
(1962) 12 GAU CK 0004

In the Gauhati High Court

Case No : First Appeals No's. 16, 17, 18 and 19 of 1957

Pabbojan Tea Co. Ltd. and Others

APPELLANT

Vs

Deputy Commissioner and Others

RESPONDENT

Date of Decision : 07-12-1962

Acts Referred:

Assam Minimum Wages Rules, 1952 — Rule 27, 29
Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 226, 227
Minimum Wages (Central) Rules, 1950 — Rule 24
Minimum Wages Act, 1948 — Section 20(2), 4(1), 5, 5(1), 5(2)

Citation : (1962) 12 GAU CK 0004

Hon'ble Judges : G. Mehrotra, C.J.; S.K. Dutta, J; C.S. Nayudu, J

Bench : Full Bench

Advocate : P.K. Goswami and S.R. Khaund, for the Appellant; R.K. Goswami, Sr. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

G. Mehrotra, C.J.—These four appeals raise common questions of law and facts and one judgment will cover all these four appeals. These appeals have been filed on behalf of the Plaintiffs. Plaintiff-Appellants are four tea companies. Defendant No. 1 is the Deputy Commissioner, Lakhimpur, Dibrugarh and is the authority under the Minimum Wages Act, Defendant No. 2 is the Government Labour Officer, Dibrugarh and Defendants Nos. 3, 4 and 5 are the garden labourers who have been sued in their representative capacity. The Plaintiffs have claimed a declaration that the orders passed by the Defendant No. 1 dated the 2nd June 1954 are void, illegal and ultra vires and without jurisdiction and are not binding on the Plaintiffs. A further declaration is claimed that the Defendants Nos. 3 to 5 and similar other sub-normal workers are not entitled to full minimum wages without performing a normal day's task or without working the prescribed number of hours. A perpetual injunction is claimed against Defendant No. 1 restraining him from enforcing the order dated the 2nd June

1954.

The Government of Assam by notification dated the nth March 1952 fixed minimum wages under the Minimum Wages Act and directed the said wages to be payable to employees under the tea plantations with effect from the 30th March 1952. On the 16th April 1952 the Government published the Minimum Wages Rules which fixed the number of hours in the case of adults for a normal working day to nine hours per day subject to a maximum of 48 hours. On the complaint of Defendant No. 2 who is an Inspector appointed under the Minimum Wages Act, Defendant No. 1 issued notice on Plaintiffs calling upon them to pay the outstanding amount of wages and to show cause why prosecution should not be sanctioned against them for violation of the Minimum Wages Act. Objections were tiled to the said notice and thereafter Defendant No. 1 by his orders dated the 2nd June 1954, directed the Plaintiffs to pay the difference of the full minimum wages and the amount actually paid at the rate of Rs 1-4-0 per day for male workers and that of Rs. 10/12/- per day for 43 female workers. The, said order directed payment of the difference between the full mini-mum wages as prescribed under the notification dated the nth March 1952 and the amount actually paid. The order of the Defendant No. 1 dated the 2nd June 1954 is impugned on the ground that it is without jurisdiction. It is urged that without working for full day the sub-normal labour are not entitled to full wages fixed under the Minimum Wages Act.

2. The suit was contested both on questions of fact and law. The Defendants' case was that the suit is not maintainable and that the order of the Defendant No. 1 was valid in law and was. not without jurisdiction.

3. The trial Court framed the following issues:

1. Is the order of the Deputy Commissioner, Lakhimpur, dated 2nd June 1954 void, illegal, wrong, and ultra vires?
2. Had the Deputy Commissioner, jurisdiction to direct payment of full wages to sub-normal-" workers and treat them as normal workers?
3. Is the order of the Deputy Commissioner against the principles of natural justice and so-bad in law?
4. Is the claim of Defendant No. 2, barred" under 1st proviso of Section 20(2) of the Minimum Wages Act"
5. Is the suit maintainable in law?
6. Is the suit barred under the provisions of the Minimum Wages Act?
7. Has the Court jurisdiction to try the suit?
8. Is the suit bad for non-joinder of the State Government and the Union of India?
9. Is there any cause of action for the suit?

10. Is the notice u/s 80, CPC Code, legally valid?

11. Is the Plaintiff entitled to a declaration and-, in a perpetual injunction as prayed for?

12. To what relief, if any, is the Plaintiff entitled?

Dealing with the issue No. 2 the trial Court has held that the authority constituted under the Minimum Wages Act held the view that these-letter chalan labour (sub-normal labour) come under the category of normal labour and as such are entitled to minimum wages. His views may be right or they may be wrong but it cannot be said that he acted beyond the scope of his authority. Finality attaches to these orders, however wrong they may be on merits or on grounds of policy. Thus the trial Court decided issues Nos. 1 and 2 against the Plaintiffs. In short the decision of the Court below is that the Minimum Wages authority had jurisdiction to decide the matter and" the order is not without jurisdiction. The decision of the Court below is assailed in appeal.

4. The notification dated the nth March,. 1952 is marked Ext. 24 and is as follows:

The 11th March 1952.

No. GLR.352/51/56.- In exercise of the powers conferred by Section 3, read with Sub-section (2)" of Section 5 of the Minimum Wages Act, 1948 (XI of 1948), as amended, the Governor of Assam, having-considered the advice of the Committee appointed?" under Clause (a) of Sub-section (1) of Section 5 of the said Act, is pleased to fix minimum wages, which will come into force with effect from the 30th March 1952, consisting of basic wages and Dear-cess allowance in terms of Clause (i) of Sub-section (1) of Section 4 of the said Act, at the rates as specified in the schedule hereto annexed payable to employees employed in Tea Plantations in the different districts of Assam.

SCHEDULE 1. Ordinary Unskilled Labour.

Adult Male (16 years and above) Adult Female (16 years and above)
Working Children (Below 16 years and above 12 years)

Basic wages Dearness 1 Allow- ance Total Basic wages Dearness Allowance Total
Basic wages Dearness 1 Allowance Total

1. Kamrup Nowgong & Lakhimpur. 2. Best of Assam Val- ley. S. Cachar. (Per day)
Bs. a. p. 0-12-0 0-12-0 0-10-0 (per day) Rs. a. p. 0-5-0 0-6-0 | 0-5-0 (per day)
Rs. a. p. 1-1-0 1-2-0 0-15-0 (per day) Rs. a. p. 0-11-0 0-11-0 0-9-0 (per day)
Rs. a. p. 0-5-0 0-5-0 0-5-0 (per day) Rs. a. p. 1-0.0 1.0-0 0-14-0 (per day) Rs.
a. p. 0-6 0 0-6.0 0-6-0 (per day) Rs- a. p. 0-2-6 0-2-6 0-2-6 (per day) Rs. a.p.
0-8-8 0-8-8 0-8.6

2. Staff and Artisans. (Basic Wage) Dearness Allowance. Staff Rs. 60 per month 50 per cent with a minimum of Rs. 30 per month. Artisans Rs. 50 per

month 50 per cent with a minimum of Rs. 30 per month. S. K. Mallick, Secretary to the Government of Assam Labour Department, Shillong.

5. The main question to be considered is the maintainability of the present suit in the civil Court. I have already set out the reliefs claimed by the Petitioner. It is a suit for declaration that the order of the authority constituted under the Minimum Wages Act directing the Plaintiffs to pay certain amounts as arrears of minimum wages to the labourers is ultra vires. In effect the relief is that the labourers are entitled to contractual wages and are not entitled to claim benefit of the notification issued by the Government fixing the minimum wages of the workers of the industry concerned. Section 9 of the CPC lays down that the Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. The section thus gives jurisdiction to Courts to try all suits of the civil nature and the first essential condition for the applicability of the section is that the suit must be of a civil nature. If the suit is of a civil nature, unless its cognizance is expressly or impliedly barred, the civil Court will have jurisdiction to try it. As I have already pointed out the pre- sent suit is in effect for a declaration that the workers are entitled to contractual rate of wages sand thus the suit is essentially of a civil nature.

6. In order to ascertain the question whether the jurisdiction of civil Courts is expressly or (2) These rates are exclusive of concessions enjoyed by the workers in respect of supplies of food-stuffs and other essential commodities and other amenities which will continue unaffected. The existing tasks and hours of work may continue until further orders. piled barred by the provisions of the Minimum Wages Act, the scheme and the provisions of the Minimum Wages Act will have to be examined. Ordinarily the civil Courts are entitled to determine all civil matters and the legislation that ousts jurisdiction of the civil Court has to be very carefully examined. If. a right is created under a special statute, any remedy for the infringement of that right is ordinarily to be sought under the provisions of the special Act. If however, the right itself is not a creation of the special statute, it will have to be determined from the examination of the provisions of the statute as to what are the extent and the ambit of the power of the special tribunal to deal with the matter in question before the civil Court. As stated by Lord Esher, M.R. in R. v. Commissioner for Special Purposes of the Income Tax, (1888) 21 QBD 313 319:

When an inferior Ct. or tribunal or body. which has to exercise the power of deciding facts, is first established by Act of Parliament, the Legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them conclusively to decide whether that state of facts exist and if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction.

But there is another state of things which may exist. The Legislature may intrust the tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or do something more. When the Legislatures are establishing such a tribunal or body with limited jurisdiction, they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. In the second of the two cases I have mentioned it is an erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the Legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends; and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction.

On the same lines are the following observations of Sri James Colville in *Colonial Bank of Australia v. William*, (1874) 15 RPC 417 at p. 443: (43 TJPC 39): .

Accordingly, the authorities...establish that an adjudication by a Judge having jurisdiction over the subject-matter is, if no defects appear on the face of it, to be taken as conclusive of the facts stated therein; and that the Court of Queen's Bench will not on certiorari quash such an adjudication on the ground that any such fact, however, essential, has been erroneously found.

