October 31, 1974, an order relating to the Uttar Pradesh Pattern of Pay, Graduated D.A. and variable D.A., being based on the Labour Minister''s award, was passed u/s 3(b) of the Uttar Pradesh Industrial Disputes Act, 1947, which came into force on October 31, 1974. A retention allowance for the unskilled seasonal workmen of the sugar factories for off-season at 10% of the basic wage and D.A. was also provided for. The demand of the workmen of the appellant sugar factories in Gujarat was for payment according to Uttar Pradesh pattern. The Industrial Court, Gujarat increased the graduated D.A. of the unskilled employees from Rs. 21 to Rs. 40 as also revised rates of variable D.A. from 83 paise per point on the rise over 301 points of All India Average Consumer Price Index Number for Industrial Workers (Base: 1960 - 100) to Re. 1 per point for skilled B operatives and for clerks drawing up to Rs. 150 per month and from Rs. 0.95 to Rs. 1.12 for All India Average Consumer Price Index for other employees by spreading the same over for a period of three years. It gave a retention allowance of 10% as demanded of the basic wage and D.A. payable during the crushing season 1974-75 and also for the subsequent years. On appeal, the Gujarat High Court quashed the award and set it aside. Before the Supreme Court the appellants inter alia contended that the grant of neutralisation of the variable D.A. at 125% is far in excess of what is permissible under the industrial law. In the premise of those facts and circumstances, the Supreme Court held:

"Dearness allowance was primarily intended as a protection of persons whose salaries are at the subsistence level to protect them against the adverse effects of the rise in prices. The Commission on Dearness Allowance in May 1967, stated that historically D.A. was regarded as applicable to those employees whose salaries are at the subsistence level or at a little above in order to enable them to face the increase in prices (sic) of essential commodities. The National Commission of Labour, 1969, observed that unless money wages rise as fast as consumer prices it will result in an erosion of real wages. But the extent of its impact will depend on the margin of cushion available at different levels of income. The Commission recommended that 95% neutralisation should be granted against rise in cost of living to those drawing minimum wage in non-scheduled employments".

64. In that case the crux of the contention was that in fixing fair wages and

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dearness allowance financial capacity of the co-operative societies should be arrived after taking into account the depreciation and the financial capacity of sugar industry. The Apex Court on consideration of the provisions of Sub-section (1) of Section 66 of the Gujarat Co-operative Societies Act, 1961 and on consideration of the judgment of the Supreme Court in Ahmedabad Mill Owners'' Association Etc. Vs. The Textile Labour Association, , held:

"The financial capacity of the industry will have to be decided in the context of the wage problems and the methods adopted in determining financial capacity of the industry for other purposes need not be followed. While examining the financial capacity in detail we must ultimately base our decision on a broad view which emerges from a consideration of all relevant factors, such as financial position of the employer, the interests of the consumer, etc.".

65. While doing so, the Apex Court has to add in para (16) thus:

"(16) The wages due to a worker is in the nature of expenses just like payment for raw materials. In this sense the wages are expenses which have to be met whether the company works, makes a profit or not. So far as the minimum wages due to a worker are concerned, the law requires that they should be paid first and if the industry cannot pay them it may as well close. The payment of dearness allowance as prescribed under the Minimum Wages Act should also be provided for in any event".

(emphasis supplied)

66. From the above observation of the Supreme Court in para (16), it is quite clear that an employer is bound to pay the minimum wages due to a worker and also dearness allowance as prescribed under the Minimum Wages Act in all events. Secondly, in that case, the Supreme Court was not called upon to decide the question whether in fixation of the minimum wages, the rate of neutralisation of VDA can exceed 100% or not? However, the observation of the Supreme Court "the payment of dearness allowance as prescribed under the Act should also be provided for in any event" in para (16) of the judgment clearly indicates that if dearness allowance forms part of minimum wage such wage should be provided to the employees of the scheduled industry in any event thereby meaning in all events. In other words, the provision for neutralisation of VDA is also a component of the minimum wage fixed under the notification. Its validity, therefore, cannot be questioned merely on the ground that the rate of neutralisation works out to more than 100%.

