

(2019) 03 KAR CK 0044

In the Karnataka High Court

Case No : Writ Petition Nos. 8388, 8417 Of 2017

M/S. Karnataka Small

APPELLANT

Vs

Secretary

RESPONDENT

Date of Decision : 23-03-2019

Acts Referred:

Minimum Wages Act, 1948 — Section 2(i), 2(e), 3, 3(i)(b), 5, 5(2), 5(1)(a), 5(1)(b), 7, 9, 20, 32

General Clauses Act, 1897 — Section 3, 5, 21

Code Of Criminal Procedure, 1973 — Section 125

Land Acquisition Act, 1894 — Section 48

Maintenance and Welfare Of Parents and Senior Citizens Act, 2007 — Section 3 (i)(b), 5, 9

Bihar State Universities Act, 1976 — Section 10(2), 11(2), 12(1), 14(1)

Constitution Of India, 1950 — Article 14, 21, 23

Citation : (2019) 03 KAR CK 0044

Hon'ble Judges : Krishna S.Dixit, J

Bench : Single Bench

Advocate : S N Murthy, Somashekar, Laxminarayana, K B Narayanaswamy, H Mangalamba Rao, Sateesh K N, Clifton D Rozario

Final Decision : Disposed Off

Judgement

1. In all these Writ Petitions, the petitioners have called in question the Minimum Wage Notifications issued on various dates by the first respondent-State Government under the provisions of sec 3 r/w sec 5(1)(b) of the Minimum Wages Act, 1948 (hereinafter "MW Act"), whereby the minimum wages have been revised for the benefit of employees in as many as 37 sectors of employment in the State, of which three Final and one Draft Notifications have been excluded later, by way of withdrawal, the same having been challenged by the Labour/ Trade Unions, separately.

2. A brief historical back ground of the Minimum Wages Act, 1948:

(a) After the World War - I (1914-1919), even the staunch believers of

Capitalism and Laissez Faire stopped considering that labour is a commodity or a factor of production, whose wages should be determined only by the market forces of demand and supply. The International Labour Organization in its Eleventh Session of 26th Convention held at Geneva in May, 1928 had passed Resolutions, inter alia, recommending for the creation of Minimum Wage Fixing Machinery and laying down broad guidelines for fixing the minimum wages with the participation of the labour and the Capital, inter alia, subject to the rider that what is fixed as a minimum wage cannot be contracted out.

(b) A relevant portion of the above Resolution reads as under:

"if the labourers are to be secured 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 upon their freedom of contract and such restrictions cannot in any sense be said to be unreasonable. On the other hand, the employers cannot be heard to complain if they are compelled to pay minimum wages to their labourers even though their labourers on the account of their poverty and helplessness are willing to work on lesser wages."

(c) India being a Member of the International Labour Organization had an obligation to evolve a legislative policy to give effect, inter alia, to the recommendations of the aforesaid Geneva Convention. However, arguably, because of the Great Depression of 1930s' followed by the World War - II (1939-1945), the Colonial Rulers had turned deaf ears to the cry of the ILO. Some ineffective and selective mechanism was introduced under the Defence of India Rules promulgated under the Defence of India Act, 1939. It is only in April 1946, on the recommendation of the Eighth Standing Labour Committee, the British India introduced a Bill. The Industries Conference of December, 1947 had passed a Resolution popularly known as "Industrial Truce Resolution" making certain recommendations concerning the subject matter of the Bill. However, after the advent of Freedom, the Parliament has passed the said Bill that became the Minimum Wages Act, 1948, w.e.f. 15th March, 1948. The Central Government being the delegate under the Act has promulgated the Minimum Wages (Central) Rules, 1950 and similarly, the Government of Karnataka also being a delegate, has promulgated the Karnataka Minimum Wages Rules, 1958.

3. THE SALIENT FEATURES OF THE ACT:

In India, the minimum wages are fixed by two agencies, viz, (i) the Central Govt. or State Govt. as the case may be, under the provisions of Minimum Wages Act, 1948 and (ii) the Industrial Tribunals/Labour Courts on reference by the appropriate Govt. under the provisions of Industrial Disputes Act, 1947, when there is an industrial dispute actual or apprehended (as considered in Sri Bhajarang Jute Mills Case, AIR 1970 SC 878. However, when there is no industrial dispute/difference, the minimum wages for the employees of the industrial sectors concerned, have got to be fixed by the appropriate Government on the recommendation of the Advisory Boards Committees appointed by it,

under the provisions of the Act. The appropriate Governments generally accept the unanimous recommendations of the Advisory Boards by notifying the wage values.

4. The Government of Karnataka vide impugned Notifications has prescribed the minimum wage rates for 34 sectors of employment purportedly on the recommendations of the Advisory Board; these having been put in challenge by the petitioners, notice having been served, the respondent State and the Unions of the employees have entered appearance and have filed their pleadings resisting the petition prayers for the quashment of the impugned Notifications. These writ petitions involving substantially similar fact matrix and raising same questions of law were taken up for final hearing as consensually suggested at the Bar. They were heard at great length and breadth, arguably their limited scope notwithstanding.

5. Learned Senior Advocates appearing for the petitioners' side namely, Sri.S.N.Murthy, Sri.S.S. Naganand, Sri.K.Kasthuri, and other advocates namely, M/s. Sridhar Prabhu, Vasuki, Subramanyam, Somashekar, B.K. Prashanth, Praveenkumar Hiremath, have broadly made the overlapping submissions as under:

(a) The Advisory Board having been improperly constituted is no Board at all in the eye of law; even otherwise, the interests of the cross sections of the Industry/ Capital were not fairly represented as required by law; the representatives of the Labour were heavily loaded to the Board to the prejudice of the Capital; some of the Members virtually from the Labour were wrongly put to represent the interest of the Capital; there was no consultation worth the name between the Government and the Board.

(b) The representations made by the Capital against proposed revision of wage values for employees in various sectors of employment were not considered/ discussed by the Government nor by the Advisory Board; even, the comments/ suggestions of the Labour Department too were not adverted to; the Advisory Board which is expected to function with due seriousness did the exercise with a very casual approach to the matter and strangely; thus, the impugned Notifications are vitiated by a gross non-application of mind; the Board Members had no unanimity of views and consequently, the Board did not make any recommendation at all, having thus abdicated its function; Board proceedings do not satisfy the mandate of the rules namely voting; all this is in derogation of the inner voice of Apex Court decision in Bijay Cotton Mills Case, AIR 1955 SC 33 and of the Division Bench decision of this Court in Mangalore Ganesh Beedi Case 2003 (5) KLJ 26.

(c) There was no meaningful discussion between the members of the Board in respect of wages concerning certain employment sections at all; while determining the components of wages such as House Rent, Dearness Allowances, Cost of Living, etc., the Government and the Advisory Board have not borne in

mind the principles laid down by the Apex Court in the case of Reptakos Case, (1992) 1 SCC 290, and in the case of Airfreight Ltd; the cost of neutralization provided by the employers qua the Price Index Rise upto 6537 points has not been taken into account.

(d) The factors that otherwise do not fall into the domain of fixing the minimum wages have entered the impugned notifications: (i) providing rest rooms, drinking water, etc., (ii) payment of cost of living index even when wages being paid are above the minimum wage values, (iii) payment of equal remuneration to female employees, (iv) inclusion of service weightage/allowance & experience allowance; HRA admissible to Government Servants is irrelevant while fixing rental values as a component for fixation of Minimum Wages, etc.

(e) The impugned notifications fix the minimum wages even for such of the employees who do not fall into the first part of the definition, and also for those in respect of whom the State Government has not made declaration in terms of second part of the inclusive definition of 'employee' given u/s.2 (i) of the Act; the Government although has power to fix the Minimum Wages, is not justified in mandating payment of wages only on the heads/components that entered fixation of Minimum Wages notwithstanding the wages that are being paid are higher than what is determined; Minimum Wages could not have been fixed in respect of non-scheduled employments.

(f) The Government has now directed the employer by the impugned Notifications to continue to pay the wages at the current rates which are nearly the "fair wages" even when the Minimum Wages now fixed are lower in value and therefore, this amounts to fixing the "fair wages" by arrogating the power not otherwise vested in it since, the limited power availing to the Government is to fix the Minimum Wages; the Minimum Wages now fixed are higher than what were proposed in the Draft Notifications and therefore, to that extent the employers did not have opportunity of representation against the same; had the Government given that impression, the employers would have shown reason as to why it should not be done.

(g) The Minimum Wages now fixed are the "Fair Wages" if not more than that, which could not have been done under the Act regardless of laudability of such fixation; the contemporary wage values in the neighbouring States have not been borne in mind; the exercise of fixing the Minimum Wages, as of necessity has to be empirical-data-driven; the data collected, tabulated and operated by the Government does not generate confidence in a reasonably trained mind, inasmuch as barring the rent component, Bangalore becomes the cheapest city in the State, whereas small towns like Mandya, Bhadravathi, Hassan and Gulbarga are deemed costlier, going by the said data which offends commonsense and does not match with the ground realities of life; the whimsical/arbitrary upwardly revision ranging from 200 to 325 % of the 2009 Minimum Wage values, that too with retrospective effect from 01.04.2015 may strike the deathknell of many a industry.

(h) In the guise of fixing the Minimum Wages, the Government could not have directed the employer to constitute and appoint a Competent Officer and the Appellate Authority by the impugned Notifications for adjudication of disputes/claims relating to payment of Minimum Wages when the Parliament in its wisdom has provided the remedy to the aggrieved u/s 20 of the Act; conceding such a power to the Government virtually amounts to re-enacting the provisions of the Act.