The above observations of Lord Esher M.R. have been quoted with approval by their Lordships of the Supreme Court in the case of *Chaube Jagdish Prasad and Another Vs. Ganga Prasad Chaturvedi*, Their Lordships of the Supreme Court further observed in this case at page 497 as follows:

These observations which relate to inferior Courts or tribunals with limited jurisdiction show that there are two classes of cases dealing with the power of such a tribunal (1) where the legislature entrusts a tribunal with the jurisdiction including the jurisdiction to determine whether the preliminary state of facts on which the exercise of its jurisdiction depends exists and (2) where the legislature confers jurisdiction on such tribunals to proceed in a case where a certain state of facts exists or is shown to exist. The difference is that in the former case the tribunal has power to determine the facts giving it jurisdiction and in the latter case it has only to see that a certain state of facts exists.

7. The provisions of the Minimum Wages Act hereinafter called "the Act") may be conveniently examined at this stage. The preamble of the Act provides that this legislation has been enacted to provide for fixing minimum rates of wages in certain employments. "Wages" has been defined u/s 2(h) of the Act meaning all remuneration. capable of being expressed - in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment. The word "employee" u/s 2(i) means any person who is

employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed. It also includes an employee declared "to be an employee by the appropriate Government. Section 3(1) gives power to the appropriate Government in the manner herein provided

(a) to fix the minimum rates of wages payable to employees employed:

(i) in the employment specified in Part I of the Schedule at the commencement of this Act, before 31st day of December 1954;

(ii) in an employment specified in Part II of the Schedule at the commencement of this Act, before the 31st day of December, 1954. The proviso to this section gives power to the appropriate Government to fix such rates for a part of State or for any specified class or classes of such employment in the whole State or part thereof. It also gives power to the appropriate Government to review at intervals the minimum rates of wages so fixed.

Section 3(1A) gives power to the appropriate Government to refrain from fixing minimum rates of wages in respect of scheduled employment. Sub-section (2) of Section 3 provides that the appropriate Government may fix:

(a) a minimum rate of wages for time-work (hereinafter referred to as "a minimum time-rate");

(b) a minimum rate of wages for piece work (hereinafter referred to as "a minimum piece-rate");

(c) a minimum rate of remuneration to apply in the case of employees employed on piece-work for the purpose of securing to such employees a minimum rate of wages on a time work basis (hereinafter referred to as "a guaranteed time-rate").

(d) a minimum rate (whether a time-rate or a piece-rate) to apply in substitution for the minimum rate which would otherwise be applicable, in respect of overtime work done by employees (hereinafter referred to as "overtime rate"). Section 3(3) provides as follows:

In fixing or revising minimum rates of wages under this section,-

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

(i) different scheduled employments;

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

(iii) adults, adolescents, children and apprentices;

(iv) different localities;

(b) minimum rates of wages may be" fixed by the hour, by the day or by any larger wage-period as may be prescribed:

Section 5 lays down the procedure for fixing the minimum wages. Section 12 enjoins upon the employer to pay to every employee engaged in a scheduled employment under him wages at a rate not less than the minimum rate of wages fixed by such notification for that class of employees in that employment without any deductions except as may be authorized within such time and subject to such conditions as may be prescribed. Section 13 gives power to the appropriate Government to fix the number of hours for work which shall constitute a normal working day, inclusive of one or more specified intervals, in regard to any scheduled employment minimum rates of wages in respect of which have been fixed under this Act. Rule 24 of the Minimum Wages (Central) Rules, 1950 provides that the number of hours which constitute a normal working day shall be in the case of adult, nine hours and in case of child, four and a half hours. Section 14 provides for overtime payment and Section 15 provides as follows:

If an employee whose minimum rate of wages has been fixed under this Act by the day works on any day on which he was employed for a period less than the requisite number of hours constituting a normal working day, he shall, save as otherwise hereinafter provided, be entitled to receive wages in respect of work done by him on that day as if he had worked for a full normal working day:

Provided, however, that he shall not be entitled to receive wages for a full normal working day:

- (i) in any case where his failure to work is caused by his unwillingness to work and not by the omission of the employer to provide him with work, and
- (ii) in such other cases and circumstances as may be prescribed.

Section 20 which is another relevant section, reads as follows:

20. (1) The appropriate Government may, by notification in the official Gazette, appoint any Commissioner for Workmen's Compensation or other officer with experience as a Judge of a civil Court or as a stipendiary Magistrate to be the Authority to hear and decide for any specified area all claims arising out of payment of less than the minimum rates of wages to employees employed or paid in that area.

(2) Where an employee is paid less than the minimum rates of wages fixed for his class of work under this Act, the employee himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any inspector, or any person acting with the permission of the Authority appointed under Sub-section (1), may apply to such Authority for a direction under Sub-section (3):

Provided that every such application shall be presented within six months from the date on which the minimum wages became payable:

Provided further that any application may be admitted after the said period of six months when the applicant satisfies the Authority that he had sufficient cause for

not making the application within such period.

3. When any application under Sub-section (2) is entertained, the Authority shall hear the applicant and the employer or give them an opportunity of being heard, and after such further inquiry if any as it may consider necessary, may, without prejudice to any other penalty to which the employer may be liable under this Act, direct the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid, together with the payment of such compensation as the Authority may think fit, not exceeding ten times the amount of such excess and the Authority, may direct payment of such compensation in cases where the excess is paid by the employer to the employee before the disposal of the application.

4. If the Authority hearing any application under this section is satisfied that it was either malicious or vexatious, it may direct that the penalty not exceeding fifty rupees be paid to the employer by the person presenting the application.

5. Any amount directed to be paid under this section may be recovered:

(a) if the Authority is a Magistrate, by the Authority as if it were a fine imposed by the Authority as a Magistrate, or

(b) if the Authority is not a Magistrate, by any Magistrate to whom the Authority makes application in this behalf, as if it were a fine imposed by such Magistrate.

6. Every direction of the Authority under this section shall be final.

7. Every Authority appointed under Sub-section (1) shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (V of 1908) for the purpose of taking evidence and of enforcing the attendance of, witnesses and compelling the production of documents, and every such Authority shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (V of 1898).

Section 22 provides for the penalties for breach of any order made u/s 13. Section 24 provides that -

No Court shall entertain any suit for the recovery of wages in so far as the sum so claimed -

(a) forms the subject for an application u/s 20 which has been presented by or on behalf of the Plaintiff, or

(b) has formed the subject of a direction under that section in favour of the Plaintiff, or

(c) has been adjudged in any proceeding under that section not to be due to the Plaintiff, or

(d) could have been recovered by an application under that section.

Section 25 provides that-

Any contract or agreement, whether made before or after the commencement of this Act, whereby an employee either relinquishes or reduces his right to a minimum rate of wages or any privilege or concession according to him under this Act shall be null and void in so far as it purports to reduce the minimum rate of wages fixed under this Act.

Section 26 gives power to the appropriate Government to direct that the provisions of this Act shall not apply in relation to the wages payable to disabled employees. Section 27 gives power to the State Government to add to the Schedule. The Schedule, Part I, item 4 deals with employment in any plantation, that is to say, any estate which is maintained for the purpose of growing cinchona, rubber, tea or coffee.

8. The Plaintiffs tea estates therefore, come within the Schedule Part I, item 4 attached to the Act and the minimum wages in respect of the said employment could be fixed by the appropriate Government by a notification issued under the Act. There is an obligation on the employer to pay the employees of the said employment the minimum wages fixed under the notification. If the minimum wages are not paid, the employer is liable to be prosecuted and further the employee is entitled to apply for a direction before the Authority constituted under the Act for payment of the minimum wages due. under the notification. The direction given by the authority under the Act is to be final. In the present case any direction thus issued by the authority u/s 20 has been given finality under the Act. Section 25 also abrogates any contract which reduces the right of an employee to get minimum rates of wages. Section 24 also bars any suit for the recovery of the wages and the employee in order to recover the amount of wages has to resort to the remedy provided for u/s 20. It is therefore clear that the purpose of the Act is to fix minimum wages in order to maintain the industrial peace and to prevent exploitation of labour.

9. As has been pointed out by their Lordships of the Supreme Court in the case of U. Unichoyi and Others Vs. The State of Kerala,

In an under-developed country which face? 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 labour need not be considered. What is being prescribed is minimum wage rates which a welfare State assumes every employer must pay before he employs labour.

10. AS I have already indicated, the suit in effect is for a declaration that the employees are only entitled to the wages on the basis of the contract. Section 25 says that any contract or agreement whereby an employee either relinquishes or reduces his right to a minimum rate of wages or any privilege or concession accruing to him under this Act shall be null and void in so far as it purports to

reduce the minimum rate of wage fixed under this Act.

11. Reliance is placed by the State on the case of *Rai Brij Raj Krishna and Another Vs. S.K. Shaw and Brothers*, The facts in this case were that a suit was brought by the landlords for ejectment of the tenant on the ground that there was non-payment of rent. An application to this effect was made u/s II (I) (A) of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 to the House Controller. The tenant had attempted to pay the rent and ultimately when the money order sent by him was not accepted he deposited the rent in the office of the Controller. In spite of the deposit the House Controller ordered the eviction of the tenant on the ground of non payment of rent.

This order was upheld on appeal by the Commissioner and thereafter the tenant brought a suit for a declaration that the order of the Controller was illegal and without jurisdiction. The suit was dismissed by the Munsiff but the decree was ultimately reversed by the High Court. The matter came up before the Supreme Court and it was held by the Supreme Court that the House Controller had jurisdiction to decide conclusively whether the condition precedent for the application of Section II did or did not exist and as such the decision of the House Controller cannot be said to be without jurisdiction and the suit for setting aside that order was not maintainable. After quoting the observations of Lord Esher, M. R. in (1888) 21 QBD 313 referred to by me earlier, their Lordships of the Supreme Court held as follows:

There can be no doubt that the present case falls within the second category mentioned by Lord Esher, because here the Act has entrusted the Controller with a jurisdiction, which includes the jurisdiction to determine whether there is nonpayment of rent or not, as well as the jurisdiction, on finding that there is non-payment of rent, to order eviction of a tenant. Therefore, even if the Controller may be assumed to have wrongly decided the question of non-payment of rent, which by no means is clear, his order cannot be questioned in a Civil Court.