67. In Saurashtra Paper and Board Mills Private Limited''s case, the Gujarat High Court placing reliance on the decision of the Apex Court in Management of Shree Chalthan Vibhag Krand Udyog Sahakari Mandli Limited''s case, held that the neutralisation sought to be achieved in the categories of employees, namely, unskilled, semi-skilled and clerical B which is more than 100% is not permissible. From the judgment of the Gujarat High Court, it seems that the attention of the Court was not drawn to the observation of the Apex Court in para (16) of the

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very same judgment. Therefore, with respect, we state, the view taken by the learned Judges of the Gujarat High Court is not acceptable to us. Therefore, we hold that there could be more than 100% neutralisation of Variable Dearness Allowance in fixing minimum wages. In forming this opinion, we are also supported by an unreported judgment of this Court in the cases of Sujirkar''s Tile Works v. State of Karnataka, W.P. No. 5164 of 1987, Karnataka Film Chamber of Commerce, a judgment of Division Bench of Andhra Pradesh High Court in Andhra Pradesh Hotels Association Vs. Government of Andhra Pradesh and Another, , to which one of us (S.R. Nayak, J.) was a member and the judgment of the Patna High Court in Minerva Printing Works v. State of Bihar 1997 Lab. I.C. 407.

68. A minimum wage is a wage, which, in any event, must be paid irrespective of the extent of profits, the financial condition of the establishment or the availability of workmen on lower wages. The minimum wage is independent of the kind of industry and applies to all alike big or small. It sets the lowest limit below which wages cannot be allowed to sink in all humanity. Thus, fair wage or a reasonable wage is different from the minimum wage. In U. Unichoyi''s case, supra, the Supreme Court held, that in fixing minimum wage, capacity of management to pay is not a consideration. It may be a relevant consideration where demand of workmen is for ''fair wage'' or ''living wage''. In Ahmedabad Industries and Other Employees'' Union v. State of Gujarat 2000 1 LLJ 1424, it was held that the paying capacity of the industry while revising the statutory minimum wage is not relevant. The principle minimum wage has no reference either to the value of the work done by the worker, or to the capacity of the industry to pay. It has to be determined on the cost of living and normal or reasonable needs of the worker and his family on the bare subsistence level. The employees are entitled to the minimum wage at all times and under all circumstances. In Management of Reptakos Brett and Company Limited it was held that the employer who cannot pay the minimum wage has no right to engage labour and no justification to run the industry. As already pointed out supra, minimum wages may consist of basic wages and a special allowance with increase or decrease in basic wages when question of neutralisation of cost of living arises by way of dearness allowance. The concept of minimum wages under the Act is not contractual but statutory and therefore the employer would be bound by the notification u/s 3 fixing either minimum rate of wages or remuneration. In Secunderabad Club''s case, supra, the Andhra Pradesh High Court held that cost of living allowance cannot be said to be illegal or bad nor can it be said that it would amount to double payment.

69. In reviewing the validity of the impugned minimum wage notification the Court has to bear in mind the goals such as "socialism", "equal pay for equal work", set by the Constitution of India. The Constitution of India declares India to be a socialist, republic besides being a secular-cum-sovereign democratic republic. Although the concept "socialism", has not been defined in the Constitution of India, it is commonly understood to mean "from each according

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to his ability to each according to his need" although the above liberal meaning of the concept "socialism" cannot blindly be accepted in interpreting the Constitution or in statute law, with the introduction of the word "socialism" under the preamble of the Constitution vide 42nd amendment, the State has aimed to eliminate inequality of income in status in life with the object of providing decent standards of life to the working people. It is stated that the preamble of a Constitution is a "floodlight" illuminating the path to be pursued by the State to set up a sovereign, socialist, secular, democratic polity. In D.S. Nakara and Others Vs. Union of India (UOI), , Apex Court while holding that the principle aim of a socialist State is to eliminate inequality in income and status and a decent standard of life was pleased to observe:

"The basic framework of socialism is to provide a decent standard of life to the working people and especially provide security from cradle to grave. This amongst others on economic side envisaged economic equality and equitable distribution of income. This is a blend of Marxism and Gandhism leaning heavily towards Gandhian socialism. During the formative years, socialism aims at providing all opportunities for pursuing the educational activity. For want of wherewithal or financial equipment the opportunity to be fully educated shall not be denied. Ordinarily, therefore, a socialist State provides for free education from primary to Ph.D. but the pursuit must be by those who have the necessary intelligent quotient and not as in our society where a binary young man coming from a poor family will not be able to prosecute the education for want of wherewithal while the ill-equipped son or daughter of a well-to-do father will enter the portals of higher education and contribute to national wastage. After the education is completed, socialism aims at equality in pursuit of excellence in the chosen avocation without let or hindrance of caste, colour, sex or religion and with full opportunity to reach the top not thwarted by any considerations of status, social or otherwise. But even here the less equipped person shall be assured a decent minimum standard of life and exploitation in any form shall be eschewed. There will be equitable distribution of national cake and the worst off shall be treated in such a manner as to push them up the ladder. Then comes the old age in the life of everyone, be he a monarch or a mahatma, a worker or a pariah. The old age overtakes each one, death being the fulfilment of life providing freedom from bondage. But here socialism aims at providing an economic security to those who have rendered unto society what they were capable of doing when they were fully equipped with their mental and physical prowess. In the fall of life the State shall ensure to the citizens a reasonably decent standard of life, medical aid, freedom from want, freedom from fear and the enjoyable leisure, relieving the boredom and the humility of dependence in old age. This is what Article 41 aims when it enjoins the State to secure public assistance in old age, sickness and disablement. It was such a socialist State which the Preamble directs the centres of power Legislative, Executive and Judiciary to strive to set up.

From a wholly feudal exploited slave society to a vibrant, throbbing socialist

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welfare society is a long march but during this journey to the fulfilment of goal every State action taken must be directed, and must be so interpreted, as to take the society one step towards the goal".

70. Since the directive as contemplated under Article 43 of the Constitution enjoins upon the State to implement its obligation by effective legislation or economic organisation or in other way, to secure to all workers, a living wage condition of work ensuring a decent standard of life and full enjoyment of leisure, social and cultural opportunities, interpretation to be placed by the Court should also be persuasive. Statute is not to be understood and interpreted merely from the lexicographic angle. The Court must not forget, while reviewing the minimum wage notification, the will and in-built policy of the law-maker as discernible from the object and the scheme of the enactment.

71. One more factor which weighs with us not to interfere with the fixation of minimum wages is that the Act is a beneficial piece of social legislation which protects the day-to-day living conditions of the workers employed at the lowest level of wages in sweated labour. It is trite, though the minimum wages are fixed statutorily, it does not measure up either to the fair wage or to the living wage particularly due to high rate of increase in the Consumer Price Index (CPI). In Kamani Metals and Alloys Limited''s case, supra, the Supreme Court held that in the fixation of either a minimum wage or a fair wage or a living wage, the workmen should receive their proper share of the national income which they help to produce with a view to improve their standard of living. The idea seems to be: take care of the legitimate needs of the workers and they will take care of the national wealth.

72. The management of Beedi Manufacturing Industries have utterly failed to make out any permissible ground to quash the impugned minimum wage notification. As held in Ministry of Labour and Rehabilitation and Another Vs. Tiffin''s Barytes Asbestos and Paints Ltd. and Another, , the notifications fixing the minimum wages are not to be lightly interfered with under Article 226 on the ground of some irregularities in a country where the wages are already minimum except on the most substantial ground. We do not find any substantial ground to quash the impugned notification.

73. In conclusion, with respect, we cannot sustain the judgment of the learned Single Judge impugned in these writ appeals. In the result, we allow the Writ Appeal Nos. 7170 to 7172 and 7935 to 7947 of 1999 and 3553 to 3579 of 1999 and set aside the order of the learned Single Judge dated 9th September, 1999 and dismiss the Writ Petition No. 1793 of 1997 and batch (Management of Jyothi Home Industries and others Vs. State of Karnataka and others, filed by the managements of the Beedi Manufacturing Industries with no order as to costs.

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