(i) The impugned notifications have been issued revising the minimum wages on the basis of Three Consumption Units for one earning member presumably male employee when now-a-days even women of the family are also invariably employed and this important factor having been lost sight of, the impugned notifications are liable to be set at naught on the ground of error apparent on the face of the record. This contention was specifically urged by the learned counsel Mr. Sridhar Prabhu and Mr.Vasuki.

6. Per contra, learned Senior Advocate Mr.K.Subba Rao, learned Addl. Government Advocate Sri.Laxminarayana, Prof. Vilas Datar and Sri.Narayanaswamy appearing for the Labour, broadly made the following submissions:

(a) the scope of interference by the Writ Court in wage fixation matters is limited, the exercise essentially being within the domain of the Executive; Writ Court is not an appellate body above the appropriate Government; the focal point of writ jurisdiction is the decision making process and not the decision; the records of the cases and those produced by the Government for inspection of all stakeholders prima facie show that both the Board and Government have done their exercise and they further show that there was consultative process between them; the exercise of fixing Minimum Wages is a quasi legislative act and therefore, the appropriate Government has a greater leverage in the matter.

(b) The Advisory Board was properly constituted; improper constitution of the Board is no ground for invalidating its proceedings and the Minimum Wage Notifications, in the absence of proof of prejudice; there was fair and equal representation of both the Capital and the Labour on the Board; Board need not make recommendation in so many words as long as the proceedings reflect its views; Government and the Board have considered the matter after looking into the representations from the Capital; records reveal the consultative process between the Government and the Board.

(c) the concept of "Minimum Wages" is a progressive idea which is animated by Directive Principles contained in Articles 39, 42 & 43 and the Fundamental Rights guaranteed under Articles 21 & 23 of the Constitution of India; the various principles laid down and the factors indicated by several decisions of the Apex Court in the matter of 'fixation of Minimum Wages' have been duly adverted to both by the Board and the appropriate Government; Labour law being not a slave of precedents, has to keep pace with the living realities of life as was

stressed by Dr.B.R. Ambedkar and later by the Apex Court; even if there are errors this side or that side, that per se would not justify invalidation of impugned fixation of minimum wages.

(d) The Minimum Wage Values now fixed by the appropriate Government are based upon the empirical data collected by the State machinery; there was thorough discussion by the Board, and none of the representatives of the industry having raised any objection, now cannot turn around and find fault with the same; though law mandates periodic revision of Minimum Wages at least once in five years, the same having not been done, the upward revision values cannot be found fault with even if for argument sake, the hike is more than 100%; the components that entered the fray of decision making cannot be said to be irrelevant.

(e) The contention that even for the classes of employees which do not answer definition of "employee" u/s 2 (i) of the Act, the Minimum Wages have been fixed, is incorrect, the definition being inclusive; the very draft Notifications followed by impugned Final Notification include such classes of employees and therefore, the inclusion amounts to declaration by the appropriate Government under section 2 (i); if those who do not fit into the definition are allowed to have the benefit of the impugned Notifications, the same can be challenged by the Capital as individual disputes that would be adjudicated u/s 20 of the Act.

(f) The contention that the Minimum Wages cannot be fixed with retrospective effect and that the Minimum Wage Values now fixed cannot be in excess of what was proposed in the draft Notifications, is legally untenable, position of law having long been settled; service weightage as the basis for hike cannot be found fault with; the grounds now being urged as to inclusion of certain factors while determining the Minimum Wages having not been taken as objection either before the Advisory Board or before the Government, cannot now be entertained vide doctrine of estoppel.

(g) No fault can be found for directing the continuance of rates of wages that are higher than the Minimum Wages now fixed; the industries which do not want to pay the Minimum Wages, have no right to exist; power to fix Minimum Wages includes power to take all measures necessary for implementation of the same and therefore, creation of an appellate authority under the impugned Notifications cannot be faltered; payment of equal remuneration to female employees and some favourable remuneration to karmachari employees operating as components in the impugned Notifications cannot be found fault with, since they are otherwise also protected under the respective legislations.

(h) The contention of the petitioners side that the impugned notifications are issued on the basis of Three Consumption Units for one male bread winner and therefore the same is liable to be quashed since the women are also employed now-a-days, is liable to be rejected, inasmuch as the State being the guardian of the citizens has the statistical data as to male-female employment; the life

expectancy having been enormously improved, the parents of the bread winner whom he has to look after also reside with him; the Parliament has enacted law protecting the senior parents/senior parent citizens which the Courts have progressively attributed and therefore this factor would neutralize the contention of the petitioners even if it is assumed to be true.

7. Learned counsel appearing for the petitioner - Labour, in support of challenge to the withdrawal of three Final Notifications fixing the Minimum Wages and one Draft Notification proposing the Minimum Wages, made the following submissions:

(a) The withdrawal of Notifications fixing/proposing the Minimum Wages by the impugned Notifications is incompetent, there being no statutory enablement in the Act, section 21 of General Clauses Act apparently being inapplicable.

(b) There is absolutely no ground for withdrawing the said fixation of Minimum Wages even if power to withdraw is assumed; the withdrawal has been done with mala fide intent, only to favour the Capital to the grave prejudice of the labour, especially when such fixation was done beyond the period of five years prescribed by section 3 of the Act

(c) The withdrawal of Minimum Wage Notifications is sans due application of mind and in violation of principles of natural justice, since no opportunity of hearing was given to the other stakeholders, and in any event, the grounds stated for withdrawal apart from being factually incorrect, are legally untenable; this apart, no explanation is offered by the respondent-State for not following the same procedure prescribed for fixing the Minimum Wages.

8. Learned Senior Advocate Sri.Naganand and other Advocates appearing for the respondent-Employers, and the learned Addl. Government Advocate appearing for the State along with other Advocates for the Labour made submissions in justification of the impugned withdrawal of the Minimum Wage Notifications, roughly as under:

(a) it is competent for the appropriate Government for revising the Minimum Wages fixed, at any time by virtue of power given u/s 3 of the Act; the withdrawal of impugned Minimum Wage Notifications is only a step-in-aid for revising the Minimum Wages as provided u/s 5, even if section 21 of the General Clauses Act, 1897 (hereafter "GC Act") is arguably not applicable; the impugned Notifications themselves provide for constitution of the Wage Board and the contemplated revision of Minimum Wages.

(b) If fixation of the Minimum Wages is a quasi legislative act, as held by Courts, then power to revise what is fixed, necessarily includes power to do all that is necessary for such revision; the impugned withdrawal for the purpose of review/revision of Minimum Wages, is competent for the Government u/s 3 r/w 5 of the Act; power to revise/refix the Minimum Wages again logically being legislative in character, the stakeholders need not be heard at the time of withdrawing the

Minimum Wage Notifications, since they will be heard when Draft Notification proposing the Minimum Wages will be issued.

(c) Merely because, withdrawal of Minimum Wage Notifications is done at the instance of the Capital, mala fide cannot be attributed/inferred inasmuch as Capital is the stakeholder on par with the labour in any industry and therefore, Capital being aggrieved by the fixation of excessive wage rates, is entitled to seek redressal by way of revision/refixation of Minimum Wages.

(d) The Capital has shown how it had been adversely affected by the fixation of Minimum Wages, and the appropriate Government having applied its mind, has issued withdrawal Notifications which specifically provide for revision/refixation of wage rates afresh and therefore, the said action cannot be faltered on the grounds urged by the Labour; the impugned withdrawal Notifications themselves provide for constitution of the Advisory Board for recommending refixation of Minimum Wage Values.

9. I have extensively heard the learned Senior Advocates and the Advocates on record appearing for the contending parties; the submissions made by learned Addl. Government Advocate have also been noted. I have perused the Petition Papers, the Statements of Objections, the Synopsis filed by both the sides and the Rulings cited at the Bar.

10. SCOPE OF JUDICIAL REVIEW IN WAGE FIXATION MATTERS:

It is a settled principle of law that, Judicial Review under Articles 226 & 227 of the Constitution of India focuses the "decision making process" and not the "decision as such", subject to all just exceptions. Scope of Judicial Review in the matters of legislative & quasi legislative acts is ordinarily and comparatively restrictive qua the extent of reviewability of administrative actions simplicitor, inasmuch as legislative & quasi legislative acts involve varying degrees and kind of policy formulation which power lies within almost the exclusive domain of co-ordinate branches of the Government namely the Executive and Legislation. Determination of Minimum Wages done under the provisions of section 3 r/w section 5 of the Act, which is a labour welfare legislation, has considerable elements of legislative character vide Chandra Bhavan Boarding Case AIR 1970 SC 2042; Unichoyi and Others Vs. State, AIR 62 SC 12; Secunderabad Club Vs. State of A.P, (1997) 1 LLJ 434 AP; the Government is the ultimate authority for fixing/revising the Minimum Wages, and not the Advisory Board, nor the Court which lacks expertize in the matter, vide: Andhra Pradesh Hotel's Association Vs. Government of AP (2002) 3 LLJ 623 AP; therefore, the Writ Court does not assume appellate jurisdiction to enable itself to undertake the exercise of reappraisal of the relevant factors that enter the domain of fixation/revision of Minimum Wages; keeping this in view, Court undertakes the adjudicatory process in these matters.

