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In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 334 of 1962

Narottamdas Harjiwandas — APPELLANT

Vs

State of Madhya Pradesh and Others — RESPONDENT

Date of Decision : 05-09-1963

Acts Referred:
Constitution of India, 1950 — Article 14, 19(1)
Madhya Pradesh Minimum Wages Fixation Act, 1962 — Section 2, 20, 20(1), 22, 3

Citation : AIR 1964 MP 45 : (1963) 7 FLR 426 : (1965) ILR (MP) 70 : (1963) JLJ 917 : (1964) MPLJ 43

Hon'ble Judges : P.V. Dixit, C.J;K.L. Pandey, J

Bench : Division Bench

Advocate : A.P. Sen, B.V. Shukla, A.H. Saife and S.A. Awasthy, for the Appellant; K.A. Chitaley and G.M. Chaphekar, for the Respondent

Final Decision : Dismissed

Judgement

Dixit, C. J.

This order will also govern Miscellaneous Petitions Nos. 281, 300 and 305, all of 1962.

The petitioners in these four cases under Article 226 of the Constitution challenge the vires-of the Madhya Pradesh Minimum Wages Fixation Act, 1962, (hereinafter referred to as the Act), and seek a declaration that the Act is invalid, ultra vires and unenforceable and pray that the opponents be restrained by a suitable direction from putting the Act into operation.

Two of the petitioners are manufacturers of Bidis. The other petitioners carry on the business of running transport services. By notifications Nos. 306 to 309 XVI-58, dated the 30th December 1958, issued under the Minimum Wages Act, 1948, (hereinafter referred to as the Central Act), the Government fixed rates of minimum wages for certain employments including Bidi-mak- ing manufactory and public motor transport. The rates of minimum wages set out in the

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notifications were brought into force from 1st January, 1959.

These notifications were struck down by this Court as invalid and inoperative in Anand Transport Co., (Private) Ltd. v. State of Madhya Pradesh, M. P. No. 150 of 1959, D/- 28-4-1960 (UP). Corporation of City of Jabalpur v. State of Madhya Pradesh, M. P. No. 66 of 1959, D/- 20-7- 1960 (MP) and Narottamdas Harjiwandas Vs. P.B. Gowarikar, Inspector, Minimum Wages, Assistant Labour Commissioner''s Office and Others, . The notifications having been struck down by this Court, the State Legislature enacted the Minimum Wages (Madhya Pradesh Amendment and Validation) Act, 1961, (hereinafter referred to as the Validation Act).

After the Validation Act came into force, five petitions under Article 226 of the Constitution were filed in this Court questioning its validity on various grounds (see Firm Dayalal Meghji and Co. and Others Vs. State of Madhya Pradesh and Others,). The petitioners in those cases, however, concentrated their attack on Section 31-A inserted in the Central Act by the Validation Act, which ran as follows -

"31-A. (i) The rates of minimum wages fixed or revised in respect of employments Nos. 2,3,5, 6, 7, 8 and 11 in Part I of the Schedule to the Principal Act, under the Government of Madhya Pradesh, Labour Department Notifications Nos. 306 to 309-XVI-58 dated the 30th December, 1958, shall be and shall always be deemed to have been validly fixed or revised and shall be deemed to have come into force on the date mentioned in the said notifications, notwithstanding any judicial decision to the contrary or any defect or irregularity in the constitution of the Advisory Board u/s 7 of the Principal Act read with Section 9 thereof or publication of the notifications in the Gazette or non-compliance with any other requirement of law and shall not be called in question in any Court merely on the ground that there was failure to comply with the provisions of the Principal Act.

(2) The rates of minimum wages fixed or revised in respect of employment specified in Part II of the Schedule to the Principal Act under the Government of Madhya Pradesh, Labour Department Notification No. 7758-XVI, dated the 31st December. 1959. shall be and shall always be deemed to have been validly fixed or revised, notwithstanding any defect or irregularity in the constitution of the Committee u/s 5 (i) (a) of the Principal Act read with Section 9 thereof, or publication of the notification in the Gazette or non-compliance with any other requirement of law and shall not be called in question in any Court merely on the ground that there was failure to comply with the provisions of the Principal Act: ***"

The petitioners inter alia contended that the Validation Act had not in any way improved the situation and the notifications dated the 30th December, 1958, which were declared to be invalid in 1061 MPLJ 302 : AIR 1061 MP 182 and other cases, continued to be null and void; that the State Legislature was not

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competent to amend the Central Act and, therefore, the Validation Act was ultra vires and constitutionally invalid; that the validation of the notifications dated 30th December, 1958, amounted to fixation or revision of the rates of minimum wages in contravention of the provisions of the Central Act; that as the State Government functioned as a delegate under the Central Act in relation to the scheduled employment, any fixation of minimum wages by the State Government had to be in conformity with Sections 5, 7 and 9 of the Central Act and not contrary to them; that as the Validation Act did not give to the Government any power, as from 30th December, 1958, or from a point of time anterior to it, to fix minimum wages without the necessity of following those provisions, the notifications could not be referred to any power; and that in consequence the validation provisions contained in Section 31-A was altogether invalid and ineffective.