Dealing with the question in connection with the powers of the High Court to issue a writ of certiorari under Article 226 of the Constitution the Supreme Court in the case of *Ebrahim Aboobakar v. Custodian General of Evacuee Property, New Delhi*, AIR 1952 SC 319 took the same view and approved the observations of Lord Esher, M. R. above referred to.

12. The counsel for the Appellants refers to the case of *Secretary of State v. Mask and Co.*, AIR 1940 PC 105 and has relied upon the following passage at page no of the report:

It is settled law that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. . It is also well settled that even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in

conformity with the fundamental principles of judicial procedure. Many of the cases referred to in the judgments below are of this nature and are not relevant to the present case.

The facts were that a suit was brought by a firm of merchants in Madras for recovery of a certain amount of money against the Customs Department on the allegation that the amount was illegally collected from them by levying duty upon a tariff value of Rs. 23 per cwt. upon 1000 bags and of Rs. 16 per cwt. upon the remainder. The question raised was that the Civil Court had no jurisdiction to set aside the order of the customs authorities as it was validly passed under the provisions of the Sea Customs Act and the authority was competent to pass such an order. On the merits of the case their Lordships held that by Sections 188 and 191 of the Sea Customs Act a precise and self-contained code of appeal is provided in regard to obligations which are created by the statute itself and it enables the appeal to be carried to the Government and under those circumstances the Privy Council held that there was by implication an exclusion of the jurisdiction of the Civil Court-to set-aside the order. The suit was thus dismissed. It is therefore, clear that the provisions of the Act will have to be examined to find out if the jurisdiction of the Civil Court can be said to be barred by implication. In my opinion therefore, the Civil Court's jurisdiction is barred in respect of the matters which the authority constituted under the Act was entrusted to conclusively determine u/s 20 of the Act.

13. A brief analysis of Section 20 of the Act will show that if an employee is paid less than the minimum rates of wages fixed for his class of work under this Act,, the employee has a right to apply u/s 20 for a direction to the employer to pay him the deficient amount. After the application has been made under Sub-section (3), the authority appointed under the Act has to hear the applicant and the employer and give them an opportunity of being heard. After making further inquiry if the authority considers it necessary it may direct the payment to the employee of the amount by which the minimum wages payable to him exceeded the amount actually paid. An authority appointed under the Act has all the powers of the Civil Court for the purpose of taking evidence and enforcing the attendance of witnesses. The facts on which the jurisdiction of the authority depends is the fixation of the minimum rates of wages for the class of work under the provisions of the Act. The question therefore, whether the minimum wage of the applicant has or has not been fixed under the notification is a jurisdictional fact and any decision by the tribunal on this question cannot be held to be final. The jurisdiction of the Civil Court is thus not barred to examine the correctness or otherwise of the decision of the authority on this point. The authority though - constituted under the Act, has not been given power to conclusively determine the existence or non-existence of conditions on which the authority depends. Once however, it is accepted that the notification fixes the minimum wage of the class of employees to which the Petitioners belong, the question as to what amount was payable to the employees and what is the extent of deficiency are matters which are left to the authority appointed under

the Act. Any decision by the authority on those points will be final and not examinable by the Civil Court.

The decision of the authority thus, cannot be attacked before the Civil Court on the grounds which were within the exclusive jurisdiction of the authority appointed under the Act. It should be pointed out that the contention of the Appellants is not that the notification issued by the Government was ultra vires of the powers of the Government. It is not urged that the notification does beyond the powers conferred upon the Government under Sections 3 and 5 of the Act. That being so, the only question which requires consideration is how far on the terms and language of the notification it applies to the so-called sub-normal labour.

14. The first contention of the Appellants is that the authority had no jurisdiction to decide whether the notification applies to the sub-normal workers or not and as the authority has decided that the notification applies to the Lettera chalan workers the decision is without jurisdiction and can be set aside by the Civil Court. There is no bar to the authority. appointed under the Act to go into the question" of the applicability of the notification to the sub-normal labour. It was open to the authority to have proceeded with the merits of the application and before the Civil Court it was. open to the employers to show that the assumption of jurisdiction by the authority was in correct. If however the authority has given a decision on that point and not assumed jurisdiction on the assumption that the condition precedent exists in fact, the decision of the authority is examinable by the Civil Court. If the Civil Court independently comes to the conclusion that the decision of the authority was correct, it cannot hold that the decision was without jurisdiction, merely because the authority decided the matter.

Moreover it appears from the order of the authority that the point was raised by the employers themselves. It is thus not open for them now to say that the decision of the authority is without jurisdiction. The point may be examined from another aspect. Any decision made by the authority with regard to the conditions on the existence of which its jurisdiction depends, will not necessarily render the decision on merits without jurisdiction. The facts whether his decision on merits is without jurisdiction or not will itself depend upon the decision by the Civil Court itself as to the correctness or otherwise of the facts on the existence of which the jurisdiction of the authority depends.

15. It was next contended that on the interpretation of the notification itself, it does not apply to the sub-normal workers. I have already quoted the notification in the earlier part of my judgment. The opening words of the notification show that the Government purports to fix the minimum wages payable to all the employees employed in the tea plantations in the different districts of Assam. The generality of the word "employees" has only been limited by the words "ordinary unskilled labour in the schedule. Reading the schedule and the first paragraph of the notification together, it is clear that the notification purports to fix the minimum wages of unskilled labour of the industry. The only class to

which the notification has been made applicable is the unskilled labour employed in a particular industry. The notification does not create any class of sub-normal workers. The power to fix minimum wages of a particular class is given to the Government and for the purposes of fixation of minimum wages it is open to the Government to classify labour. Having classified the labour as skilled and unskilled labour, it is not open to the employer to further sub-divide the unskilled labour and create a different class according to his own choice. Merely because under a contract the sub-normal workers agreed to work for less hours on payment of less wages, it does not mean that they formed a distinct class by themselves just different from the class whose minimum wages have been fixed under the notification.

If the argument of the Appellants is accepted, the result may be that factually if some of the ordinary workers work only for three or four hours a day, such workers as soon as they start working for less than nine hours a day, form a class distinct from the one for which the minimum wages have been fixed. If that argument is accepted, Section 15 of the Act becomes redundant.

16. u/s 15 an employee whose minimum rate of wages has been fixed under the Act by the day, works on any day on which he was employed for a period less than the requisite number of hours constituting a normal working day, shall be entitled to receive wages in respect of the work done by him on that day as if he had worked for a full normal working day. The proviso however lays down that under certain circumstances he shall not be entitled to get full wages if he works for less than the normal working day. This section is attracted only if the minimum wages have been fixed. If the matter comes up before the authority constituted under the Act it may have to determine as to what actual amount of wages the employee is entitled to get and the wages will have to be calculated having regard to the provisions of Section 15. If however, the argument of the Appellants is accepted and a worker who works for less than the normal working day is taken out of the ambit and scope of the notification, then Section 15 becomes redundant. The object underlying Section 15 will (sic) (not) be achieved by the employer by treating such employees as a class by themselves.

17. It was very strenuously urged that the contention of the Appellants that the Lettera-chalan formed a distinct class by themselves has been accepted by the Deputy Commissioner himself and as such it is not open to the Respondents to say that they are included in the class of which the minimum wages have been fixed under the notification. In my opinion on the proper reading of the order of the Deputy Commissioner it cannot be said that he recognised Lettera chalan as a separate class not included in the class of workers whose minimum wages have been fixed under the notification. What the Deputy Commissioner means is that even though having regard to the nature of the work which they do, having regard to their age, infirmity, physical defect etc. and having regard to the terms of their contract they may have been differentiated from the other unskilled employees of the concern, yet none the less the Minimum Wages Act or the

notification does not make any such distinction. Mr. A.F. Ward witness No. 2 for the Plaintiff in Title Suit No. 13, the Manager of Dhoedam Tea Estate has said in his cross examination that they have introduced the nomenclature - "Letra Chalan".

18. In the case of a disabled employee section 26 gives power to the appropriate Government to direct that the provisions of the Act shall not apply in relation to the wages payable to such an employee. No such notification has been issued in the present case. Unless it can be said that the notification does not apply to the Lettera challan labour it cannot be said that the decision of the Deputy Commissioner was without jurisdiction.

19. It was contended that the words "employees employed in Tea Plantations in the different districts of Assam" occurring in the notification and the words "ordinary unskilled labour" occurring in the schedule to the notification should be given a limited meaning. The notification only fixes the minimum wages of such unskilled labour as is employed under the contract that they will work for the whole day. Persons who are employed on specific term that they will work for less than the whole day, are not covered by the notification. It is contended that the wages must have a correlation with the task and hours of work. It is also contended that the Act only gives power to the Government to fix the minimum wages but it does not give power to the Government to affect the contract between the employer and the employee in any other matter.

20. It is necessary to examine the authorities cited by the Appellants' counsel in support of his proposition. Reliance was placed first on the case of A.M. Allison Vs. B.L. Sen, The above case also arose out of the dispute with reference to the notification of the 1st March 1952 which is the notification in question before us. The facts of that case were that prior to the fixation of the basic wages as aforesaid the labourers engaged in plucking tea leaves in these tea estates used to be paid basic wages for males labourers at as. 8 per day for plucking 16 seers of green leaves and for female labourers at as. 8 per day for plucking 12 seers of green leaves. If the labourers plucked larger quantities of green leaves they used to be paid by way of extra wages at the rate of 0 ps. per seer in excess of 16 seers and 12 seers respectively. The payment of basic wages on the above computation also worked out at the rate of 6 ps. per seer of green leaves plucked by the labourers.