11. AS TO ALLEGED IMPROPER CONSTITUTION OF ADVISORY BOARD:

(a) The contention advanced on behalf of the Capital/Employers that the Advisory Board was improperly constituted, there being no due representation of the interest of the employers, is factually incorrect and legally not tenable; none of the representatives of the industry on the Board ever raised any issue as to improper constitution of the Board; even the petitioners after the constitution of the Board did not raise such an objection with some amount of material to substantiate the same, at any point of time when the Board was deliberating; several of the petitioners herein themselves were Board members and many of them were the members of M/s Karnataka Small Scale Industries Association (KASSIA), Karnataka Employers Association (KEA) and M/s Federation of Karnataka Chambers of Commerce & Industry (FKCCI), which had admittedly their representatives on the Board. The version of the Government that KASSIA consists of membership of more than 5000 employers, and both FKCCI & KASSIA together represent more than 90% of the Scheduled Employments under the Act, is not controverted from the side of the Employers/Capital. Thus, the interest of the employers had a mediate and effective representation as rightly contended by learned Senior Advocate Mr.K. Subba Rao and by the learned Addl. Government Advocate Mr.Laxminarayana. It is not the object of the law that every section of employment/industry should be directly represented on the Board; this apart, what prejudice is caused by such constitution of the Board is neither proved nor pleaded with material particulars.

(b) The contention of learned counsel Mr.A. Sridhar appearing for the Employers/Capital that the constitution of the Board with 12 members from the Labour and 12 from the Capital, and other 15 members being the independents violates the intent of section 9 of the Act, is not substantiated by material particulars; true it is, one Pakarusab Bagawan who was earlier nominated to be a representative of the Labour, was later redesignated as a representative of the Capital as he was found to be a registered Class-I Contractor vide Enquiry dated 20.03.2017, as rightly pointed by the learned AGA Sri.Laxminarayana, from the original records. Such redesignation cannot be found fault with, especially when the fact matrix ascertained in the enquiry having not been put to challenge herein; so is the other contention as to Sri.Chinnaswamy M in whose place R. Umesh came to be appointed as the Chairman of the Board. Merely because Umesh was a Class I Contractor, it cannot be argued that he was not an independent member of the Board and therefore, he could not be made the Chairman thereof.

(c) The Apex Court in the case of Ministry of Labour and Rehabilitation Vs. Tiffin's Barytes Asbestos and Paints Ltd. (1985) 3 SCC 594 observed:

"We are afraid that the approach of the High Court was entirely wrong. For the purpose of appointing the committee to represent the employers in a scheduled employment, it was not necessary that the person appointed should be engaged for profit in the particular employment. It is enough if a nexus exists between the persons so appointed to represent the employers in the particular employment and the particular employment concerned. For example it may be absurd to

appoint persons engaged in the newspaper industry to a committee to represent employers concerned in the employment barytes mines or bauxite mines. The case before us is not one of that nature at all. there was no material before the High Court nor was the High Court in a position to say that the persons appointed to the committee to represent the employers were entirely unconnected with or ignorant of the particular employments. We fail to understand how by merely looking at their names and the positions occupied by them, the High Court was able to say that they were incompetent to represent the employers in the particular employments".

(d) Although section 9 of the Act providing for inter alia the composition of Advisory Board employs the word 'shall', the same cannot be construed as mandatory in the absence of a provision mentioning of the consequences of violation thereof. That apart, the employer side having due representation on the Board could have pointed out the defect, if any, in the constitution of the Board right at the beginning itself; employers too could have done it since the Board was constituted by a Notification that was put in public domain. That having not been done, it is too late in the day to raise an objection as to the very constitution of the Board itself, especially when the prejudice caused thereby is neither pleaded nor substantiated by placing cogent material, as already stated above. In any circumstance, the opinions/views of the Board are only recommendatory in character, the ultimate decision making power resting with the appropriate Government vide: *Tourist Hotel Vs. State of Andhra Pradesh*, (supra); *Andhra Pradesh Hotels Association Vs. Government of Andhra Pradesh*, (supra). Therefore, the contention as to improper constitution of the Board, fails.

12. AS TO REGULARITY OF BOARD PROCEEDINGS:

(a) The contention advanced on behalf of the employers/capital that the members of the Board did not deliberate the matter and transact the business, with due seriousness and that they had not considered the representations of the Capital which the Government had in bound volumes sent to them, again is difficult to accept. The learned Senior Advocate Mr.K. Subba Rao and the learned AGA Mr.Laxminarayana have taken the Court through the contents of the Board Proceedings and the recommendations, which prima facie show that there was transaction of business and various members both representing both the industry and the labour had discussed the subject on several dates; the argument that the quality and quantum of discussion/deliberation in the Board, ideally speaking, could have been much higher, is beside the point. However, it is desirable that before nominating the persons to the Board, the appropriate Government should make some reasonable enquiry for ascertaining their credentials, lest otherwise, it should give scope for the complaints from the stakeholders, as are made herein.

(b) The Government after making bound volumes of the representations along with the views of the Department of Labour, had forwarded the same to each of the members of the Board; the contentions taken up in these representations by

and large, were the subject matter of deliberation in the Board Proceedings; the quality and quantum of deliberation could have been much higher is not disputable, but that per se is no ground for faltering the Board proceedings. The learned AGA Sri.Laxminarayana on instruction, had made available a copy of one such bound volume; it was looked into by the Court and also by the learned Advocates from the side of the industry namely Sri.Sridhar Prabhu and Sri.Vasuki, who fairly conceded that this volume contains the representations sent by the petitioners. Therefore, the contention that the representations of some of the petitioners were not adverted to by the Government or by the Board and thus, the action is vitiated due to non-application of mind, remains a mere unsubstantiated allegation.

(c) The contention of the learned counsel appearing for the Employers/Capital that when there was a plurality of opinions amongst the members of the Advisory Board, the provisions of Rules 16 & 17 of the Karnataka Minimum Wages Rules, 1958 required voting procedure to be adopted and in the instant case, this having not been done, the proceedings of the Board are vitiated, again is very difficult to accept. True it is, these Rules prescribe the general procedure to be followed by the Board at a meeting whilst transacting the business. They apply in an ideal situation where the proposed recommendations are formulated and views of individual members thereon are solicited, which is not the case at hands. This apart, these Rules regulate the procedure and therefore, they are directory in nature; this view is strengthened by the absence of a provision in these Rules which prescribes the consequences of non-adherence thereto. Therefore, this contention too fails.

13. AS TO ABSENCE OF CONSULTATION BETWEEN THE GOVERNMENT AND THE BOARD:

(a) The contention vehemently advanced on behalf of the Employers/Capital by Sri.S.N. Murthy, Sri.S.S. Naganand, learned Senior Advocates and learned counsel Sri.A. Sridhar that the material on record does not reflect about the due consultation of the Board by the Government is bit difficult to accept; arguably, it can be said that the Board after the accomplishment of the proceedings, did not make any concrete recommendations for the consideration of the Government, but that per se may not be a sufficient ground for invalidating the revision of Minimum Wages objectively done by the appropriate Government Again ideally speaking, Board could have made concrete recommendations, is also true but that is too feeble a ground for invalidating the Minimum Wage Notifications that followed the Board Proceedings. The contents of the Board Proceedings of various meetings show that there was some discussion and deliberation by its members on several matters that normally enter the fray of fixation of Minimum Wages.

(b) There was no unanimity of views of the members, in the Board proceedings in certain of the matters, may be arguably true; but the Board proceedings throw light on the subject matter of then proposed fixation of Minimum Wages in

substance; individual views of the members of the Board are reflected from the Proceedings sheets; there was a kind of unanimity in certain matters such as rental values, VDA, etc; the Government in its Statement of Objections, has asserted to have looked into the Board proceedings whilst issuing the impugned Minimum Wage Notifications; there appears to be some nexus between the subjects and the wage values mentioned in the Board proceedings on the one hand and the contents of the impugned Notifications on the other; there is no reason to doubt the version of the Government as to it's having considered the Board recommendations vide *Arbuda Bhavan Tea Shop Vs. State of Maharashtra* (1992) ILLJ 807 Bom. [Para 4]; the involvement of the high functionaries of the Government in the decision making process strengthens the presumption that the Government has considered the same. This Court having looked into the original files produced by the learned AGA, is satisfied as to the consultative process. Therefore, this contention as to the absence of consultation, too fails.

(c) The contention of learned Senior Advocate Sri.S.N. Murthy that the Board in its meeting held on 15.12.2016 had discussed only with regard to revision of wages of doctors and that, nothing was discussed about other categories of employees in the hospital industry, is not substantiated nor it is a sufficient ground to invalidate the impugned Minimum Wage Notifications. The Board need not specifically discuss about every class/category of employers/employees in the hospital industry if there is other material to show that there was discussion about the essential components of wages as are applicable to similarly placed classes/categories of employees in other employments/industries, as rightly contended by learned Senior Advocate Sri.K. Subba Rao and the learned counsel Sri.V.R. Datar for the Labour; there was some discussion amongst the members of the Board about the essential components that enter the domain of Wage fixation as generally applicable to all sections of employment. Both the Board and the Government have considered the representations made by the industry; this apart, regardless of the recommendations of the Board, under the scheme of the Act, it is exclusively within the domain of the appropriate Government to revise the Minimum Wages and therefore, whatever procedural lacuna that arguably lie in the Board Proceedings pale into insignificance, unless the same are demonstrably enormous in the sense that they would have marred the decision making process itself; the argument that the Board had abdicated its advisory role, appears to be too farfetched when what is required is just a consultation-likething and not the advice.