It was held by us in Firm Dayalal Meghji and Co. and Others Vs. State of Madhya Pradesh and Others, , that the Validation Act was an independent Act and was not an enactment directly amending or repealing any provision of the Central Act; that both the Central Act and the Validation Act coexist in the State subject to the rule laid down in Clause (2) of Article 254 of the Constitution; and that the Validation Act was within the legislative competence of the State Legislature,

In regard to the validity of Section 31-A, we expressed the opinion that it purported to validate an invalid act done under the Central Act and which was required to be done in conformity with the procedure laid down in Section 5 of the Central Act; that it merely validated the rates of minimum wages notified on 30th December, 1958, and did not confer on the Government, as from 30th December, 1958, or a date anterior to it, the power to fix minimum wages in a manner or mode which did not involve compliance of Sections 5, 7 and 9 of the Central Act; and that consequently the validation of the rates of minimum wages notified on 30th December, 1958, was not referable to any power and was altogether ineffective and nothing but a repetition of an invalid Act, namely, the fixation of minimum wages notified on 30th December, 1958.

It was also observed by us that under Entry 24 of List III, Schedule 7 to the Constitution, the State Legislature had the power to make a law for the fixation or revision of minimum wages, that it could have under this legislative power made a law giving to the Government the power to fix and revise minimum wages without the necessity of following the procedure prescribed by the Central Act, but Section 31-A was not an independent provision fixing certain rates "of minimum wages retrospectively from 1st January, 1959, quite independently of the notifications dated 30th December, 1958, or of the provisions of the Central Act.

The decision in Firm Dayalal Meghji and Co. and Others Vs. State of Madhya Pradesh and Others, , led to the promulgation of the Madhya Pradesh Minimum Wages Fixation Ordinance (No. 4 of 1962). The Ordinance was replaced by the impugned Act. The Act is described as "An Act to fix the minimum rates of wages

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in certain scheduled employ- ments and to provide for certain other matters connected therewith. In the definition section of the Act, that is Section 2, it is provided that

"The expressions used in this Act and denned in the Minimum Wages Act, 1948 (XI of 1948), in its application to the State of Madhya Pradesh shall have the meanings assigned to them in the said Act."

Sections 3 and 4 of the Act, which deal with the present matter, are as follows -

Notwithstanding anything contained in Section 5 of the Minimum Wages Act, 1948 (XI of 1948), in its application to the State of Madhya Pradesh (hereinafter referred to as the said Act) or any other provision contained therein relating to the fixation or revision of minimum rates of wages in scheduled employments and any judgment, decree or order of any Court to the contrary, the minimum rates pf wages in respect of employments in items 2, 3, 5, 6, 7, 8 and 11 in Part I and in respect of employment in Part II of the Schedule to the said Act shall be and shall always, in respect of each such employment, be deemed to be as specified in Table appended hereto and it is hereby enacted that the said minimum rates of wages shall be payable by the employer in the said scheduled employments and be enforceable against him with effect from the 1st January, 1959, as if the provisions herein contained have been in force at all material times.

The provisions of Section 4-A, Section 5, in so far as they relate to revision of minimum rates of wages, and of Sections 12 to 30-A of the said Act, and the rules made thereunder shall apply to minimum rates of wages specified in Section 3 as they apply to minimum rates of wages in respect of scheduled employments fixed in accordance with the said Act:

Provided that with respect to claims arising out of payment of minimum rates of wages specified in Section 3 pertaining to a period prior to the publication of the Madhya Pradesh Minimum Wages Fixation Ordinance, 1962 (4 of 1962) in the Gazette, the period of one year referred to in the first proviso to Sub-section (2) of Section 20 of the said Act shall be counted with effect from the 21st June, 1962, the date of publication of the said Ordinance in the Gazette."

In the Table appended to the Act are set out the rates of minimum wages for certain employments.

The petitioners contend that the challenged Act is in pith, substance and reality an Act to validate the notifications dated the 30th December, 1958, which were declared to be illegal by this Court and not an independent or ad hoc legislation fixing the rates of minimum wages in certain employments; and that as the Act has no independent existence without the Central Act, it is a piece of "Colourable legislation" trenching upon the legislative field of Parliament. This Act, it is said, by fixing minimum wages with retrospective effect and by making the employer liable to penalty by the application of Section 20 of the Central Act to rates of

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minimum wages specified in Section 3 of the impugned Act imposes unreasonable restrictions on the petitioners'' fundamental rights guaranteed by Article 19(i)(f) and (g) of the Constitution and thus violates those fundamental rights.

The Act, it is then said, by not providing the essential safeguards embodied in the Central Act for the fixation of minimum wages imposes restrictions upon freedom of contract and violates the fundamental right of the petitioners under Article 19(1)(g); and that it also offends Article 14 of the Constitution inasmuch as it results in discrimination in the mode and manner of fixation of minimum rates of wages in scheduled employments, and so far as Bidi-making manufactories are concerned the Act prescribed different rates of minimum wages for persons employed therein. It is also urged that the Act is repugnant to Article 20(1) of the Constitution in so far as it makes the employer liable to punishment u/s 22 of the Central Act as in force in the State for his fictional failure to pay to the employees the difference between wages fixed retrospectively by the Act and the wages actually paid to them.