After the fixation of the minimum wages by the notification, the managers of the tea estates continued to pay to the labourers wages at the rate of 6 ps. per seer of green leaves plucked by them. They refused to pay any extra amount unless the green leaves plucked by them exceeded 24 seers and 22 seers respectively. The workers on these facts filed a petition before the Deputy Commissioner u/s 20(2) of the Act, asking for a direction to the employers to pay them at the rate of the minimum wages fixed under the notification for the workload of 16 seers for the male and 12 seers for the female labourers per day and for the additional plucking done by them, they claimed 6 pies per seer extra. The

Management contested the petition on two grounds - firstly that the petition as framed was not maintainable u/s 20 of the Act and secondly that there was no fixed workload or task in respect of plucking for earning"; daily basic wages before the introduction of the minimum wages.

The Deputy Commissioner, Sibsagar repelled the contention raised by the Management and issued directions in accordance with the prayer of the labourers. Thereafter applications under Article 226 of the Constitution were filed by, the Management before this Court. This Court dismissed" these applications and the appeals against the decision of this Court came up before the Supreme-Court, The two contentions were reiterated before the Supreme Court. It was contended firstly that" under the notification only minimum time rate was fixed and thus the labourers were to be paid the basic wages mentioned in the schedule attached to the notification, regardless of their outturn of work

It was held by their Lordships of the Supreme Court that the wages fixed in the notification were correlated to the existing work-load or task and as. 12 for the male labourers and as; n for the female labourers were fixed in regard to the existing work-load or task of 16 seers of tea leaves to be plucked by the male labourers and 12 seers of tea leaves to be plucked by the female labourers. As to the objection that the application was not maintainable u/s 20 the Supreme Court left that" question open and held that both the High Court and the Deputy Commissioner have taken, a substantially correct view and there was no failure of justice. The Supreme Court refrained from interfering with the order of the High Court or the Deputy Commissioner on that ground.

21. Mr. Goswami who appears for the Appellants has relied upon this case for the purpose of showing that the fixation of minimum wages in the notification was not divorced from the existing workload or task. The minimum or basic wages fixed under the notification were according to his contention, correlated to the amount of work. In our opinion these- observations have, no relevance to the interpretation of the notification. The Supreme Court was not dealing with the question as to which class of labourers the notification applied. It was only considering the question whether the notification fixed the wages on a minimum time-rate or the wages were fixed in relation to the existing work-load or task. In effect the decision of the Supreme Court was that when the notification raised the wages of male labourers from annas 8 to annas 12 per day, it did so having regard to the work-load for which they were paid annas 8. For this conclusion the Supreme Court referred to the words "the existing tasks and hours of work may continue" occurring in the notification.

The argument of Mr. Goswami is that in the present case when annas 12 per day were fixed, it should be assumed on the parity of reasoning that they were fixed for the whole day's work. The first answer to this contention is that this interpretation has nothing to do with the class of workers to whom the notification applied and secondly even if it was fixed having regard to the workload or the task that is having regard to the fact that an employee had to work for

the whole day to earn the minimum basic wages, it does not necessarily follow that the notification did not apply to Lettera chalan about . The question whether a Lettera chalan labourer is entitled to full wages even though he works for less than the full day is different from the question whether the notification applies or does not apply to a Lettera chalan labourer That will depend upon the construction of the notification.

22. The next case referred to is Bidi, Bidi leaves and Tobacco Merchants' Association, *Gondia v. State of Bombay (now Maharashtra)*, (1961 62) 21 FIR 331: (AIR 1062 SC 486) In this case the validity of a notification issued by the Government was challenged. By the said notification while fixing the minimum wages for the bidi industry, the Government also laid down the procedure to be adopted to settle disputes between the employer and the employees as to the payment for bidis which are rejected as not being up to the standard. It was held that that part of the notification which fixed the minimum rates of wages was valid but the part of the notification which laid down the procedure for deciding the disputes between the employers and the employees as to the payment for bidis which were rejected as not being up to the standard was invalid. The contention of the Appellants is not that the part of the notification which fixes the minimum wages of Lettera chalan labour is invalid. The contention only is that on the proper interpretation of the notification it does not apply to the Lettera chalan labour. This case thus has no application to the facts of the present case. Reliance is placed on the following observations:

What is the extent of the authority conferred on the Respondent in fixing or revising minimum rates of wages under the relevant provisions of the Act? In dealing with this question we must necessarily bear in mind the definition of the term "wages" prescribed by Section 2 (h). As we have already seen the term "wages" includes remuneration which would, if the terms of the contract of employment, express or implied were fulfilled, be payable to a person employed in respect of his employment. In other words, the term "wages" refers to remuneration payable to the employee as a result of the terms of employment. What would be the amount to which the employee is entitled if the other terms of the contract are performed? That is the question which has to be asked in determining what the term "wages" means u/s 2 (h). No doubt Sections 3, 4 and 5 authorise the appropriate Government to fix the minimum rates of wages. In other words, if the wages fixed by a contract which is either express or implied are found to be low, authority is conferred on the appropriate Government to increase them so as to bring them to the level of what the said Government regards as the minimum wages in the particular scheduled employment in the particular area concerned. This means that power is conferred on the appropriate Government to modify one term of the contract express or implied between the employer and the employee and that is a term which has reference to the payment of wages. If for a certain piece of work done by the employee the employer has agreed to pay him either expressly or by implication a certain amount of wages the appropriate Government can issue a notification and

prescribe that for the said work done under the contract the employer must pay his employee a much higher rate of wages and the higher rate of wages thus prescribed would be deemed to be the minimum rate of wages between the parties.

It would, however, be noticed that in defining "wages" Clause 2 (h) postulates that they would be payable if the other terms of the contract of employment are fulfilled. That is to say, in authorizing the fixation of minimum rates of wages the other terms of the contract of employment have always to be fulfilled. The fulfillment of the other terms of the contract is a condition precedent for the payment of wages as defined u/s 2(h) and it continues to be such a condition precedent even for the payment of the minimum rates of wages fixed and prescribed by the appropriate Government.

This passage in my judgment supports the contention of the Respondents, much less supporting the Appellants. It will be clear from this that the Government can fix by notification the amount of wages which should be paid in substitution of the wages already paid for the same amount of work. In the present case if the notification applied to the Lettera chalan labour, it cannot be said that the Lettera chalan labour is not entitled to the full wages merely because such a labourer works for less than the full day. These observations further show that the contract can be altered by the Government in respect of the wages. In other respects the contract survives and that is precisely what the contention of the Respondents is. It is urged that by notification the minimum wages payable to the employee will be the wages fixed under the notification and as to the amount of task the contract between the Management and the Lettera challan labour survives. On the plain reading thus, of the notification, in our opinion the notification applies to the Lettera chalan labour.

23-24. The next contention raised is that u/s 15 of the Act the Lettera chalan labourer was not entitled to get more than what he was paid for. I have already quoted Section 15. Section 15 is attracted only if the wages of a particular class of employees have been fixed under a, notification issued under the Act. If the notification does not apply to the Lettera chalan labour, then Section 15 is not attracted and the question whether the Lettera chalan labourer is entitled to get full day's wages or not u/s 15 will not arise. If however, it is accepted that the notification applies to Lettera chalan then the question of what amount the Lettera chalan labourer is entitled to in view of the provisions of Section 15 will be a matter within the exclusive jurisdiction of the Deputy Commissioner. The question in effect relates to the nature of direction which the Deputy "Commissioner is empowered to issue under Section. 20 (3). Any decision by the Deputy Commissioner thus is not examinable by the Civil Court. Howsoever erroneous the decision of the Deputy Commissioner be, on this point, it will not render his decision without jurisdiction and the Civil Court is debarred from setting aside the order of the Deputy Commissioner on the ground that his decision on that question is erroneous.

25. It was next contended that Section 15 does not make an employer liable to pay full wages if the employee does not work for full number of hours constituting a normal working day, unless the employee can show that his failure to work was caused by omission of the employer to provide him with work and further that he was willing to work. In the present case the employee has failed to prove these conditions which entitled him to get full wages even though he has not worked for the requisite number of hours constituting a normal working day. In this connection it is further contended that at any rate the Deputy Commissioner should have considered whether proviso (i) to Section 15 was or was not attracted in this case on the facts and his failure to do so was a failure to exercise the jurisdiction vested in him and his decision is liable to be set aside on that ground.

It is urged that the Deputy Commissioner only applied his mind to proviso (ii) of Section 15 only. It is true that the Deputy Commissioner while dealing with the argument of the Management based on Section 15 has observed that under this section Government is to prescribe the cases and circumstances in which an employee employed for a period less than the requisite number of hours constituting a normal working day, shall not be entitled to receive wages for a full normal working day and no such rules appear to have been framed by Government prescribing such cases and circumstances, which shows that he has not considered proviso (i) to Section 15. But this may be due to the fact that the Management did not base its claim on proviso (i) to Section 15. It is urged that when the Management was relying upon Section 15 it was for the Deputy Commissioner to examine the case of the parties having regard to both the provisos of the section and not to proviso (ii) only. We do not think that this contention is sound.

The Management as it appears from the proceedings before the Deputy Commissioner, based its claim entirely on the ground that the Lettera chalan formed a distinct class of labourers who do not come within the ambit of the notification. That being the contention they could not have relied and they did not rely on proviso (i). The question of unwillingness on the part of the labourers and the omission of the employer to provide them with work does not arise on the admitted case of the parties, The case could only come under proviso (ii) and thus it cannot be argued that the Deputy Commissioner failed to exercise the jurisdiction vested in him by Section 15; nor can it be said that any such omission on his part makes his decision without jurisdiction, so as to take away the finality attached to his decision u/s 20(6).

26. It is not necessary in this view of the matter to examine the question of burden of proof! argued before us by the counsel for the Appellants. Prima facie Section 15 does not say that the worker will not be entitled to full wages unless he works for the requisite number of hours constituting a normal working day. Normally he is entitled to the full day's wages even though he does not work for requisite number of hours constituting a normal working day. It is in certain

exceptional circumstances that he is not entitled to get the full wages and those circumstances are enumerated in the proviso. If the Management wants to take, benefit of the proviso and contends that his case is covered by the proviso and thus the worker is not entitled to receive full wages, it is up to the Management to prove that those conditions exist and not for the employee to show that those, conditions do not exist. Moreover under the proviso he is not entitled to receive wages if the failure to work is caused by his unwillingness and not by the omission of the employer to provide him with the work. Even if it is assumed that there was no omission on the part of the employer to provide him with the work, it cannot be inferred from that that there was unwillingness on the part of the labourer to work for the whole day.