(d) The contention of learned Senior Advocate Sri.S.S. Naganand appearing for the employers that the Advisory Board after accomplishing the proceedings is bound to give advice which the appropriate Government has to consider, is not substantiated by his reliance on the decision dated 22.05.2018, of the Hon'ble Delhi High Court rendered in W.P.(C) No.8125/2016 [*Federation of Okhla Industrial Association Vs. Lt. Governor of Delhi & other connected matters*]; at para VI of its conclusions next below para 364 of the judgment, the Delhi High Court has observed:

"VI. The appropriate government is required to take into account the report and advice rendered by the Committee/Advisory Board and to apply independent mind and take a balanced decision so far as fixation or revision of minimum wages is concerned. The Government is not bound by the recommendations of the Committee. It is open to the Government to accept (wholly or in part) or to reject the advice of the Board or report of the Committee".

(e) Admittedly, the case stated before the Delhi High Court related to recommendation of a Committee appointed u/s 5 (1) (a) of the Act as contradistinguished from an Advisory Board which has a role assigned under the Proviso to section 5 (2). Section 5 (1) (a) employs the word "advise" and therefore, arguably the Committee is duty bound to tender advice to the Government in the matter of fixation/revision of Minimum Wages. In contradistinction to this, the Proviso to section 5 (2) employs the expression "the appropriate Government shall consult the Advisory Board" and thus, there is no warrant for the argument that the Board should tender the advice, when what is required is only a consultation by the Government. It is difficult to accept the contention that there cannot be a meaningful consultation if the Board does not give its concrete recommendations. The dictionary meaning of the word "consultation" may be certain, but its meaning varies depending upon the subject matter of the Statutes in which this word is employed, and also the text and context in which it appears. After all, it is said that, law is not the slave of dictionary. It is open to the Board not to furnish any concrete recommendations, when there is a plurality of opinions expressed by its members as may be reflected in the Board proceedings. If the Government duly adverts to these opinions even when they are not consistent with each other, the same may amount to consultation. There is enough material to form an opinion that this has happened in the case at hands. The Division Bench of Allahabad High Court in the case of UP Cinema Exhibitors Federation Case, 1977 LAB IC 993 at para 24, has observed as under:

"24. It is true that where the exercise of a power is dependent on consultation with some other authority such exercise of the power would be bad if consultation with the authority concerned has not been made. The crucial question which, however, falls for consideration is, as pointed out above as to what is the scope and purpose of consultation under a given statute. The broad outlines of consultation are certainly those as contained in Chandramouleshwar Pd.'s case (AIR 1970 SC 370) (supra). If there are proposals and counter-proposals these have to be communicated to each other and the relative merits of the views expressed in the proposals and the counterproposals have to be examined. The question is whether any sitting round the table is necessary to discuss the proposals and the counter proposals or such discussion can be made in writing. Keeping in view the nature of the power to be exercised by the Government to revise the minimum rate of wages by the mode specified in S. 5 (1) (b) of the Act we are of opinion that it is not necessary that there should be an oral discussion round the table where the officials of the Government and the

members of the Advisory Board may sit together and examine the relative merits of the views expressed by them in the proposals and the counter-proposals, if any. It would be seen that S. 5 of the Act does not prescribe any procedure for consultation. In the instant case the original record was produced before us by the Advocate General which indicated that not only the proposals of the Government but also the objections that had been received against the proposals were sent to the Advisory Board for consultation. It is not the case even of the petitioners that the Advisory Board was not consulted at all. What was urged was that no effective consultation was made. A copy of the report submitted by the Advisory Board has been placed on the record of the writ petition and its perusal indicates that on the quantum of the minimum wages proposed to be fixed the Advisory Board did not have any counter-proposals. In this view of the matter also no discussion was called for. The Advisory Board not having given any counter-proposals, it can be presumed that it was in agreement with the proposals of the Government. It is true was pointed out by the learned counsel for the petitioners that the report of the Advisory Board was not very elaborate. This, however, in our opinion could not invalidate the fixation of the minimum wages by the Government. In what manner should the Advisory Board express its opinion is the look-out of the Advisory Board and not of the Government. The only duty cast upon the Government under the Act is to consult the Advisory Board if the proposal was for revision of minimum wages. That having been done the statutory requirements were fulfilled and we are unable to accept the submission made by counsel for the petitioners that the impugned notification is bad because no effective consultation was made by the Government with the Advisory Board."

(f) The said Delhi Decision (*supra*), as such, has not laid down a proposition as canvassed before this Court that the Board is bound to give its consensual opinion/recommendation, either. An isolated sentence divorced from the context, as appearing in the said decision cannot be treated as the ratio laid down in the case especially when the case that was being considered by the Court did not involve interpretation of the Proviso to sub-section (2) of the Act. The Privy Council in the case of *Port Louis Corporation Vs. Attorney General of Mauritius* (1965) A.C 1111, as rightly contended by Mr.Subba Rao, while considering the nature and scope of consultative process, albeit in a little different context has observed as under:

"The requirement of consultation with the local authority concerned must be subject to a condition or assumption that the local authority will be ready and willing to avail itself of a reasonable opportunity to state the views....The local authority cannot be forced or compelled to advance any views but it would be unreasonable if the Governor in Council could be prevented from making a decision because a local authority had no views or did not wish to express or declined to express any views".

(g) The decision of this Court cited at the Bar namely *Aspinwal and Company Vs.*

State of Karnataka ILR 1985 KAR 688, at para 11 states that consultation with the Board is a must and that if the Government considers the advice given by the Board, the requirement of section 5 (2) of the Act is complied with. These observations of the Court cannot be construed as laying down a ratio that the Advisory Board is bound to tender the advice invariably, and only after such an advice is tendered, the Government can be said to have consulted the Board. The observations of the Court are not to be treated as Euclid's Theorem or as the statutory provisions. When the Advisory Board has not given a counter proposal qua the proposed fixation/revision of the rates in the draft notification, there is a strong presumption that the Board accepted the draft proposal of the Government vide Uttara Pradesh Cinema Exhibitors Federation Vs. State of UP 1977 LAB IC 993 (All) paras 24 & 25. The Apex Court in Bijay Cotton Mills Case (supra), upheld the validity of the Act because of the checks and balances inbuilt therein, like consultation with the Advisory Board/Committees, etc., is true but that does not without anything more come to the aid of Employers/Capital since there was some amount of consultation between the Government and the Advisory Board.

(h) The reliance of learned counsel Mr.A. Sridhar appearing for the Employers/Capital on the decision of the Apex Court in Dr.Ram Tawakya Singh Vs. State of Bihar, (2013) 16 SCC 206 for construing the word "consultation" in the Act as requiring meeting of the minds, is not well founded inasmuch as in the said decision, the Apex Court was considering the word "consultation" appearing in section 475 10(2), 11(2), 12(1) & 14(1) of B SU Act which is differently structured and which as a subject, miles away from this Act. Similarly, his reliance on the Division Bench decision of Hon'ble Rajasthan High Court in N.K. Jain Vs. Labour Commissioner AIR 1957 RAJ 35 too, does not much come to his aid, unless every sentence therein is construed as a provision of the Statute. The pith and substance of para 14 thereof is that the Government cannot without constituting the Advisory Board, fix/revise the Minimum Wages and that the application of mind by the Government to the advice of the Board if is lacking, then its action would be bad. The thrust of the said paragraph is the culpable action of the Government and not the culpa attributable to the Board at all. The Apex Court in Chandra Bhavan Boarding Case (supra) has held that it is the prerogative of the appropriate Government to decide whether it should follow the procedure prescribed under section 5(1)(a) or under section 5(1)(b) of the Act and "in either case it is merely a procedure for gathering the necessary information". Therefore, the infraction of the procedure even if is assumed, petitioners cannot draw much milk therefrom.

14. AS TO HOW DELIBERATIONS TOOK PLACE IN THE BOARD PROCEEDINGS:

(a) The Advisory Board, can fix its own procedure; it may use the Government data or the data brought by its members from their own sources; the Board need not undertake investigation or a roving enquiry vide: Bhastiram Narayan Das Vs. State of Andhra Pradesh, AIR 1969 AP 227; the Board Proceedings reflect the

discussion on the essential components of wages; in the proceedings of 17.04.2015, the representatives of the employers, broadly accepted the revised wages; in the Proceedings dated 02.01.2016, they agreed to the calculation of components of Minimum Wages; there was unanimity in accepting the proposed wages for private safai karmacharis and therefore, challenge to fixation of their wages, though was argued feebly, this court does not think that the contention advanced on behalf of employers, was consideration worthy, especially because of the very nature of the job that is looked down by the civilized society; it also involves some amount of life and health hazards as well.

(b) In the Board proceedings held on 02.01.2016 in re the wages of security guards, 7 out of the 11 representatives of the Capital voted in favour of the Draft Notification; in the proceedings dated 25.04.2016, in respect of six industries, 14 out of the 19 representatives voted for the finalization of the draft values; in the proceedings dated 13.05.2016 that related to 16 industries, the FKCCI stated that it has no objection to the proposed Minimum Wages fixed for the hotels and laundry sectors; 10 out of the 15 representatives voted for issuance of the Final Notification in terms of the draft values; in the proceedings held on 08.11.2017, in respect of all the 37 industries, there was almost a unanimous acceptance of the proposed values. There is discussion about Shanthappa Committee recommendations and the postulates laid down in the case of Reptakos, (1992) 1 SCC 290. At no point of time, the representatives of the employers had given their counter proposals qua the Draft Notifications. All these proceedings prima facie show that the Advisory Board has done some work although it is true that much more could have been done; "there is scope for improvement even in heaven"- said Oscar Wilde.