The validity of the Act has also been attacked on three additional grounds put forward on behalf of the petitioners in Miscellaneous Petitions Nos. 281 and 300, of 1962. They are: first, that the function of the fixation of minimum wages is not a function of a legislative character but that it is in its nature a judicial or a quasi-judicial activity and, therefore, the State Legislature was not competent to fix the minimum rates of wages; secondly, that the Act is not workable for the reason that it does not define "employer" and the definition of that word given in the Central Act cannot be adopted with the aid of Section 2 of the Act inasmuch as in the Central Act the word "employer" has been defined in relation to scheduled employments in respect of which minimum rates of wages have been fixed under the Central Act; and, thirdly, that in regard to employment in public motor transport, the Act fixes two rates of minimum wages.

In connection with the submission, which the petitioners put in the forefront of their case, that the impugned Act is really an Act to validate the notifications issued on 30th December, 1958 and is not an ad hoc legislation, it was argued by Shri Sen, learned counsel appearing for the petitioners in Misc. Petitions Nos. 305 and 334 of 1962, that the Act itself did not define any of the expressions used therein; that Section 2 of the Act made the definitions given in the Central Act applicable for ascertaining meaning of the various expressions used in the Act; that likewise by Section 4 of the Act the provisions of certain sections of the Central Act were made applicable to the minimum rates of wages prescribed by the Act; and that Section 3, by which minimum wages in respect of certain scheduled employments were fixed, did so by expressly overriding Section 5 and other provisions of the Central Act.

It was said that all these features indicated that the Act had no independent existence without the Central Act and the fixation of minimum wages attempted thereby was in reality the validation of the minimum rates of wages fixed by the

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notifications issued on 30th December, 1958. Learned counsel referred to the preamble of the Act and said that though it tried to define the scope of the legislation as if it were a self-contained Code in itself, there was no provision "for certain other matters" connected with the fixation of minimum rates of wages for which one had to look to the Central Act.

We are unable to accede to this argument. A bare perusal of the Act, which is a brief one, is sufficient to show that ex facie it is a legislation fixing minimum rates of wages for certain employments quite independently of the provisions of the Central Act and of the notifications dated the 30th December, 1958. It is quite true that the Act does not give definitions of the various expressions used therein and adopts the definitions given in the Central Act. The adoption of the definitions given in the Central Act or the application of certain provisions thereof to minimum rates of wages fixed by Section 3 of the Act does not, however, make it one inextricably interwoven with the Central Act and ceasing to exist if the Central Act is repealed. Sections 2 and 4 of the Act are instances of legislation by reference, and they do nothing more than incorporate the definitions given in the Central Act and certain provisions from it in the Act. This is done for convenience of drafting and for avoiding the necessity of setting out at length in the Act concerned the provisions which it is desired to adopt from another Act. The effect of such incorporation by relation is that, the provisions of an Act, which are adopted by reference in another Act. become part of that Act as if they were expressly incorporated therein. Where certain provisions of a statute are incorporated by reference into another, the repeal of the first statute does not of itself repeal the provisions as incorporated in the second statute. This is a settled principle. In AIR 1931 149 (Privy Council) it was observed by the Privy Council that-

"..... it is accepted that where a statute is incorporated by reference into a second statute, the repeal of the first statute does not affect the second ..... This doctrine finds expression in a common-form section which regularly appears in the amending and repealing Acts which are passed from time to time in India. The section runs, The repeal by this Act of any enactment shall not affect any Act ..... in which such enactment has been applied, incorporated or referred to. The independent existence of the two Acts is therefore recognized; despite the death of the parent Act, its offspring survives in the incorporating Act. Though no such saving clause appears in the General Clauses Act, their Lordships think that the principle involved is as applicable in India as it is in this country."

The Privy Council''s decision was referred in Jethanand Betab Vs. The State of Delhi (Now Delhi Administration), , and the rule of construction enunciated therein was followed. This accepted principle has been stated in ''Maxwell on Interpretation of Statutes'', tenth edition, at p. 406, and in ''Craies on Statute Law'', fifth edition at page 385, by emphasizing that the repeal of the first statute does not affect the second as the provisions of the first statute incorporated in the second statute form part of the second enactment. If,

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therefore. Sections 2 and 4 of the Act incorporated by relation certain provisions of the Central Act into the impugned Act and those provisions must be read as if they are expressly incorporated in the Act, and the repeal of the Central Act or amendment of its provisions will in no way affect the provisions incorporated in the Act, then the argument that Sections 2 and 4 of the Act destroy its character and nature as a legislation fixing minimum wages independently of the provisions of the Central Act, is clearly untenable.