As I have already observed, the case, was fought on the ground that the Lettera chalan labour forms a distinct class from its very nature of contract and from the very nature of the class to which they belonged, they were not entitled to full wages even though otherwise they may come under the notification. Such a case would only fall under proviso (ii) and the Deputy Commissioner was not called upon to go into the facts which would attract proviso (i). In our opinion therefore, considering it from any aspect of the matter it cannot be said that the decision of the Deputy Commissioner was without jurisdiction as he has erroneously interpreted Section 15 or that he has failed to apply his mind to all aspects of Section 15.

27. The next point urged was that the order of the Deputy Commissioner does not come within the ambit and scope of the provisions of Section 20. Sub-section (2) of Section 20 gives power to an employee who is paid less than the minimum rate of wages to apply to the authority for a direction under Sub-section (3). It also gives power to any Inspector to make such an application. In the present case the application was made by the labour officer. It cannot therefore, be said that the application was not in a proper form and by a competent person. Sub-section (3) gives power to the authority after hearing the parties and making such inquiry as it deems proper to issue a direction to the employer to pay the employee the amount by which the minimum wages payable to him exceeds the amount actually paid. Unless it can be said that the direction issued by the Deputy Commissioner is beyond the ambit of Sub-section (3) it cannot be said that it is without jurisdiction.

28. The direction issued by the Deputy Commissioner is in the following terms:

I therefore, direct that the garden should pay the difference of the full minimum wages and the amount actually paid as follows together with compensation three times the amount payable to each worker.

No. of Difference to be paid by the garden workers. per day. Male 10 Rs. 1-14-0
Female 43 Rs. 10-12-0

The management has contended that the Lettera chalan workers as such are not" entitled to the minimum wages fixed under the notification. There was no

dispute as to the number of the workers who if it was found that the notification applied to Lettera chalan, were entitled to get minimum wages fixed under the said notification. The Labour Officer had applied on behalf of all the Letter: ". chalan workers. Even in the present suit all the workers have not been impleaded as parties. Only some have been impleaded in their representative capacity.

It is therefore, difficult to accept the contention of the Appellants that the direction issued by the Deputy Commissioner goes beyond the provisions of Section 20 (3). In this connection it was also urged that the Deputy Commissioner had no jurisdiction to say that although the Lettera chalan formed a distinct class by themselves as they worked for less than the normal working hours, still he on his own authority declared that they are entitled to the same treatment as the other workers who worked for the full day under the notification. Such a decision by the Deputy Commissioner, it is contended, is going beyond the powers given to him u/s 20. I do not think that the Deputy Commissioner has held that although the Lettera chalan forms a distinct class such as to take them out of the scope of the notification, still the Deputy Commr. on his own authority has retied them on par with the other whole-time workers. The Deputy Commissioner has observed in his. order as follows:

It is clear, therefore, that under the existing Minimum Wages Act, and Rules, Lettera Challan Labour, in spite of the amount of work (time or task rate) performed per day is to be treated as ordinary labour entitled to wages for a full normal, working day.

The observations do not mean that the Deputy Commissioner held that although the Lettera chalarn workers do not come within the ambit and scope of the notification, on his interpretation the Act makes-no such distinction. What he meant by the observations is that once it is held on the interpretation of the notification that the minimum wages of the employees of the industry have been fixed inclusive of the Lettera chalan labour, it cannot be said that the Act has made any distinction between the workers who work for the normal working hours and the Lettera chalan worker. I have already referred to the various sections of the Act They show that once it is held that Lettera chalan is covered by the notification, the Act gives full jurisdiction to the Deputy Commissioner to issua direction with regard to the amount of difference.

29. It is contended that in the Supreme Court decision of A.M. Allison Vs. B.L. Sen, to which I have already referred in the earlier part of my judgment, the question of jurisdiction of the Deputy Commissioner was left open. Yet there are certain passages in the judgment which the counsel for the Appellants would adopt as a part of his submission. The passages run as follows:

It is argued that the authority appointed u/s 20(I) of the Act is invested with, the powers of hearing and deciding claims arising out of the payment of less than the minimum rates of wages and is authorised to hear the applicant and the employer or give them an opportunity of being heard, and, after such further

enquiry, as it may consider necessary, to give directions u/s 20(3) of the Act which directions are final and" not subject to any appeal or revision by any higher authority. Such drastic powers could not have been meant to be exercised when there are complicated questions of law or fact but could be exercised only in cases where the quantum of minimum wages fixed by the notification in question could be determined by the authority on a plain reading of the terms thereof. Then and then only would the authority have jurisdiction to entertain such claims and" give necessary direction having the attribute of finality.

There is in the instant cases moreover a further difficulty and it is that there are two rival contentions which can, with equal force, be urged by the respective parties. The Appellants contend" that they have all throughout been paying to the labourers, after the date of the notification in question, basic wages at the rate of as. 12 per day for male labourers and as. 11 per day for the female labourers and there is no instance which has been cited on behalf of the Respondents where anything less than the minimum basic wages thus fixed by the Government has ever been paid. The claim of the labourers comes to this that they have not been paid the extra wages for plucking green leaves in excess of the basic work-load or task of 16 seers and 12 seers respectively. Such claim for extra wages certainly does not amount to a claim arising out of the payment of less than the minimum rates of wages. It is, on the other hand, contended on behalf of the Respondents (the workers) that the basic wages of as. 12 per day for male labourers and as. 11 per day for female labourers fixed under the notification are correlated to the existing workload or task of plucking green leaves weighing 16 seers and 12 seers respectively and if they are entitled to the payment of these basic wages on their putting forward that much quantity of work, the non-payment by the managers of these tea estates to them of any extra wages on the computation of 6 ps. per extra seer unless they plucked 24 seers and 22 seers of green leaves respectively is tantamount to non-payment of the minimum basic wages of as. 12 and as. 11 respectively as fixed in the notification.

30. So far as the second line of argument advanced on behalf of the Management in that case and adopted by the present Appellants is concerned, it does not arise in the facts of the present case. Admittedly here the Management has not paid them the wages at the rate fixed by the notification. The claim thus, of the employee relates to the payment of wages.

As to the first part of the argument, merely because the point raised involves a determination, of complicated questions of fact and law, it cannot be argued that Section 20 is not attracted, nor can it be said that on the interpretation of Section 20 as soon as a dispute is raised as to the amount of the wages payable to a workman the jurisdiction of the Deputy Commissioner is ousted. The Deputy Commissioner is empowered to direct the employer to pay the deficiency in the amount of wages if the minimum rates of wages have been fixed under the Act.

Before any direction can be issued by the Deputy Commissioner, the Deputy Commissioner may decide if the rates have or have not been fixed under the notification as a preliminary issue, although his decision on the preliminary issue may be examinable by the Civil Court. Section 20 does not lay down that as soon as a dispute is raised with regard to the interpretation of the notification fixing the minimum rates of wages, the jurisdiction of the Deputy Commissioner is ousted.

31. Lastly it was contended that the Deputy Commissioner's order is vitiated inasmuch as he did not observe the procedure laid down u/s 20 and that he has violated the principles of natural justice in making such an inquiry.

32. Before examining the facts it will not be out of place to once more consider the ambit and scope of the powers of the Civil Court in declaring an order passed by a competent authority as ultra virus. In the case of *Smt. Ujjam Bai v. State of U.P.*, AIR 1962 SC 1621 Das, J., observed (at page 1629) as follows:

Whenever a judicial or quasi-judicial tribunal is empowered or required to enquire into a question of law" or fact for the purpose of giving a decision on it, its findings thereon cannot be impeached collaterally or on an application for certiorari but are binding until reversed on appeal. Where a quasi-judicial authority has jurisdiction to decide a matter, it does not lose its jurisdiction by coming to a wrong conclusion, whether it is wrong in law or in fact. The question whether a tribunal has jurisdiction depends not on the truth or falsehood of the facts into which it has to enquire, or upon the correctness of its findings on these facts, but upon their nature and it is determinable "at the commencement, not at the conclusion, of the inquiry (*Rex v. Boltan*, (1841) 1 QB 66 at p. 74.)

Thus, a tribunal empowered to determine claims for compensation for loss of office has jurisdiction to determine all questions of law and fact relating to the measure of compensation and the tenure of the office, and it does not exceed its jurisdiction by determining any of those questions incorrectly; but it has no jurisdiction to entertain a claim for reinstatement or damages for wrongful dismissal, and it will exceed its jurisdiction if it makes an order in such terms, for it has no legal power to give any decision whatsoever on those matters. A tribunal may lack jurisdiction if it is improperly constituted, or if it fails to observe certain essential preliminaries to the inquiry. But it does not exceed its jurisdiction by basing its decision upon an incorrect determination of any question that it is empowered or required (i. e., has jurisdiction) to determine....

The strength of the theory of jurisdiction lies in its logical consistency. But there are other cases where Parliament when it empowers an inferior tribunal to enquire into certain facts intends to demarcate two areas of enquiry, the tribunal's findings within one area being conclusive and within the other area impeachable. "The jurisdiction of an inferior tribunal may depend upon the fulfillment of some condition precedent or upon the existence of some particular fact. Such a fact is collateral to the actual matter which the tribunal has to try

and the determination whether it exists or not is logically prior to the determination of the actual question which the tribunal has to try. The tribunal must itself decide as to the collateral fact: when, at the inception of an inquiry by a tribunal of limited jurisdiction, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether it will act or not, and for that purpose to arrive at some decision on whether it has jurisdiction or not. There may be tribunals which, by virtue of legislation constituting them, have the power to determine finally the preliminary facts on which the further exercise of their jurisdiction depends but, subject to that, an inferior tribunal cannot, by a wrong decision with regard to a collateral fact, give itself a jurisdiction which it; would not otherwise possess.