15. AS TO THE MINIMUM WAGES BEING EXORBITANTLY HIGH AND EXPLOITATIVE OF THE INDUSTRY:

(a) In fact, none of the members representing the Employers/Capital on the Advisory Board, had ever come out there with a counter formula as to what were the true and correct Minimum Wage Values, in their opinion. The complaint that the impugned wage values transcend the Minimum Wages, cannot be mechanically chanted like a vedic mantra, in a populous society like ours, where at times, blood appears to be cheaper than bread. The following observation of the Apex Court in Reptakos Case, (1992) 1 SCC 290 at para 25 though was made more than a quarter century ago, is starkly relevant today:

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

(b) The contention that the revised rates of Minimum Wages brought about by the impugned notifications are far higher than the "Fair Wages" and therefore, the same fall foul of the Act, again is too farfetched an argument. This Court in Chandra Bhavan Boarding Case AIR 1968 Mysore 156 at paras 104 & 111 has ruled that the onus of establishing that the rates of wages fixed by the Government are in excess of the Minimum Wage values, lies on the shoulders of the challengers; no material is produced to show that the impugned wage values are far in excess of Minimum Wages; the contention of Mr.Vasuki that in the fixation/revision of minimum wages, what the Govt. should keep in view are only "roti, kapadaa aur makaan" could have been true if the interpretation of Article 21 by the Apex Court in the case of A.K. Gopalan Vs. State of Madras, (1950) SCR 88, had stagnated; but the organic concept of "life and liberty" having been enormously broadened precedent by precedent vide: Maneka Gandhi Vs. UOI, 1978 SCR (2) 621, the same animates the provisions of the Act and therefore, the said contention cannot be countenanced.

(c) The contention of Mr.Praveen Kumar Hiremath and Mr. Sridhar Prabhu appearing for the Employers/Capital that the Minimum Wages revised under the impugned notifications being unreasonably high, are exploitative of the employers and unless scaled down, the same may strike the death-knell of several industries, is again bit difficult to countenance; such a contention cannot be addressed by the writ court, since the same falls within the domain of the Executive wisdom and power. A court exercising writ jurisdiction and not appellate jurisdiction ordinarily will not run a race of opinions with the Executive as to what ought to be the Minimum Wages, of course subject to all just exceptions. The Apex Court in Mis. Bhaikusa Yamasa Kahatriya Case 1953 Suppl. 1 SCR 524 has observed that the fixation of Minimum Wages depends on a host of factors such as the prevailing economic conditions, the cost of living in a place, the nature of the work to be performed and the conditions in which the work is performed. The writ court ordinarily will not re-appreciate every factor/component that figures in the fixation of Minimum Wages, the focal point of judicial review being the decision making process and not the very decision itself: vide Mangalore Ganesh Beedi Case (2004) 5 KarLJ 443 [Kar] and Uttar Pradesh Cinema Exhibitors Federation Vs. State of UP, 1977 LAB IC 993 (All) para 56; it is the consistent view of the Apex Court right from the days of Bijay Cotton Mills Case, AIR 1955 SC 33, Unnichoyi Case, AIR 1962 SC 12 and Reptakos Case, AIR 1992 SC 504 that in the fixation of Minimum Wages, the financial capacity of the employer is not relevant.

(d) Mr.Hiremath's contention vide what the Apex Court observed in E.P. Royappa Vs. State of Tamil Nadu, AIR 1974 SC 555 that every act of the State be it legislative, executive or administrative, runs the risk of invalidation, if it is shown to be unjust, arbitrary and unreasonable, and therefore logically, even in respect of socio-economic matters too, like price fixation, wage fixation, etc., the Writ Court can interfere if such fixation is shown to be of rank arbitrariness/unreasonableness, as a dry proposition may be true, but for its invocation, the

case pleaded by the petitioners lacks the substratum; same would be the answer to the contention of other learned counsel for the petitioners that even a legislative act would be struck down if it is shown to be "manifestly arbitrary" vide: *Shreya Singhal Vs. Union of India*, AIR 2015 SC 1523 and therefore, the fixation of Minimum Wages which assertedly is a legislative exercise, is not immune from attack.

(e) There is no merit in the other contention too that the wage values being very high, i.e., the hike being more than 100%, the same are liable to be set at naught, for saving the body and soul of the industry. This court cannot be called upon to take up an investigation on the reasonableness of rates of wages fixed by the Government of the day by following the due procedure of law: vide *Mangalore Ganesh Beedi Case* (supra); the Apex Court in *Unichoyi Vs. State of Kerala*, AIR 1962 SC 12 observed:

"...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 in minimum wage rates which a welfare State assumes every employer must pay before he employs labour.....

Sometimes the minimum wage is described as a bare minimum wages 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 wages 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 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."

(f) The fixation of Minimum Wages under the Act being as complex as can be, is a matter pertaining to socio-economic policy evolved by the Executive in its accumulated wisdom, which ordinarily does not admit meticulous judicial review. This Court in the case of *FKCCI Vs. Government of Karnataka*, (2017) 1 KLJ 157 at paragraph 8 observed:

"While the High Courts, under writ jurisdiction, may examine the legality of economic policy, but they are not to examine the "soundness" of the economic policy. The jurisdiction for interfering with the economic policy by the Government is, thus, extremely narrow. It is an arena where angels fear to tread; the High Court, under its writ jurisdiction, is not expected to rush in like a fool where angels fear to tread ".

These observations silence the contention of the Employers/Capital, of course subject to all just exceptions which their case is not shown to fit into.

16. AS TO THE MINIMUM WAGES BEING MUCH HIGHER THAN THE WAGES IN THE NEIGHBOURING STATES:

(a) the contention that the neighbouring States like Tamil Nadu and Andhra Pradesh, have prescribed lesser Minimum Wages and therefore, the ones prescribed by Karnataka Govt. being higher are bad, is legally untenable even if factually assumed to be correct; the consequences of accepting such a proposition would show it's fallacy; ours is nearly a federal country and we have a quasi-federal Constitution, as rightly said by K.C. Wheare, a constitutional jurist; every State has to take a decision in the matter of fixation/revision of minimum wages, inter alia keeping in view the socio-economic conditions of working classes in that State as mandated by the Act and therefore, what a neighbouring State would do, may not be relevant; the second fallacy is: India has a contiguous landmass; if one State fixes the Minimum Wages, every other State has to follow the same, because each becomes immediately or mediately a neighbouring State to the other next in line; thus, a tiny State like the ones in the North-East of the Nation fixing the Minimum Wages first of all, may put a fetter on the power of all other States in the country in the matter of fixation/revision of minimum wages, if the proposition canvassed on behalf of the petitioners is accepted; the constitutionally ordained Federal Structure that our country to its credit, has, and also the absence of legal prohibition against an appropriate Government to fix the Minimum Wages dependently of and on par with those in the other States, justify repulsion to this contention; an argument to the contrary would rob off the very federal autonomy of the provincial Governments as the unit of policy making, in its power delegated by the Act.

(b) There is yet another reason for rejecting this argument of the Employers/Capital because if accepted, it may result into bringing in a uniform wage structure in all employment sectors throughout the country mindlessly, arbitrarily and unreasonably, regardless of the varying and various socio-economic conditions of the working classes in several States; such a uniform fixation/revision may bruise the principle of equality enshrined in Article 14 of the Constitution which going by the judicial interpretation, prohibits treating of unequals as equals, and therefore, may fall foul of law.

17. AS TO MINIMUM WAGES BEING HIGHER THAN WHAT WERE PROPOSED IN THE DRAFT NOTIFICATIONS:

The draft Minimum Wage notification gives an opportunity to both the Capital and the Labour to put forth their views on the proposed values; it is not even like a minimum bid value in a public tender; it is open to the Employers/Capital to represent against the values stated therein as being higher; conversely, it is also open to the labour/employees to represent for rates higher than the proposed ones; when a draft notification is issued u/s 5(1) (b) of the Act, mentioning certain Minimum Wage values, the appropriate Government does not assure either of the parties that the final values shall never be more or less than the proposed values; thus, these values are by their very nature are intended to be variable depending upon the inputs to be given by the competing sides; the Labour wants the rates higher than the proposed values whereas, the Capital wants the rates lower than what are proposed; the appropriate Government in consultation with the Advisory Board/Committee, decides whether something is to be added to the proposed values or some reduction is to be made therefrom. This decision of the Government is in the nature of a quasi-legislative Policy evolved after having the inputs from the stakeholders. Thus, there is no merit in the contention that the final Minimum Wages cannot be different from what were proposed in the Draft Notifications; an argument to the contrary shuns logic and reason; the values proposed in the Draft Notifications do not generate any legitimate expectation that the Minimum Wages as finalized in the Notification would never be different; in fact, this question is no longer *res integra*, having been answered by this Court against the Employers/Capital in *Chandra Bhavan Boarding Case* (supra); *Unnichoyi Case* (supra) and also *Kerala Rubber Footware Manufacturers Case* (supra);

18. AS TO NON-SCHEDULED EMPLOYMENTS AND EMPLOYEES NOT ANSWERING THE DEFINITION OF "EMPLOYEE":

(a) Learned counsel for the Employers/Capital namely Mr.Subramanyam contends that under the scheme of the Act, the Government can fix and revise the Minimum Wages only for the employees in the Scheduled Employments but the impugned notifications cover several employments which are not loaded to the schedule at all. The learned AGA Mr.Laxminarayana has produced the Notification No.kaa.i:93:lmw:2001, Bengaluru, dated 06.07.2004 and another Notification No.kaa.i:113:lmw:2005, Bengaluru, dated 17.03.2006 and yet another Notification bearing No.kaa.i:31:lmw:2017, Bengaluru, dated 30.12.2017 whereby, "all other employments" and "employment not covered in any of the scheduled employments" stand loaded to the Schedule. These Notifications are residuarly universal in inclusion; the second and third Notifications of 2006 & 2017 above, have been issued after consulting the Advisory Board. No challenge having been laid to these universal Notifications, this contention of Mr.Subramanyam, learned counsel appearing for some of the petitioners fails.