The comment of Shri Sen on Section 3, which is the principal provision of the Act, and the preamble to the Act is equally unsubstantial. The language of Section 3 is plain enough to show that what it does is to fix minimum rates of wages in respect of certain employments as from 1st January, 1959, and this it does after saying that the rates of wages "shall be and shall always ..... be deemed to be as specified in Table" notwithstanding anything contained in Section 5 or any other provision of the Central Act and any judgment, decree or order of any Court to the contrary. This provision does not purport to amend or modify in any way the provisions of the Central Act relating to the fixation or revision of minimum rates of wages. Nor does it attempt to validate the rates of wages notified on 30th December, 1958, or fix the rates of minimum wages under the Central Act, albeit contrary to its provisions. The rates of wages specified in the Table appended to the Act may be the same as those notified on 30th December, 1958. But that does not make Section 3 a provision validating the notifications issued on 30th December, 1958, or fixing the rates of wages under the Central Act. The sanction for the rates of wages specified in the Table appended to the Act is neither the provisions of the Central Act nor the notifications dated 30th December, 1958, but the impugned Act itself. The non obstante expression, with which Section 3 begins, only emphasized the categorical provision contained in Section 3 that the rates of minimum wages specified in the Table shall prevail as from 1st January, 1959, and that no provision of the Central Act relating to the fixation or revision of the minimum rates of wages or a judgment, decree or order of any Court shall be an impediment to their prevalence. The non obstante expression, far from weaving the rates of minimum wages specified in the Table to the Act into the text of the Central Act, makes them quite independent of the Central Act.

In our judgment, the Act is an independent enactment fixing minimum rates of wages for certain employments, and does not purport to validate the rates notified on 30th December, 1958, or attempt to fix minimum rates ot wages under the Central Act in violation of its provisions. The preamble to the Act cannot be said as one giving dyslogistic description of the Act having no legal significance. It rightly describes it as

"An Act to fix the minimum rates of wages in certain scheduled employments and to provide for certain other matters connected therewith."

If, as we think, the Act is an independent enactment fixing minimum rates of wages in certain employments without the necessity of following the procedure

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prescribed by the Central Act, then, as pointed out by us in 1962 MPLJ 849 : (AIR 1962 M P 312), the State Legislature- had the power to make that law under Entry 24 of List III, Seventh Schedule to the Constitution. It is not disputed that the State Legislature has legislative competence to enact an independent Act fixing rates of minimum wages. There being no attempt in the Act of an encroachment or trespass on the powers of Parliament, or any patent, manifest, direct, disguised, covert or indirect transgression of the limits of legislative authority of the State Legislature, it cannot be regarded as a piece of ''''colourable legislation''''.

It may be that in placing the Act on the Statute Book the State Legislature was motivated by a solicitude for the employees and by the idea that the employees in certain employments should get the minimum rates of wages from 1st January, 1959, which had been notified on 30th December, 1958 and which could not be given to them because the notifications were struck down and the attempt to validate them by the Validation Act proved to be futile. But if the enactment was within the legislative competence of the State Legislature, then the motives which impelled it to act are really irrelevant and have no bearing on the question whether the Act is or is not a piece of "colourable legislation". This is very clear from the decisions of the Supreme Court in K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa, , Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, and The Board of Trustees, Ayurvedic and Unani Tibia College, Delhi Vs. The State of Delhi and Another, , where the doctrine of ''colourable legislation'' has been explained.

In the first case, namely K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa, , the Supreme Court said -

"It may be made clear at the outset that the doctrine of colourable legislation does not involve any question of bona fides or mala fides on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the legislature lacks competency, the question of motives does not arise at all ..... If the constitution of a State distributes the legislative powers among different bodies, which have to act within their respective spheres marked out by specific legislative entries, or if there are limitations on the legislative authority in the shape of fundamental rights, questions do arise as to whether the legislature in a particular case has or has not, in respect to the subject-matter of the statute or in the method of enacting it, transgressed the limits of its constitutional powers. Such transgression may be patent, manifest or direct, but it may also be disguised, covert and indirect and it is to this latter class of cases that the expression "colourable legislation" has been applied in certain judicial pronouncements. The idea conveyed by the expression is that although apparently a legislature in passing a statute purported to act within the limits of its powers, yet in substance and in reality it transgressed these powers,

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the transgression being veiled by what appears, on proper examination, to be a mere pretence or disguise."

In the view we have taken of the nature and effect of the impugned Act, it is manifestly clear that the State Legislature was competent to enact it, and in doing so the Legislature did not transgress any of the limitations placed on it. The objection that the challenged Act is a piece of "colourable legisation" must, therefore, fail.

The validity of the Act is then assailed on the ground that the provisions of the Act put restrictions on the freedom of contract of the petitioners and subject them to disproportionate imposition and thus violate the fundamental rights guaranteed under Article 19(1) (f) and (g) of the Constitution. In connection with this objection, it must first be stated that it is not the contention of the petitioners that the fixation of minimum wages by or under a statute in itself constitutes a violation of fundamental rights. Indeed such a contention, .even if it had been advanced, would not have been accepted by us in view of the pronouncements of the Supreme Court in Bijay Cotton Mills Ltd. Vs. The State of Ajmer, , U. Unichoyi and Others Vs. The State of Kerala, and Bhikusa Yamasa Kahatriya Vs. Sangamner Akola Taluka Bidi Kamgar Union, . In all these cases, it has been emphasized by the Supreme Court that the object in fixing the minimum rates of wages is to prevent exploitation of labour and if the labourers are to be protected against exploitation by their employers, it is absolutely necessary that restraints should be imposed upon the employers'' freedom of contract and such restrictions cannot in any sense be said to be unreasonable. In the case of Bijay Cotton Mills Ltd. Vs. The State of Ajmer, , Mukherjea, J., (as he then was) observed -

"..... the employers cannot be heard to complain if they are compelled to pay minimum wages to their labourers even though the labourers, on account of their poverty and helplessness, are willing to work on lesser wages."