(Halsbury's Laws of England, 3rd Edn. Vol. II page 50)

Subba Rao J. who differed from the majority decision, has also drawn a distinction between the cases where this Court exercises its powers of issuing a writ of certiorari under Article 226 of the Constitution and when the civil court has to entertain a suit for a declaration that the order passed by a competent authority is illegal. Dealing with the case of Rai Brij Raj Krishna and Another Vs. S.K. Shaw and Brothers, to which I have already referred in the earlier part of my judgment, it was observed by Subba Rao, J., (at page 1654) as follows:

This decision has nothing to do with the scope of this Court's power to enforce a fundamental right, but it deals only with the question of the ouster of the Civil Court's jurisdiction when a special tribunal is created to finally decide specific matters.

33. The allegation in the plaint dealing with this matter is contained in paragraph 9 which reads as follows:

That further the aforesaid orders being based without going into evidence and without proper enquiry are manifestly wrong, perverse and arbitrary and are against the principles of natural justice. Defendant No. .1 has further failed to exercise his jurisdiction to determine the issues involved u/s 15 of the Minimum Wages Act.

This paragraph has been denied in the written statement filed by various Defendants. The facts in support of the allegation in this paragraph are to be found in paragraphs 3 and 4 of the plaint. In paragraph 3 it is definitely stated that -

That the Defendant No. 1 who is the authority appointed u/s 20 of the Minimum Wages Act on the complaint of Defendant No. 2 who is an Inspector so appointed under the Minimum Wages Act served on the Plaintiff's Manager of Pabbojan Tea Estate a notice No. 5926G, dated 2nd June, 1953, calling upon him "to pay the outstanding amount of wages and to show cause why prosecution should not be sanctioned against him for violation of the Minimum Wages Act.

Paragraph 4 runs as follows:

That the Plaintiff's manager of Pabbojao. Tea Estate, submitted on 27th July, 1953, a written reply to the Defendant No. 1 disowning liability for payment of the amount claimed in the notice mentioned above.

These paragraphs are quoted from the plaint of Title Suit No. 11 of 1954. Similar allegations have been made in the plaints of Title Suits Nos. 12, 13 and 14 of 1954 which were heard together.

34. The Deputy Commissioner in the opening paragraph of his order has stated that the case has arisen on an application by the Labour Officer, Dibrugarh for a direction u/s 20 (3) of the Minimum Wages Act against the Management. An attempt at amicable settlement; failed. The management has submitted an explanation dated 13th April, 1954. In the plaint it is admitted that after the notice was issued calling upon the Plaintiffs to pay up the amount, they filed objection disputing their liability. The date of objection filed by the Management is given in the plaint to be 27th July, 1953. The Deputy Commissioner in his order has referred to the application by the Management dated 13th April, 1954. The notice which was given is printed at page 100 of the Paper Book and reads as follows:

That you have not paid the minimum wages to the following employees in accordance with the prescribed rate as fixed by the Government with effect from the date of the implementation of the said Act.

You are hereby directed to pay the outstanding amount of wages with the requisite amount of delayed compensation to the employees in conformity with Section 20(3) of the Minimum Wages Act, 1948 and report compliance on or before 10th June. 1953.

You are also directed to show cause before the undersigned by that date why prosecution should not be sanctioned against you for violation of the provisions of the said Act.

35. The grievance of the Appellants is that there was no proper inquiry. It is difficult to appreciate the point raised by the Appellants. That there was an application by an Inspector cannot be denied. If the Plaintiff's Appellants intended to dispute the fact that there was an application by the proper authority, they should have done so before the Deputy Commissioner. The Deputy Commissioner has referred to the application by the Inspector and the reply by the Management, and in the absence of anything to the contrary no presumption can be drawn that there was no such application.

36. Section 22 (1) provides that -

Any employer who pays to any employee less than the minimum rates of wages fixed for that employee class of work or less than the amount due to him under the provisions of this Act, or infringes any order or rules made u/s 13 shall be punishable with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with

both:

Provided that in imposing any fine for an offence under this Sub-section, the Court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken u/s 20.

Section 22 (3) runs as follows:

No Court shall take cognizance of a complaint against any person for an offence under Sub-section (1), unless an application in respect of the facts constituting the offence has been presented u/s 20 and has been granted wholly or in part, and the Authority granting such application has sanctioned the making of the complaint.

The grievance of the Appellants is that the notice only asked the Appellants to show cause why they should not be prosecuted. The only notice contemplated is one u/s 22 (3) and this Sub-section requires that before cognizance can be taken, an application in respect of the facts constituting the offence is to be made u/s 20. The notice thus which was given asking them to pay the amount and further giving out the nature of the offence was in effect a notice u/s 20 and if the Deputy Commissioner gave opportunity to the Management to meet the allegations, it cannot be said that there was no proper inquiry or that the notice was invalid so as to render the entire proceedings without jurisdiction. If there was a valid application the only requirement under Sub-section (3) of Section 20, is that the applicant and the employer should be given an opportunity of being heard and after such, further inquiry if any, as the authority considers necessary, the authority may direct payment to the employee, of the amount by which the minimum wages payable to him exceeds the amount actually paid.

37. The Management admittedly was given an opportunity to explain. Witness No. 1 on behalf of the Plaintiff in Title Suit No. 11/54 has stated,

We received a notice from Deputy Commissioner, Lakhimpur, Ext. 1, asking us to pay Letter s their alleged wages. We denied our liability. The Deputy Commissioner did not hold any enquiry and did not take any evidence to see whether the allegations made were right or not.

He has however further in the cross-examination stated as follows:

Regarding this case we had a discussion with the Deputy Commissioner at Doom-dooma Club. I was present. I think Mr. Goswami our advocates was there. The Deputy Commissioner made enquiries. In the case before the Deputy Commissioner Mr. Goswami was acting on our behalf.

Witness No. 3 in Title Suit No. 12/54 has stated that he received notice from the Deputy Commissioner to pay full minimum wages to the lettera chalan. He denied liability as they were unwilling to perform the full task. The Deputy Commissioner did not take evidence of letteras nor did he record any other evidence. . The Deputy Commissioner came to Doom-Dooma Club and held a

meeting of all the Managers at 3 P. M. The Deputy Commissioner did not record any proceedings. It was just a discussion. The meeting broke up within an hour. The management did not admit their liability and denied it in that meeting. In cross-examination he says that he got some intimation to meet the Deputy Commissioner at Doom Dooma regarding lettera chalan. He attended the meeting. It was a general discussion. Witness No. 2 in Title Suit No. 13/54 has in his examination in chief stated as follows:

I received a notification from the Deputy Commissioner to pay full minimum wages to these letteras, Ext. 7. We denied liability to pay. The Deputy Commissioner did not hold any enquiry but he held a meeting at Doom Dooma Club at 3 P.M. where all the Managers concerned were present and the Government Labour Officer was also there. This was on 17th February 1954. The Deputy Commissioner did not record any evidence. We explained the position to the Deputy Commissioner denying liability but nothing was recorded.

In cross-examination he says:

Before the Deputy Commissioner, I submitted explanation and after that there was a hearing at Doomdooma. Mr. Goswami was there and all the Managers. Mr. Gosvvami explained the position and put our case before the Deputy Commissioner.

Plaintiff's witness No. 4 in Title Suit No. 14/54 has stated in his examination-in-chief that a notice was received from Deputy Commissioner as did Manager of the Associated Company. The management did not admit liability. The Deputy Commissioner did not take any evidence when he went to Doom Dooma Club where he was for about an hour and had a discussion. In cross-examination however, he states that he did not attend Doom Dooma meeting and thus he had no personal knowledge of what had happened that day.

38. On behalf of the Defendant in Title Suit No. 14/54 one Bairagi has been produced who has deposed about the nature of the work done by lettera chalan labour.

39. From the perusal of the statements of witnesses on behalf of the Plaintiffs it is clear that the management was given opportunity to explain. The only stand which they took up was that they were not liable as the notification did not apply to letter a chalan labour.

40. The inquiry was done by the Deputy Commissioner as he thought necessary in the circumstances of the case. The counsel, for the Management was present there. If the Appellants had any grievance on the ground that the questions of fact were involved in the case, they should have prayed for the opportunity to produce evidence. When no point was raised disputing the facts by the Management and the only ground taken was that the Management was not liable under the notification or under the Act to pay full wages to the Lettera chalan labour, it cannot be said that the Deputy Commissioner did not hold any inquiry

simply because he did not record any evidence. Even in these suits the Plaintiffs have not proved that at any stage of the inquiry before the Deputy Commissioner they desired to produce any evidence which the Deputy Commissioner refused to allow or that he did not record any evidence which the Management produced. Thus even if it be accepted that this can be a ground for the Civil Court to declare the decision of a competent authority invalid, there was no violation of any principles of natural justice in the present case, nor there was any violation of the procedure laid down under the law for such inquiries.

41. The next point urged by the Appellants is that the application before the Deputy Commissioner was barred by limitation and as such the order dated 2-6-1954 is without jurisdiction. In paragraph 10 of the plaint it is alleged that the claim of Defendant No. 2 was barred under the law under the first proviso of Section 20 (2) of the Minimum Wages Act and as such the orders passed by Defendant No. 1 are void. In paragraph 16 of the written statement the allegation is denied. It is further stated therein that if there has been any delay it has been condoned. Trial Court held that the delay has been condoned and the order is not invalid on that ground.

42. Section 20(2) proviso lays down that every application shall be presented within six months from the date on which the minimum wages became payable: Provided further that any application may be admitted after the said period of six months when the applicant satisfies the Authority that he had sufficient cause for not making the application within such period. No objection was taken before the Deputy Commissioner that the application was filed beyond time. If the point had been taken before him the Deputy Commissioner could have dealt with it. On the face of the order it cannot be said that the application was beyond time and the order was without jurisdiction. The want of jurisdiction cannot be said to be patent. Even in the present suit no facts are mentioned in the plaint which will go to show that the application was barred by time.