(b) The contention advanced on behalf of the Employers/Capital by learned Advocates namely M/s Sridhar Prabhu, Vasuki and Subramanyam that the

employees in the supervisory/managerial cadres do not fall within the definition of "Employee" u/s 2 (i) of the Act, is a mixed question of law and facts which cannot be ordinarily adjudicated upon in writ jurisdiction inasmuch as the existence of the ingredients of this definition or the factual components need to be ascertained in an appropriate challenge in individual cases. Prima facie, supervisory staff which answers the definition of "employer" u/s 2(e), does not fall into the definition of "employee" u/s 2(i) of the Act. The definition of "employee" u/s 2(i) has two parts; in the first part, there is a "means definition" and in the second part, there is an "inclusive definition". Both these parts have specified contours; for those who fall directly within the first part, the contention of the petitioners cannot be favoured; however, in the absence of a declaration by the appropriate Govt., those employees who do not fall within the first part, cannot be the beneficiaries of the impugned Minimum Wage notifications and therefore, to the extent these Notifications cover the supervisory staff, they are bad; however, such of the employees regardless of their designation as supervisory or managerial staff may also show that they fall within the first part of the definition and therefore, they are entitled to the benefit of these Notifications. In treating such a contention, the observations made by this court in the case of *Aspinwal and Co. Ltd. Vs. State of Karnataka* ILR 1985 Kar 688 and the decision of Madras High Court in the case of *Tamil Nadu Spinning Wheels Association Vs. State of Tamil Nadu* [MANU/TN/1081/2009] need to be kept in mind by the authority while adjudicating the claim under Section 20 of the Act. This observation will take care of the apprehension expressed by the side of Employees/Trade Union.

19. AS TO THREE CONSUMPTION UNITS FOR ONE MALE EARNER:

(a) the contention of the petitioners side that the appropriate Government has operated a wrong factual premise that it has taken Three Consumption Units per one male bread winner when women too are in employment, does not merit consideration in the absence of minimum statistical data as to male-female employment ratio; since the burden of establishing this contention rests on the contenders, the petitioners ought to have furnished minimum functional data so that the onus would have shifted to the other side as rightly contended by the learned AGA Mr.Laxminarayana, Prof. V.R.Datar and Mr.Narayanaswamy.

(b) Several customary personal laws provide for maintenance of wife, children and parents who are incapable of maintaining themselves vide: Mayne's Hindu Law & Mulla's Mohammeden Law; Section 125 of Cr.P.C., 1973, enacts an obligation on men to provide maintenance subject to certain conditions and that the earlier ceiling limit of Rs.500/- has been now removed by amendment; this apart, the Parliament has enacted the Maintenance and Welfare of Parents and Senior Citizens Act, 2007; Sec. 5 r/w Sec. 9 of the Act, obligates inter alia major sons/daughters ['children' u/s.2 (a)] to look after the parents/senior citizens; the State Government has promulgated u/s.32 of the Act the Karnataka Maintenance and Welfare of Parents and Senior Citizens Rules, 2009; this aspect of the matter

if adverted to by the appropriate Government/Advisory Board, the Unit Ratio would have been arguably a bit different to the advantage of the employees.

(c) Even if a large chunk of women is assumed to be in employment as contended by the petitioners, still because of new Parliamentary Policy imposing obligation to maintain the aged parents, as rightly contended by the learned Sr. counsel Mr. Subba Rao for the Labour, the same does not much come to the aid of the petitioners; suffice it to say that this being a post Reptakos development, needs to be adverted to by the appropriate Government/Board in the fixation/revision of minimum wages in the succeeding block periods; Court has to rest this contention here not only because of lack of statistical data in this regard but the impact of such data (if were made available), on the wage revision process at the hands of Executive Wisdom, which is otherwise marked by a limited judicial reviewability.

20. AS TO THE RENT COMPONENT IN FIXING THE MINIMUM WAGES:

(a) All the learned counsel appearing for the Employers/Capital in general and the learned Senior Advocate Sri.S.N. Murthy in particular, contended that the rental value taken at Rs.4,000/- for the Corporation areas i.e., Zone 1 is too high; this Court is not in agreement with the same. The Industrial Housing Scheme that was prevalent immediately after the advent of the Constitution is no longer in existence, the same having yielded place to a new Scheme namely "Affordable Housing For The Urban Poor", evolved by the Ministry of Housing and Urban Poverty Alleviation, which prescribes housing accommodation of 300-400 sq.ft for each family of 1 + 3 units; in the year 1961, the Committee on Fair Wages had prescribed a minimum area of 180 sq.ft for a family of four persons in Bombay Area, which the Apex Court mentioned in Standard Vacuum Refining Company of India Vs/ Its Workmen, AIR 1961 SC 895; the unprecedented population growth and the rapid urbanisation have little imbalanced the demand and supply in the matter of housing accommodation for working classes; there has been economic and industrial growth in the country is also obvious; the Apex Court in the case of Chandra Bhavan Boarding Case (supra) noted that the concept of Minimum Wage undergoes change with this growth and with the consequent change in the standard of living; that being so, its concomitance must necessarily increase with the steady and noticeable progress of the societal standards; the contention that while fixing the rental value, the appropriate Government has been guided by those admissible to the Government

servants, may be marginally true; but the Government has through its agencies collected the necessary data and the exercise is thus, data driven and not whimsical. The rental values approximate to those of the Government servants even if true, may not come to the aid of petitioners. This apart, in fixing the Minimum Wages, the component of rent is taken arbitrarily at a higher value even if assumed to be true, does not constitute a sufficient ground for invalidating the same when the Minimum Wage as an overall package, does not transcend the true value, some of the components being on the higher side,

notwithstanding: vide Malayalam Plantation Vs. State of Kerala, (1976) 1 LLJ 114 at para 19 (KeralaFB); this is what the Division Bench of this Court too in Mangalore Ganesh Beedi Case (supra) echoed.

(b) The Government in its Written Arguments has meticulously stated about the concept of Affordable Housing keeping in view various Housing Schemes/Projects that obtain in rural areas, in urban areas and urban-slum development areas; there is no reason to doubt the version of the Govt. as rightly contended by Mr.Laxminarayana, AGA, who had on instruction, placed before the court certain original records also; the same are looked into by a section of Advocates appearing for the Employers/Capital.

21. AS TO GRANT OF SERVICE SENIORITY WEIGHTAGE:

(a) The impugned notifications fixing the Minimum Wages prescribe an addition of 1 % by way of Service Seniority Allowance to the Minimum Wages (excluding the DA component) for each completed year of service after an employee puts in a continuous service of ten years of service; however, this is subject to a maximum of 10%; all the learned counsel for the Employers/Capital and Sri.K. Kasturi, Sri.S.N. Murthy and Sri.S.S. Naganand particularly contend that there is no authorization in the Act for such a levy. Per contra, Mr.Subba Rao for the Labour contends that it is an incentive for working with the same employer for long period of a decade or above and that such a concept is not alien to the law of Minimum Wages; such an addition apart from providing sustenance and maintenance of the worker and his family, goes a long way in preserving his efficiency as a worker.

(b) The concepts of "Minimum Wages"; "Fair Wages" and "Living Wages" obtaining in the realm of Labour Law are well understood terms, although at times, their borders may be blurred. The idea of Minimum Wages is animated by the Directive Principles enshrined in the Constitution, is true. But what is legislated is the mandate to pay the Minimum Wages and not the Fair Wages nor the Living Wages, the ever expanding parameters of "Minimum Wages" notwithstanding. The Apex Court in a catena of decisions has laid down the parameters of and the factors that enter the decision making process at the hands of the appropriate Govt.; it is a bit difficult to treat the Service Seniority Weightage allowance as one of the factors admissible in law for fixing/revising the Minimum Wages, merely because arguably, such weightage allowance goes a long way in preserving the efficiency of an employee. There may be many things if granted to an employee, that may go a longer way in enhancing his efficiency level; but, that is no justification for packing them in the concept of Minimum Wages; such things per se cannot constitute the relevant components that ought to enter the fixation of Minimum Wages, unless they are made legally admissible, regardless of the dynamic nature of the concept. It makes no difference whether the Advisory Board recommended it or whether that was opposed by the representatives of the employers since this is a matter that touches the competence of the appropriate Government; apparently, no provision of the Act

supports such addition to the Minimum Wages; there may be disputes as to the boundaries of this concept but such a dispute is more like a border dispute and not as to the existence of the land itself. Therefore, I am in respectful disagreement with the decision of the Hon'ble High Court of Kerala in Kerala Rubber Footware Manufacturers & Exporters Association Vs. State of Kerala, 2014 (140) FLR 840, so far as this aspect is concerned and also the decision of the Hon'ble High Court of Punjab & Haryana in the case of Gurgaon Industries Association and Another Vs. State of Haryana, decided on 18.08.2017.