In repelling the argument regarding the burden of minimum wages on the employers, he said -

"If it is in the interest of the general public that the labourers should be secured adequate living wages, the intentions of the employers whether good or bad are really irrelevant. Individual employers might find it difficult to carry on the business on the basis of the minimum wages fixed under the Act but this must be due entirely to the economic conditions of those particular employers. That cannot be a reason for striking down the law itself as unreasonable."

He also pointed out that the fixation of minimum wages was with a view to carry out one of the Directive Principles of State Policy embodied in Article 43 of the Constitution, and so the provisions which were impugned in the case of Bijay Cotton Mills Ltd. Vs. The State of Ajmer, , were protected by the terms of Clause (6) of Article 19. The petitioners have not, therefore, rightly raised before us the plea that the fixation of minimum rates of wages by itself violates the

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fundamental freedom under Article 19(1)(f) and (g).

It was however urged on their behalf that the Act itself fixed the minimum rates of wages and did not provide for any machinery as provided by the Central Act for the fixation of minimum rates of wages after enquiry or on the advice or report of a committee appointed for that purpose; that such a machinery was an essential safeguard against arbitrary and unreasonable fixation of minimum rates of wages; and that it was because of these safeguards provided in the Central Act that the validity of Sections 3, 4 and 5 of that Act was upheld by the Supreme Court in Bijay Cotton Mills Ltd. Vs. The State of Ajmer, . The petitioners'' further submission was that the retrospective operation of the Act cast a disproportionate imposition on them besides making them liable to penalty and punishment by the application of Sections 20 and 22 of the Central Act to the rates of minimum wages specified in Section 3 of the impugned Act" for their "fictional failure" to pay to the employees in past the wages fixed retrospectively by the Act.

It is impossible to accept the contention that the Act is invalid inasmuch as it, instead of setting up a machinery for fixation of minimum rates of wages after investigation, enquiry and report, fixes the rates itself, the necessary result of which would be to detract from the comprehensiveness of the legislative powers conferred by the Constitution on the State Legislature. The doctrine that in the grant of a substantive power of legislation is included the power to enact incidental or ancillary legislation and that the legislature has full and absolute discretion in the exercise of its powers is inherent in the Constitution. As has been observed in The Edward Mills Co. Ltd., Beawar and Others Vs. The State of Ajmer and Another, ,

"it is a fundamental principle of constitutional law that everything necessary to the exercise of a power is included in the grant of the power. A legislature cannot strip itself of its essential functions and vest the same on an extraneous authority. The primary duty of law making has to be discharged by the legislature itself but delegation may be resorted to as a subsidiary or an ancillary measure."

The same principle has been reiterated in Vasantlal Maganbhai Sanjanwala Vs. The State of Bombay and Others,) thus -

"It is now well established by the decisions of this Court that the power of delegation is a constituent element of the legislative power as a whole, and that in modern times when the legislatures enact laws to meet the challenge of the complex socio-economic problems, they often find it convenient and necessary to delegate subsidiary or ancillary powers to delegates of their choice for carrying out the policy laid down by their Acts. The extent to which such delegation is permissible is also now well settled. The Legislature cannot delegate its essential legislative function in any case. It must lay down the legislative policy and principle, and must afford guidance for carrying out the said policy before it delegates its subsidiary powers in that behalf."

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The choice is with the legislature whether after having made a law containing the determination of the legislative policy and its formulation as a rule of conduct, the details for working it out and for carrying the enactment into operation and effect should be done by itself or should be left to another subordinate agency (See In re Article 143 Constitution of India and Delhi Laws Act (1912) etc. AIR 1951 SC 332). If various systems or methods or modes can be adopted by the legislature for the exercise of its powers, it cannot be said of one such method that it is illegal or unconstitutional because other modes are available. The delegation of power is a permissible power and not a compulsory one.

To support his contention that the only power and valid mode c" fixation of minimum rates of wages is to set up a machinery for the fixation of wages by a board or a body after investigation, inquiry and report, learned counsel for the petitioners relied on Bijay Cotton Mills Ltd. Vs. The State of Ajmer, , and Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others, . In our opinion, these cases do not lend any support to the contention. There is a distinction between the present case and the cases relied on by the petitioners. The Acts, the validity of which was considered by the Supreme Court, delegated the power of fixing the rates of wages to a suborordinate agency and themselves did not fix the rates. The observations in those cases to the effect that the mode of fixation of wages by the board or body set up under the relevant Acts was proper were made in relation to the challenge to those Acts on the ground of excessive delegation.