Without an assertion in the plaint giving the date of the application, the relief claimed and the date when the wages became due, a bare statement that the application is barred u/s 20(2) is not enough to hold that the application was beyond time. Unless foundation is laid in the plaint the Court below could not examine facts. The order of the Deputy Commissioner does not show that he has ordered payment of wages for a period beyond six months of the date of the application. In the plaint even the exact amount which in each case the Plaintiff has to pay, has not been mentioned. Plaintiff in each case has valued his suit at Rs. 5,100/- presumably to make it appealable to this Court as a first appeal. The valuation has been put treating it as a suit for declaration with injunction as a consequent relief. If the amount was known the period could have been calculated. Moreover when the Deputy Commissioner had jurisdiction to extend time and in fact entertained the application he exercised his discretion and his order cannot be held to be without jurisdiction. The civil Court cannot say that as there is no order by the Deputy Commissioner holding that sufficient-reasons

have been given for delay the direction u/s 20(3) is without jurisdiction.

43. Reference is made to the case of Prem Narayan Amritlal Varma Vs. Divisional Traffic Manager Bhusawal, That was a case arising out of the Payment of Wages Act: and the provisions were different. Apart from it, that was not a case where the order of the authority was impugned on the ground that it was passed beyond time without giving reasons in the order for extending the time.

44. The counsel for the Respondent relied upon the case of K. Ramaswamy Doss v. A. Rama Pillai, (S) AIR 1955 Mad 569. It was held in that case as follows:

Neither the Act nor the rules framed thereunder prescribe that there should be any written application by the employee to get the benefit of the second proviso to Section 20(2).

In this case at the time of admitting the application of the employee, the tribunal was not called upon to satisfy itself nor did it satisfy itself then that there were sufficient causes to condone the delay in making the application as required by second proviso to Section 20(2), Minimum Wages Act, but was satisfied only on the date of enquiry when the explanation for delay was offered by the employee, and the employer himself did not raise the question that the application was belated and time barred till after the enquiry was over, and even at that stage, he did not seek to make it the subject-matter of an issue, and on the merits of the employee's claim it could not be said that anything other than substantial justice was done as between the parties by the tribunal granting the claim of the employee. It was held that the apparent defect in determining the question of fact, on which depended the jurisdiction of the tribunal to investigate the claim for the period anterior to the six months referred to by the first proviso in Section 20(2) of the Act was not such that the employer should be given ex to justified" the writ of certiorari to set aside the order granting the claim. No doubt in this case at a later stage the point was taken and a finding was given by the authority that there was sufficient cause. But the observations go to support the contention of the Respondent that any decision on that point, whether by implication or express terms, does not relate to the jurisdiction of the tribunal, or, at any rate, a failure to decide it at the initial stage will not make the jurisdiction of the tribunal patently erroneous, so as to justify interference by the High Court under Article 226 of the Constitution.

45. In my opinion therefore these appeals have no force and they are dismissed with costs.

C.S. Nayudu, J.

46. I agree with the judgment just now pronounced by My Lord the Chief Justice. I would, however, like to add a few words of my own.

47. The two main points that arise for consideration in these appeals are:

(1) Whether it is within the competence of, the Deputy Commissioner, the

authority prescribed under the Minimum Wages Act, to decide whether the notification in question issued by the Government under the provisions of the Minimum Wages Act, is applicable to the Lettera chalan labourers working as workmen on the tea plantations of the Appellants.

(2) Whether the Civil Court had jurisdiction to entertain the suits out of which these appeals had arisen,

48. On the first point, the contention of the learned Counsel for the Appellants was two-fold, licitly, that, as a complicated question of law and fact involving the interpretation of the scope of the notification was involved in these proceedings, the Deputy Commissioner could not have and was not competent to decide this complicated question. Secondly, that, assuming that he could so decide, the correctness of his decision is examinable by Civil Courts, and, as these constitute the preliminary facts and conditions which had to be decided before the Tribunal under the Act, namely, the Deputy Commissioner, could validly exercise jurisdiction, in accordance with the observations of Lord Esher, M. R. in (1888) 21 QBD 313 at p. 319.

49. On the first part of the argument, I am clearly of opinion that when the legislature has advisedly vested the jurisdiction of deciding the matters arising under the Act, in the tribunal in question, namely the Deputy Commissioner in this case, such a tribunal has the power and jurisdiction to adjudicate upon all the matters germane to and relevant for the determination of the questions before the tribunal involving the exercise of its jurisdiction under the Act. That complicated questions would arise for decision before the exercise of jurisdiction by the tribunal must have been in the knowledge of the legislature which must have taken into account these aspects and come to a decision that the tribunal is competent enough to consider and decide on these complicated issues. It is not for Courts to sit in judgment over this decision of the legislature and to say whether " the legislative policy involved was a correct one or not. I have, therefore, no hesitation whatsoever in coming to the conclusion that the tribunal appointed by the Legislature under the Act is fully competent to decide every matter that would be necessary to be decided either before or in the course of the exercise of jurisdiction by that tribunal under the Act. There is thus no substance in the first contention.

50. As regards the second part of the argument of the learned Counsel for the Appellants, it would be necessary to refer to the observations of Lord Usher, M. it., on which reliance has been placed, to which reference has already been made. In these observations, which have been quoted in extensor by My Lord the Chief Justice, two stages of the matter have been envisaged. The first stage involved the determination of certain preliminary state of facts and on finding that those facts existed to proceed to exercise the jurisdiction vested in it. The second stage, namely the stage of actual exercise of jurisdiction, would, according to these observations, arise only on the findings reached on the preliminary facts.

But these observations themselves recognise that where a distinction between the two decisions, namely the decision on the preliminary facts and the decision on the question of, jurisdiction, has to be made, the legislature alone would prehend whether the proof of the existence of preliminary facts was an essential condition to the exercise of jurisdiction, and whether the decision of the tribunal on the existence of the preliminary facts was or was not final, for, if the legislature intended that the decision on the preliminary facts is not final, it is open to it to say so.

Again, it is also recognised that the decision involved in the exercise of jurisdiction by the tribunal would be final only if the legislature declared it to be so. The question for consideration in the instant case is whether any such distinction has been maintained by the legislature in enacting the Minimum Wages Act. To my mind, it has not. Investing the jurisdiction in the tribunal, namely the Deputy Commissioner, to give effect to the provisions of the Minimum Wages Act, the power of deciding whether the notification issued by the Government applied to a certain class of workmen or not, is essentially a decision inextricably connected with the decision of giving effect to the provisions of the Act. It is not in the nature of a decision on the so-called preliminary facts, as stated in the observations of Lord Esher, M.R., referred to above, and explained by the judgment of the Supreme Court as purely collateral matters, nor has it been laid down by the legislature that the decision on this aspect of the matter should not be made by the tribunal vested with the jurisdiction, or when made should not be final.

This conclusion receives further support from the circumstance that the legislature had advisedly declared that the decision of the tribunal under the Act is final; in other words, that there is no appeal or revisional power in any higher tribunal over the judgment and decision of the Deputy Commissioner under the Act. Such being the case, in my opinion, it would not be open to a Civil Court to re-investigate into the matter on which the decision has been made by the competent tribunal under the Act, as if were a higher or superior body competent to exercise scrutiny over the exercise of jurisdiction by the tribunal.

51. I am, therefore, clearly of opinion that the Deputy Commissioner is the only competent authority to decide every issue that requires to be decided in the course of his exercising jurisdiction under the Act, including the question whether the notification issued by the State Government under the Act. applied or not to any particular class of workmen.

52. On the merits, as has been pointed out by my Lord the Chief Justice, the Deputy Commissioner's order cannot be assailed. Section 3 of the Act gave power to the appropriate Government to fix the minimum rates of wages payable to employees employed in the employment specified in the relevant Part of the Schedule, which included the labourers working in the tea estates of the Appellants, and the minimum rates are prescribed in the Schedule for the ordinary unskilled labourers. Power is given to the State Government under the

Act to exclude from, the operation of the Act any particular class of labourers.

As may be seen from Section 15 of the Act, while making provision that an employee shall be paid the minimum rate of wages fixed under the Act, notwithstanding his working for a period less than the requisite number of hours constituting a normal working day, also gave power" to prescribe under the Act the cases and circumstances in which such full payment for part-time work shall not be made. Similarly, power is given u/s 26 of the Act to the appropriate Government to direct that the provisions of the Act shall not apply in relation to the wages payable to disable employees. It is not disputed that neither has the State Government made direction u/s 26 of the Act nor have any conditions and circumstances in which Section 15 would not become applicable, been prescribed, so that the position in law is that even if a workman does less work than the usual number of hours meant for a working day, he would be entitled to the full minimum wages provided for by the notification under the Act.

53. No doubt, it would be open to the employers to satisfy the tribunal that in any particular case the workman is not entitled to full minimum wage? u/s 15 of the Act by reason of the fact that although enough work was given to the workman he had not done the work for the full period through his own unwillingness to do the work. Neither has any such plea been taken in this case before the tribunal, nor has any evidence been adduced in support thereof. The contention of the Appellants all along had been that Lettera chalan labourers formed a class by themselves, in that they are incapable of carrying out the same quantity of work as the other labourers, known as Tan-Mota labourers. Even if this contention were true, the Appellants cannot question the decision of the tribunal unless it placed evidence before the tribunal that they had given enough work to the Lettera chalan labourers, but that they were unwilling to do that work. Hence, even on the merits, assuming that these merits could be gone into in a civil suit, no exception could be taken to the decision of the Deputy Commissioner in this case.