(c) The aforesaid decision in the case of Gurgaon Industries Association relied upon by the learned counsel Prof. Sri V.R Datar, again does not come to the aid of Labour in as much as the facts of the said case are a bit different from the one at hands so far as seniority weightage allowance is concerned. In the said case court noticed the unanimity of the members of the Advisory Board in favor of the allowance whereas that is not the case here. This court is not sure, if there was such a unanimity here also, such an allowance would have been upheld, either since it is a matter touching the competence of the appropriate Govt. which cannot be acquired by consent/consensus. The other reason for this court to tread a path different from the one walked by the Hon'ble High Court of Kerala equally applies to this decision as well.

22. AS TO THE MANDATE FOR CONTINUING THE CURRENT WAGES:

(a) The contention of learned counsel for the Employers/Capital that the power to fix or revise the Minimum Wages under the provisions of section 5 r/w section 3 of the Act do not include the power to direct the Employers/Capital to continue to pay the current wages when they are above the notified Minimum Wages, has a lot of force. The fixation/revision of minimum wages is the pith and substance of the Act; a little this side or that side of the Minimum Wage Values could also be upheld on the touchstone of labour welfare principles with which the Act is legislatively structured and judicially interpreted. It is also true that normally, in the fixation of Minimum Wages, the factors such as (i) the standard working class family, (ii) the food & clothing requirements, (iii) necessity of housing, (iv) Miscellaneous expenditure, (v) education of children, (vi) medical requirements, (vii) recreational facilities and (viii) provision for old age, are relevant. The boundaries of three classical categories of wage structure viz "Minimum Wage", "Fair Wage" and "Living Wage" are becoming blurred to the advantage of the working class in view of progressive interpretation of the Directive Principles and the Fundamental Rights enshrined in our Constitution, precedent by precedent. But all this is beside the point.

(b) For a variety of reasons that operate within the realm of contract, an employer may fix the wages much above the Minimum Wage values; but there is no authority vested in the appropriate Government under the Act, for directing the employers to continue the payment of such current wages, although downward revision of the same below the notified Minimum Wage Values, is statutorily interdicted. Such a direction cannot be justified except by straining

the language of the provisions of the Act; however, whether a Labour Court or an Industrial Tribunal adjudicating the industrial dispute arising from a downward revision of current wages, although not below the notified Minimum Wage Values can hold such downward revision to be bad in law, is altogether a different question having several legal and factual complexities, and that is not the subject matter of our discussion.

(c) "The payment of Minimum Wages is not contractual but statutory. Failure to fix or revise is not only a statutory violation but is a breach of fundamental right enshrined in Article 23 of the Constitution of India. If a workman is paid less than the Minimum Wages, it can be legitimately presumed that he is acting under the force of some compulsion as he has no choice...." vide: Association of Planters of Kerala Vs. State, (1996) II LLJ 67 Ker. "We are therefore of the view that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of words "forced labour" under Article 23..." vide: Peoples Union for Democratic Rights Vs. Union of India AIR 1982 SC 1473. But, these Rulings cited at the Labour Bar ultimately speak of the fixation of Minimum Wages and that they are not an authority for the proposition that where the wages that are being paid currently by the employer are higher than the notified Minimum Wages, the appropriate Government can direct the employer to continue the payment of such higher wages. Conceding such a power to the appropriate Govt. virtually amounts to expanding the scope of the Act much beyond its intent and content. Ordinarily, the wage rates above the Minimum Wage Values are a matter of contract subject to all just exceptions. Intervention in contractual rights and obligations is to be shunned except where there is statutory enablement/justification, therefor. Therefore, to the extent the impugned notifications direct the payment of current wages that are above the notified Minimum Wages, is unsustainable, on the ground of lack of competence.

23. AS TO RETROSPECTIVE REVISION OF MINIMUM WAGES:

(a) The contention advanced on behalf of the Employers/Capital that the impugned notifications prescribing the Minimum Wages have been issued by the State Government with retrospective effect and therefore, they are bad to that extent, needs to be repelled. The provisions of section 3 (i)(b) of the Act cast an obligation on the appropriate Government to review the minimum rates of wages at such intervals not exceeding five years. Admittedly, in most of these cases, the revision of Minimum Wages has been done with a delay ranging from six months to two years & nine months as rightly pointed out by Mr. Subba Rao, arguably whatever be the reason, it's bad effect being reflected on the working class. To have the notified Minimum Wages paid, is not only a legal right of the Labour but a Fundamental Right guaranteed under Article 23 of the Constitution of India, as held by the Apex Court in the case of Peoples Union for Democratic Rights, (supra). The High Court of Kerala in the case of Association of Planters of Kerala, (supra) has observed:

"10. A duty is therefore cast on the State by the provisions of the Act and Article 23 to fix and revise the minimum rate of wages. The continuance of rate of wages fixed from 1993 onwards which would be less than the minimum payable will be illegal and the workers are entitled to the retrospective fixation or revision from the date it is due for revision. Otherwise, Section 3(1)(b) would become meaningless and redundant. In this background if Section 5(2) is read it would make clear that the revision can be related to an anterior date. If not provided it would automatically come into force on the 3rd month of the issue. This is the only purport of the provision. The principle of interpretation of legislation made under power conferred by statute is that it must be construed in the light of the enabling statute generally and particularly in conformity with its substantive provision. An act comes into force normally prospectively unless by express words or by necessary implication it appears that was the intention of the legislature. Statutes of declaratory nature are prima facie retrospective in operation. Applying these principles I find that by express words viz., "otherwise provided" and by necessary implication read with Section 3(1)(b) the State is entitled to revise the minimum rate of wages retrospectively. Fixation and revision of rates of wages and the enabling provisions are declaratory in nature ".

(b) This court is in respectful agreement with the above observation of the High Court of Kerala, with an added reason that the Employers/Capital cannot take an undue advantage of non-feasance attributable to a Welfare State to the detriment of the working class of people whom the Parliamentary legislation intends to protect consistent with the Directive Principles enshrined in Articles 39, 42 & 43, and the Fundamental Right to Life with human dignity guaranteed under Article 21 vide: *Maneka Gandhi Vs. UOI*, 1978 SCR (2) 621, which includes a right to the (fair) means of livelihood vide: *Olga Tellis Vs. Bombay Municipal Corporation*, AIR 1985 SC 180 and also the Prohibition of Begar enacted in Article 23 of the Constitution of India vide: *People's Union for Democratic Rights Case*, (supra). Support for such an interpretation of the provisions of the Act can be secured from the expression "SOCIALISTIC" inserted to the preamble of our Constitution, vide 42nd Amendment. An otherwise interpretation would militate against the spirit of the constitutional and statutory provisions as progressively interpreted by the Apex Court and this Court in a catena of decisions.

(c) The above apart, the Final Notification dated 03.08.2015 that was preceded by the Draft Notification dated 01.08.2014 having been found fault with, was set at naught by this court at the instance of the Employers/Capital vide judgment dated 28.10.2016 in W.P.Nos.56099-56184/2015 & other connected matters. This Notification was also preceded by the recommendation of the Advisory Board that had discussed the matter on 23.01.2015 and 17.04.2015. After the same was quashed, the Final Notification has been reissued on 27.12.2016 which is now in challenge. These circumstances justify retrospective revision of Minimum Wages, as rightly contended by the learned Counsel Mr.Subba Rao and Prof. V.R. Datar, representing the Labour. Their reliance on the decision in the case of *Harjinder Singh Vs. Punjab State Warehousing Corporation*, AIR 2010 SC

1116, is more than justified. The Apex Court at para 23 of this decision observed as under:

"Of late, there has been a visible shift in the courts approach in dealing with the cases involving the interpretation of social welfare legislations. The attractive mantras of globalization and liberalization are fast becoming the *raison d'etre* of the judicial process and an impression has been created that the constitutional courts are no longer sympathetic towards the plight of industrial and unorganized workers... Therefore, the approach of the courts must be compatible with the constitutional philosophy of which the Directive Principles of State Policy constitute an integral part and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employer - public or private".

24. AS TO ESTABLISHMENT OF DISPUTE RESOLUTION MECHANISM:

(a) Learned Senior Counsel M/s S.N. Murthy, S.S. Naganand and Kasturi and also other Advocates namely M/s. Sridhar Prabhu, Vasuki, Subramanyam, Somashekar, B.K. Prashanth, Praveenkumar Hiremath, vehemently argued that there is absolutely no authority or justification for the appropriate Government to direct the employer to constitute and appoint the 'Competent Officer' and the 'Appellate Authority' for adjudicating the claims for disputes relating to payment of minimum wages. They point out that the provisions of section 20 of the Act have already put in place a robust mechanism for the said purpose and therefore, a parallel mechanism cannot be created. There is a lot of force in this submission. The Parliament in its legislative wisdom has devised a statutory mechanism for resolution of the claims/disputes relating to the payment of Minimum Wages and it is open to an employee to raise such disputes even through his legal practitioner, an official of a registered Trade Union, an Inspector of Minimum Wages or any person acting with the permission of the Minimum Wages Authority. That being so, the appropriate Government cannot sit in appeal over the wisdom of the Parliament, in exercise of delegated power. Therefore, to that extent, the impugned Minimum Wage Notifications are bad in law.