In the case of Bijay Cotton Mills Ltd. Vs. The State of Ajmer, , Sections 3, 4 and 5 of the Central Act were no doubt attacked on the ground that the restrictions imposed upon the freedom of contract violated the fundamental right guaranteed under Article 19(1)(g) of the Constitution. But it was also urged that the provisions relating to the fixation of minimum wages were unreasonable and arbitrary. It was in connection with the latter submission that the procedural provisions of the Central Act were examined and it was held that they constituted an adequate safeguard against any hasty or capricious decision of the appropriate Government in fixing minimum wages. Learned counsel relied on the following observations made in Bijay Cotton Mills Ltd. Vs. The State of Ajmer, -

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

Such Central Advisory body is to act also as a co-ordinating agent for co-ordinating the work of the different advisory bodies. In the committees or the

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advisory bodies the employers and the employees have an equal number of representatives and there are certain independent members besides them who are expected to take a fair and impartial view of the matter. These provisions, in our opinion, constitute an adequate safeguard against any hasty or capricious decision by the ''appropriate Government''."

The above observations cannot be read as even remotely suggesting that if the Central Act itself had fixed minimum wages, then the Supreme Court would have struck down that Act as unconstitutional and that it is essential to the validity of any Act dealing with the fixation of minimum wages that it should delegate the power of fixing wages to some authority and contain provisions such as those to be found in the Central Act which according to the Supreme Court constituted "an adequate safeguard against any hasty or capricious decision" in the fixation of minimum wages.

In our opinion, the Act cannot be held to be invalid merely because the rates of minimum wages are fixed by the Act itself arid it does not provide for a machinery for the fixation of wages by a delegate.

There is a strong presumption in favour of the constitutionality of an enactment and while considering the constitutionality of a statute, as the Supreme Court has said in Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others, . it must be assumed that the legislature understands and appreciates the need of the people and the laws it enacts are directed to problems which are made manifest by experience and that the elected representatives assembled in a legislature enact laws which they consider to be reasonable for the purpose for which they are enacted." The presumption being in favour of the constitutionality of a legislation, the burden lies upon the person who attacks the statute to show that there has been a clear transgression of the constitutional principles. The petitioners have not placed before us any material to rebut this presumption and to show that the minimum rates of wages fixed by the Act are arbitrary and unreasonable. It is not that the legislature had no material whatsoever when it fixed the rates of minimum wages specified in the Act. The returns filed by the opponents reveal that while considering the legislation in question the legislature had before it material collected during the years 1957 and 1958 in the form of opinions of committees and representatives of employees and employers with regard to the rates of minimum wages that ought to be fixed in certain employments. There is, therefore, no ground for thinking that the rates of minimum wages fixed by the Act are unreasonable or arbitrary.

Corning now to the objection that the retrospective operation of the Act cast a disproportionate imposition on the petitioners, the fact that ''the wages fixed by the Act operate retrospectively by itself is insufficient for holding that it subjects the petitioners to disproportionate imposition and, therefore, imposes unreasonable restriction on the petitioners'' fundamental right guaranteed under

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Article 19(1) (f) and (g). In The State of West Bengal Vs. Subodh Gopal Bose and Others, it has been observed that the act of the statute being given retrospective operation may also be properly taken into consideration in determining the reasonableness of the restriction imposed in the interest of the general public. This is far from saying that if a statute is given retrospective operation, then it must be taken as imposing unreasonable restrictions. The petitioners should have placed material for showing that the fixation of rates of minimum wages retrospectively involves a disproportionate imposition. They have not done so. The contention, therefore, that the minimum rates of wages fixed by the Act operating retrospectively involves a disproportionate imposition must be rejected.

The petitioners'' next point is that Section 4 of the Act makes applicable Sections 20 and 22 of the Central Act to the minimum rates of wages specified in Section 3. The result of this application, it is said, is to make them liable for payment of compensation u/s 20 of the Central Act as applied, for their act in paying to the employees before the coming into force of the Act less than the minimum rates of wages fixed by Section 3 and to make them criminally liable also for that act u/ s 22.

This contention is based on a misconception as to the date on which the petitioners'' liability to pay the wages fixed by Section 3 of the Act arises for the purposes of Sections 20 and 22. It is quite true that if after the date on which he becomes liable to pay the minimum rates of wages fixed by the statute, an employer pays to an employee less than those rates, then he renders himself liable for the payment of compensation to the employee by virtue of the application of Section 20 (3) of the Central Act and exposes himself to a penalty because of the application of Section 22 of the said Act. Now, Section 3 of the impugned Act no doubt says that the fixation of the minimum rates of wages specified therein shall operate retrospectively from 1st January, 1959. But, for the purposes of Sections 20 and 22 of the Central Act, the employer''s liability to pay the minimum rates of wages from 1st January, 1959. arises under the Act not on 1st January, 1959, but from 2ist June, 1962, the date on which the M. P. Minimum Wages Fixation Ordinance, 1962, which was replaced by the Act, was promulgated. This is clear from the fact that the application by Section 4 of the Act of certain provisions of the Central Act, including Sections 20 and 22 thereof, to the minimum rates of wages specified in Section 3 is prospective and not retrospective.

Standing by itself, Section 3, when it says that

"the said minimum rates of wages shall be payable by the employer in the said scheduled employments and be enforceable against him with effect from the 1st January, 1959, as if the provisions herein contained have been in force at all material times"

does not make an employer liable for payment of compensation, and to penalty,

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under Sections 20 and 22 of the Central Act. Section 3 nowhere speaks of the application of Sections 20 and 22 to the minimum rates of wages specified therein. It is Section 4 which makes certain provisions, including Sections 20 and 22, of the Central Act, as in force in the State, applicable to the rates of minimum wages specified in Section 3. There is nothing in Section 4 to indicate that the provisions contained therein have retrospective effect and the application of the provisions of the Central Act referred to in Section 4 is with effect from 1st January, 1959.

That for the purpose of Sections 20 and 22 of the Central Act the liability for the payment of the minimum rates of wages fixed by Section 3 cannot be taken as arising from 1st January, 1959, is made further clear and placed beyond doubt by the proviso to Section 4 which says that with respect to claims arising out of payment of minimum rates of wages specified in Section 3 pertaining to a period prior to the publication of the M. P. Minimum Wages Fixation Ordinance, 1962, in the gazette, the period of one year within which a claim has to be made u/s 20 (2) shall be counted with effect from the 21st June, 1962, the date of publication of the said Ordinance in the Gazette.

Now, the proviso to Section 20 (2) of the Central Act, as in force in this State, lays down that an application u/s 20 (2) "shall be presented within one year from the date on which, the minimum wages or other amount became payable''''. If, therefore, according to the proviso to Section 4 the period of one year is to be counted from 21st June, 1962, then it follows that for the purposes of Section 20 the wages fixed by Section 3 became payable on 21st June, 1962 and not before that date. It is the failure of the employer after 21st June, 1962, to pay the minimum rates of wages that is punishable u/s 22.

As we read Sections 3 and 4 of the Act, it is clear to us that if before 21st June, 1962, an employer has paid to an employee less than the minimum rates of wages fixed by Section 3, he cannot be ordered to pay compensation u/s 20 or be penalised u/s 22 for his failure to pay to an employee before 21st June, 1962, the minimum rates of wages fixed by Section 3. There is, therefore, no substance in the contention that Sections 3 and 4 of the Act make the employers liable for payment of compensation u/s 20 and to punishment u/s 22 of the Central Act for their "fictional failure" and, therefore, impose unreasonable restrictions on their fundamental rights under Article 19(1) (f) and (g) of the Constitution and are contrary to Article 20(1). Those provisions cannot be held to be invalid merely because an employer becomes liable to action under Sections 20 and 22 of the Central Act for his failure after 21st June, 1962, to pay the minimum rates of wages fixed by the Act. The power to fix minimum rates of wages would include the power to impose reasonable safeguards in securing payment.

It is finally submitted by Shri Sen that the Act is repugnant to Article 14 of the Constitution. The argument is that the Act fixes minimum rates of wages only in respect of some of the employments enumerated in the schedule to the Central Act; that so far as employments mentioned in the schedule to the Central Act

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and which are cot dealt with by the impugned Act are concerned the provisions of the Central Act would apply for the fixation or revision of the minimum rates of wages in those employments; that thus the fixation of the minimum rates of wages in certain employments is by the Act under challenge and in regard to other employments it is under the Central Act; that so also in this State in regard to certain employments the fixation of minimum rates of wages is by the Act itself and in other States it is under the Central Act; and that thus the Act is discriminatory in nature and violates Article 14 of the Constitution. There is no merit in this contention, which is fully answered by the following observations of the Supreme Court in The State of Madhya Pradesh Vs. G.C. Mandawar, .

"Article 14 does not authorise the striking down of a law of one State on the ground that in contrast with a law of another State on the same subject its provisions are discriminatory. Nor does it contemplate a law of the Centre or of the State dealing with similar subjects being held to be unconstitutional by a process of comparative study of the provisions of the two enactments. The sources of authority for the two statutes being different, Article 14 can have no application."

There now remain for consideration the additional submissions made by Shri Dharmadhikari, learned counsel appearing for the petitioners in Misc. Petitions Nos. 281 and 300 of 1962. He first contended that the definition of the word "employer" given in the Central Act could not be adopted with the aid of Section 2 of the Act inasmuch as in the Central Act the word had been defined in relation to scheduled employments in respect of which minimum rates of wages had been fixed under the Central Act; that the minimum rates of wages fixed under the Central Act, before the promulgation of the ordinance, in relation to certain scheduled employments had been struck down by this Court, and that being so, there was no fixation of minimum rates of wages under the Central Act in respect of those employments; arid that, therefore, the definition of the term "employer" given in the Central Act was ineffective for the purposes of the impugned Act, and in the absence of any definition of the term "employer" the Act was unworkable. The argument is fallacious and unsubstantial.