(b) There is force in the above submission. The provisions of the Act do not authorize or justify creation of a parallel adjudicatory body/a redressal forum parallel to the one contemplated u/s.20 of the Act. Creation of a competitive/parallel bodies is likely to dis-serve the cause of both the Industry and the Labour; such bodies to be appointed by the employer have the abuse potential too. In fact, that was not the subject matter of due deliberation by the Advisory Board, either. The Government while issuing the Minimum Wage Notifications could not have done this.

25. AS TO WRIT PETITIONS CHALLENGING WITHDRAWAL OF THREE MINIMUM WAGE NOTIFICATIONS AND ONE DRAFT NOTIFICATION:

(a) Learned counsel for the petitioners/trade unions Sri.K. Subba Rao, Prof.V.R. Datar and Mr.Narayanaswamy submit that the withdrawal of the above

Notifications is incompetent inasmuch as there is no provision in the Act empowering the appropriate Govt. to withdraw the same, nor there is any justification whatsoever for such withdrawal done at the instance of the Employers/Capital that too unilaterally. Per contra, learned Sr. Advocate Mr.S.S. Naganand, appearing for the counsel on record for the respondentemployers contends that, withdrawal is permissible going by the text of section 3 r/w sec. 5 of the Act; even there is no inbuilt repulsion in the Act to exclude invocation of section 21 of the General Clauses Act, 1897; withdrawal necessarily has to be at the instance of the employer or the employees, who being the stake holders can be the truly aggrieved persons; if fixation/revision of minimum wages is legislative in character, the withdrawal of these Notifications concomitantly and logically needs to be treated as having been made in quasi legislative power if not legislative, the question of hearing an indeterminate class of thousands of employees does not arise nor is it feasible; withdrawal having been done after ascertaining the necessary material data from the concerned, cannot be faltered.

(b) As to competence to withdraw Minimum Wage Notifications:

(i) As to whether Section 21 of General Clauses Act, 1897 is invocable: Section 3 provides for fixing and revising of Minimum Wages and Section 5 prescribes the procedure for doing the same; it is true that there is no specific provision enabling withdrawal of Minimum Wage Notifications, on the lines of section 48 of the erstwhile Land Acquisition Act, 1894 which provided for withdrawal of Land Acquisition Proceedings, subject to certain conditions; the text & context of various provisions of the Act and the statutory scheme of fixation and revision of Minimum Wages support the contention of Prof. Datar that there is no scope for the invocation of section 21 of the General Clauses Act either, although his reliance on some Rulings holding withdrawal of industrial dispute by the appropriate Govt. after statutory reference to Labour Court for adjudication, may not be sound; where a dispute is statutorily referred to the statutory adjudicatory body, by its very nature, the invocation of section 21 of the 1897 Act for withdrawing such a reference is impermissible; such is not the circumstance here; invocation is impermissible because the Minimum Wage Notifications create a kind of vested right in the indeterminate classes of employees, who arguably would have been underpaid their remuneration and that these rights are animated by the provisions of Articles 21 & 23 of the Constitution of India. It is bit difficult to assume that the Parliament in such a circumstance, intended to admit invocation of the provisions of General Clauses Act, as observed by the Apex Court in a catena of decisions, as rightly contended by Prof. Datar.

(ii) As to whether impugned Notifications are a step-in-aid of revising the Minimum Wages: Having held that section 21 of 1897 Act not invocable/applicable for withdrawing the Minimum Wage Notifications, we need to examine another relevant question as to whether the issuance of impugned notifications amounts to "withdrawal" at all; strictly speaking these notifications cannot be

construed as "withdrawal" in its true sense as contemplated under section 48 of the LA Act, 1894 or under the provisions of section 21 of the General Clauses Act, 1897. In view of this, the question whether the said section 21 is invocable, pales into insignificance. The withdrawal of impugned Notifications is a step-in-aid for revising the Minimum Wages in terms of section 3 r/w section 5 of the Act. The argument of the Labour that the same amounts to withdrawing, at the first blush, appears attractive but a deeper analysis shows otherwise. The text and context of the impugned notifications show that they are not effecting withdrawal simplicitor of the Minimum Wage Notifications that were issued by the appropriate Govt. earlier; they are more in the nature of a step-in-aid of reviewing the Minimum Wages so fixed; they contain the reasons that necessitated such a review; further, they speak of constitution of Advisory Board as well; the provisions of section 3 mandate revision of Minimum Wages once in five years; there is no prohibition against reviewing the same at any time during the said five year period, since section 3 employs the term "review at such intervals as it may think fit " as rightly contended by Sri.S.S. Naganand; this view gets further strengthened by the very text of section 3(1)(b) and of section 5(1)(b) of the Act:

Section 3(1)(b) reads as under:

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

(a) xxxxx

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

Section 5(1)(b) reads:

"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)xxxxx

(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."

(iii) The next contention of the Employees/Trade Unions that there was absolutely no justification for such a withdrawal, again is liable to be rejected since before issuing the impugned notifications, the Govt. had collected necessary data as furnished by the employers, other agencies and the Commissionerate of Labour. Thus, no fault can be laid in the decision making

process. The further contention that the so called withdrawal of Minimum Wage Notifications could not have been made at the instance of the Employers/Capital again is an argument too farfetched. True it is, that the employers had given the representations explaining their difficulty on account of revision of minimum wages; it is always open to the employer or the employees to air their grievances before the appropriate Govt. as to the Minimum Wages being arbitrarily fixed; where such a grievance is put forth, the appropriate govt. being the competent authority owes a duty to take a call thereon, and its stony silence would have given scope for the aggrieved to complain before this court, as well. Therefore, there is no merit in this contention, either.

(iv) The contention of the Labour/Trade Union that the respondent-Govt. before effecting the withdrawal of Minimum Wages Notifications, ought to have given an opportunity of hearing, is not sustainable, since going by the scheme of the Act, as emerging from sections 3, 5 & 7, the employees and the employers would be heard through their representatives as the members on the Advisory Board/Committee after the issuance of Draft Notifications; individuals also can make representations. The Labour or their Trade Union should be heard in such matters may be ideally true, but it is not the mandate of law especially when fixing/revising the minimum wages is held to be a legislative/quasi legislative exercise; secondly, the Minimum Wage Notifications vest a right in indeterminate classes of employees thousands in number and scattered all over the State; therefore, hearing all or any of them is not feasible; the circumstances that culminated into issuance of the impugned notifications do not raise any presumption as to lack of bonafide or the like, either.

(v) The withdrawal of Minimum Wage Notifications having not been faltered, is not end of the matter; all the learned counsel appearing for the Labour have specifically urged that men in power being what they are, are likely to yield to the pulls and pressures of lobbies to which bargaining power of the Labour may not be a match, and therefore, a specific period has to be prescribed for accomplishing the task of revising the minimum wages; they have pointed out that the Govt. invariably has not revised the Minimum Wages within the statutory period of five years; learned AGA Mr.Laxminarayana fairly submits that the Parliamentary elections are in the pipeline; once the electoral process begins, there would be obvious difficulty in accomplishing the task post-haste and therefore, a reasonable period be prescribed for doing the needful keeping in view the attending circumstances and of the likely consequences; there is force in the submission advanced at the Bar.

(vi) Prof. Datar and Mr.Narayanaswamy contended that a Welfare State like ours being the guardian of working classes, should not allow the lobby of the Capital to exploit the Labour by dillydallying tactics and that the benefit of revision lost by the Labour by virtue of the withdrawal of the notifications should be made good by making appropriate provision in the judgment; there is a lot of force and fairness in this submission, too; however, the learned counsel appearing for the

employers take exception to the allegation of "dillydallying tactics" stating that both the Capital and Labour should go hand in hand; one cannot sustain without the other; the Nation would prosper if both of them as equal partners co-operate with each other in producing the goods and services, for the benefit of the society; they assure that they would fully cooperate in the contemplated revision of Minimum Wages. This is an appreciable gesture from the side of the employers.

For the reasons stated above, these Writ Petitions filed by the employers are allowed in part; a Writ of Certiorari issues quashing only the following parts of the impugned Minimum Wage Notifications:-

(a) That part which directs payment of Service Seniority Allowance at the rate of 1% of the minimum wages for each completed year of service or otherwise, to the employees who have put in a service of ten or more years;

(b) that part which directs the employers to pay and to continue to pay the current wages that are above the notified minimum wages subject to the rider that the downward revision, if any, shall not be below the Minimum Wages prescribed under these notifications;

(c) that part which directs payment of Minimum Wages to the supervisory staff who do not prima facie answer the definition of 'employee' under Section 2(e) of the Minimum Wages Act, 1948, subject to the condition that the individual claim, if any, of such employees may be processed u/s 20 of the Act, regardless of their designation; and

(d) that part which directs the employer to constitute and appoint the Competent Officer and the Appellate Authority for adjudication of Claims/Disputes relating to payment of minimum wages.

The interim orders granted earlier stand dissolved. The amount of wages that remain unpaid because of the interim orders shall be paid by the petitioners/ employers within a period of eight weeks with interest at the rate of 6% p.a. from the date from which the same was otherwise payable.

The Writ Petitions filed by the Employees/Trade Unions challenging withdrawal of three Minimum Wage Notifications and one Draft Notification are disposed off without interference; however, a Writ of Mandamus issues to the official respondents to accomplish the fixation/revision of minimum wages in respect of the subject sectors of employment within an outer limit of six months by issuing the Minimum Wages Notifications with retrospective effect from the respective dates from which the minimum wages would have become payable, had the impugned withdrawal notifications were not issued.

No costs.