As we have endeavoured to point out earlier, the effect of Section 2 of the Act is to make the definitions of the various expressions given in the Central Act part of the Act itself. That being so, the expression "in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act" occurring in the definition of the term "employer" given in the Central Act must be read, when incorporated in the Act, as meaning "in any scheduled employment in respect of which minimum rates of wages have been fixed under the Act". The words "this Act" would mean the impugned Act and not the Central Act. It would be altogether meaningless and utterly repugnant to the subject or context of the Act to read the definition of the term "employer" in relation to scheduled employments in respect of which minimum rates of wages have been validly fixed under the Central Act.

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It was also argued by Shri Dharmadhikari. that the function of the fixation of minimum rates of wages was not a function of legislative character; that it was in its nature a judicial or a quasi judicial activity; and that, therefore, the State Legislature was not competent to fix the minimum rates of wages. Learned counsel prayed in aid of his argument the observations of the Supreme Court in Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others, with regard to the nature of functions performed by wage boards constituted under the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955. We are unable to accede to this argument. As has been said by the Supreme Court in AIR 1951 SC 332, the essentials of a legislative function are the determination of the legislative policy and its formulation as a rule of conduct. It is open to the legislature to provide for every detail for working out the law made and for carrying the enactment into operation and effect or to leave these details to a subordinate agency. The judicial power and function is concerned with ascertainment, declaration and enforcement of the rights and liabilities of the parties as they exist or deem to exist under any law. In The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees'' Union, Delhi, the definition given by Griffith, C. J., in Huddart Parker and Co. v. Moorehead 1909 8 CLR 330 was approved as the best definition so far given of the ''judicial power''. Griffith, C. J., defined ''judicial power'' thus -

"The words ''judicial power'' ..... mean the power which every sovereign authority must of necessity have to decide controversies between its subjects, or between itself and its subjects, whether the rights relate to life, liberty or property. The exercise of this power does not begin until some tribunal which has power to give a binding and authoritative decision (whether subject to appeal or not) is called upon to take action."

In Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others, , the Supreme Court referred to Cooley''s Constitutional Limitations (8th Edn., Vol. 1, at page 185), Prentis v. Atlantic Coast Line Co., Ltd., (1908) 53 Law Ed 150 and Australian Boot Trade Employees Federation v. Whybrow and Co. 1910 10 CLR 266, and quoted with approval the relevant passages therefrom bringing out the distinction between a legislative and a judicial function. Here, it would be sufficient to reproduce the relevant passage from Cooley''s Constitutional Limitations -

"..... a marked difference exists between the employment of judicial and legislative tribunals. The former decide upon the legality of claims and conduct, and the latter make rules upon which, in connection with the constitution, those decisions should be founded. It is the province of Judges to determine what is the law upon existing cases. In fine, the law is applied by one, and made by the other. To do the first, therefore, -- to compare, the claims of parties with the law of the land before established -- is in its nature judicial act. But to do the last -- to pass new rules for the regulation of new controversies -- is in its nature a

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legislative act; and if these rules interfere with the past, or the present and do not look wholly to the future, they violate the definition of a law as ''a rule of civil conduct'', because no rule of conduct can with consistency operate upon what occurred before the rule itself was promulgated."

In our opinion, it cannot be argued with any degree of force that the purpose and end of the Act is to investigate, declare and enforce liabilities under any law supposed to be already existing. It only prescribes a rule of conduct when it fixes minimum rates of wages in certain employments. In enacting the legislation, the Legislature has not attempted to exercise any judicial power. It has only discharged a function of legislative character. There is no analogy between the nature of the functions performed by wage boards constituted under the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955, and the functions discharged by the State Legislature in placing the Act on the statute book, and the observation of the Supreme Court in the case of Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others, , that it is impossible to state that "the functions performed by the wage boards are necessarily of a legislative character'''' is of no assistance to the petitioners.

Lastly it was urged by Shri Dharmadhikari that the Act fixed two rates of minimum wages for drivers and conductors employed in motor transport. The objection is devoid of any substance. According to the Table appended to the Act, the minimum rate of wages for drivers is Rs. 90/- p, m. and for conductors it is Rs. 80/-p. m. These rates are inclusive of mileage allowance but exclusive of other allowances. The Table also prescribes the minimum rates of wages for drivers and conductors which include clearness allowance but exclude mi''.eage allowance. There is no contradiction between the rates of minimum wages which include mileage allowance and exclude other allowances and which exclude mileage allowance, but include dearness allowance. The effect of the rates prescribed is that the driver must get at least Rs. 75/- p. m. including dearness allowance but excluding mileage allowance and at least Rs. 90/-p. m. including mileage allowance and excluding other allowances. Likewise, the conductor must get at least Rs. 65/- p. m. excluding mileage allowance but including dearness allowance, and Rs. 80/- p. m. including mileage allowance. It cannot be said of these rates that they are vague, uncertain, mutually destructive of each other, and incapable of being given effect to.

For the foregoing reasons, the petitioners'' attack on the validity of the Madhya Pradesh Minimum Wages Fixation Act, 1962, must fail. Our conclusion is that the Act is a valid piece of legislation. The result is that all these petitions are dismissed with costs of the respondents. Counsel''s fee in each case is fixed at Rs. 200/-. The outstanding amount of security deposit, if any after deduction of costs shall be refunded to the petitioners.

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