54. On the question raised under the second point, namely, the jurisdiction of the Civil Court, I am clearly of opinion that this is a case where the Civil Court's jurisdiction does not exist and at any rate must be deemed to have been either expressly or by implication taken away within this meaning of Section 9 of the Code of Civil Procedure. When the decision of the tribunal under the Act has been declared to be final, some seriousness should be attached to the language employed by the legislature. When a decision is declared final, it is final for all the purposes of the Act, and a Civil Court cannot have jurisdiction to examine and sit in judgment over the decision of the tribunal in such a case. If the contrary has to be accepted as correct, then the expression "final" would have no meaning, as every act of the tribunal can be immediately questioned before a Civil Court by way of a parallel procedure and the issue reopened. It is seen from the provisions of the Act that the tribunal had been invested with all the powers of a Civil Court in the matter of the procedure to be followed by it in the exercise

of its jurisdiction. This is clear from Section 20(7), which is as follows:

Every Authority appointed under Sub-section (1) shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (V of 1908), for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such Authority shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (V of 1898).

This provision coupled with the direction in Clause (6) of Section 20, namely, that "every direction of the Authority under" this section shall be final", in my opinion, leaves the matter beyond doubt that the Civil Court's jurisdiction is expressly taken away. The same conclusion will follow even if these provisions are not regarded as expressly taking away the jurisdiction of the Civil Court. When a special enactment provides for a special forum for the adjudication of disputes arising out of a matter and for the exercise of jurisdiction there under, it is that tribunal and that tribunal alone that will have jurisdiction to deal with the matter.

In such circumstances the jurisdiction of the ordinary Civil Courts must be deemed to have been excluded by implication, otherwise it would lead to the chaotic condition of the legislature investing powers in special tribunal for reaching a final adjudication of the disputes arising under the Act, and side by side permitting the commencement of the lengthy and laborious proceedings in a Civil Court, calculated to interfere with and upset the exercise of that jurisdiction under the Act. Such a situation cannot be accepted unless it receives support from the express language of the special statute.

55. IN this connection the distinction must be clearly maintained between the powers of the High Court which is a superior Court and to which the tribunal exercising jurisdiction under any special enactment within the territorial jurisdiction of the High Court is subordinate, under Articles 226 and 227 of the Constitution of India and the pursuit of the usual and ordinary remedy by way of civil suit. The High Court may in its extraordinary powers under Article 226 and its powers of supervision and superintendence examine the foundation of the exercise of jurisdiction by the tribunal in question, and may, in appropriate cases, interfere where there has been a total lack, of jurisdiction. Such a power cannot be regarded as exercisable by the ordinary Civil Courts of the land in the exercise of the ordinary" civil jurisdiction, unless the special enactment in question expressly provides for the exercise of such power or jurisdiction. In the Act in question, there is no such provision.

56. In either view of the matter, therefore; the suits filed in the Civil Court below were misconceived and were rightly dismissed. These appeals must therefore fail and I agree that they should be dismissed with costs.

S.K. Dutta, J.

57. These are appeals against the judgment and decree passed by the

Subordinate Judge, Upper Assam Districts, Dibrugarh in Title Suits, Nos. n to 14 of 1954 in his Court. The four suits were tried together and a single judgment was passed Defendants Nos. 1 and 2, namely the Deputy Commissioner, Lakhimpur at Dibrugarh and" the Government Labour Officer, Dibrugarh respectively were the same in all the suits and Defendants Nos. 3, 4 and 5 in the various suits were tea garden labourers who were sued in their representative capacity. The case of the Plaintiffs who were- Tea Companies in all the suits is as follows: The Government of Assam by a notification dated" nth March, 1952 (hereinafter called the notification) fixed minimum wages under the Minimum Wages Act (hereinafter called the Act) for the "ordinary unskilled labourers" employed in tea plantations in different districts . in Assam and directed that the said wages were payable from the 30th March, 1952. The notification also provided that the existing tasks and number of working hours would continue until further orders. On the 16th April, 1952, the Government published the Assam Minimum Wages Rules, and by Rule No. 24 fixed the number of hours of a normal working day to be nine hours, subject to a maximum of 48 hours per week in case of an adult and" 41/2 hours for a child.

Defendant No. 1 who was the Deputy Commissioner, Lakhimpur was the Authority appointed" u/s 20 of the Minimum Wages Act, and the Government Labour Officer, Dibrugarh, who is-Defendant No. 2 was the Inspector appointed under the said Act. Defendant No. 1 as the Authority served on the Managers of the Plaintiff Tea Companies a notice to pay certain wages which were-said to be outstanding and to show cause why prosecution against them should not be started. The-Managers submitted written replies to the Authority disowning liability for payment of the amount claimed in the notice. But the Authority by his order dated. 2nd June, 1954, ordered that the Plaintiffs should pay the difference of the full minimum wages and the amounts actually paid to certain labourers. The Plaintiffs assert that the Authority acted without jurisdiction and his order was void and illegal. Their contention is that, there is a class of labourers in every garden known as "Lettera Challan Labour" and that the Government notification fixing the minimum wages for the ordinary unskilled labour did not apply to these labourers. But the Authority directed payment of minimum wages to these "Lettera Challan" labour and thus his order was void and illegal.

58. The learned Subordinate Judge held that the Authority's (Deputy Commissioner's) order was final u/s 20 of the Act however wrong it might be "on merits or on grounds of policy". The learned Subordinate judge observed thus:

Defendant No. 1 is entitled to hold a wrong view or any view which may not find favour with the Civil Court, provided it can be found that he acted within the scope of Section 20(3) of the Act.

59. Four witnesses who were managers of the Plaintiff tea companies and only one D. W. who was a "lettera challan labourer" were examined.

60. Mr. Goswami, appearing on behalf of the Plaintiff-Appellants makes the

following submissions: (1) The Deputy Commissioner had no jurisdiction to interpret a notification under the Act when such a notification involved complicated questions of facts and construction. (2) Even if the Deputy Commissioner had such a jurisdiction to interpret the notification he gave a wrong interpretation and consequently his order for payment of the minimum wages was without jurisdiction. (3) The Deputy Commissioner did not hold any enquiry as required under the Act, and, as such, he acted without jurisdiction and in complete disregard of all principles of natural justice.

61. We may now examine the above submissions. Before doing so it will be convenient if the relevant sections of the Act are stated. Section 20 of the Minimum Wages Act is as follows:

Claims. (1) The appropriate Government may, by notification in the official Gazette, appoint any Commissioner for Workmen's Compensation or other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the Authority to hear and decide for any specified area all claims arising out of payment of less than the minimum rates of wages to employees and paid in that area.

(2) Where an employee is paid less than the minimum rates of wages fixed for his class of work under this Act, the employee himself, or any legal practitioner or any official of a registered trade union authorized in writing to act on his behalf, or any Inspector, or any person acting with the permission of the Authority appointed under Sub-section (1), may apply to such Authority for a direction under Sub-section (3):

Provided that every such application shall be presented within six months from the date on which the minimum wages became payable:

Provided further that any application may be admitted after the said period of six months when the applicant satisfies the Authority that he had sufficient cause for not making the application, within such period.

(3) When any implication under Sub-section (2) is entertained, the Authority shall hear the applicant and the employer or give them an opportunity of being heard, and after such further inquiry if, any as it may consider necessary, may, without, prejudice to any other penalty to which the employer may be liable under this Act, direct the, payment to the employee of the amount by which the minimum wages payable to him exceed the amount" actually paid, together with the payment of such compensation as the Authority may think fit, not exceeding ten times the amount of such excess and" the Authority may direct payment of such compensation in cases where the excess is paid by the employer to the employee before the disposal of the application.

(4) If the Authority hearing any application, under this section is satisfied that it was either malicious or vexatious, it may direct that a penalty not exceeding fifty rupees be paid to the employer by the person presenting the application.

(5) Any amount directed to be paid under this., section may be recovered:

(a) if the Authority is a Magistrate, by the Authority as if it were a fine imposed by the Authority as a Magistrate, or

(b) if the Authority is not a Magistrate, by any Magistrate to whom the Authority makes application in this behalf, as if it were a fine imposed by such Magistrate.

(6) Every direction of the Authority under this section shall be final.

(7) Every Authority appointed under Sub-section (r) shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (V of 1908), for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such Authority shall be deemed to be a Civil Court for all the purposes of S. 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (V of 1898).

61a. Section 22 of the Act reads as follows:

Penalties and procedure:- (1) Any employer who pays to any employee less than the minimum rates of Wages fixed for that employee's class of work or less than the amount due to him under the provisions of this Act, or infringes any order or rules made u/s 13 shall be punishable with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both:

Provided that in imposing any fine for an offence under this Sub-section, the Court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken u/s 20.

(2) Any employer who fails to maintain a register or record required to be maintained u/s 18 shall be punishable with fine which may extend to five hundred rupees.

(3) No Court shall take cognizance of a complaint against any person for an offence under Sub-section (1), unless an application in respect of the facts constituting the offence has been presented; u/s 20 and has been granted wholly or in part, and the Authority granting such application has sanctioned the making of the complaint.

(4) No Court shall take cognizance of an offence under Sub-section (9) except on a complaint made by, or with the sanction of, an Inspector.

(5) No Court shall take cognizance of an offence:

(a) under Sub-section (1), unless complaint thereof is made within one month of the grant of sanction under Sub-section (3);

(b) under Sub-section (2), unless complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

62. Regarding the first point Mr. Goswami adopts the argument put forward by the Solicitor General before the Supreme Court in (S) AIR 1957 SC 227 in which this point was raised. The argument was as follows:

the authority appointed u/s 20(I) of the Act is invested with the powers of hearing and deciding claims arising out of the payment of less than the minimum rates of wages and is authorized to hear the applicant and the employer or give them an opportunity of being heard, and, after such further enquiry, as it may consider necessary, to give directions u/s 20 (3) of the Act which directions are final and not subject to any appeal or revision by any higher authority. Such drastic powers could not have been meant to be exercised when there are complicated questions of law or fact but could be exercised only in cases where the quantum of minimum wages fixed by the notification in question could be determined by the authority on a plain reading of the terms thereof. Then and then only would the authority have jurisdiction to entertain such claims and give the necessary directions having the attribute of finality. In the instant cases before us, not only did the matters involve complicated questions of fact which required recording of evidence by the authority but they also involved the construction of the notification which was by no means felicitously worded. The existing tasks which were to continue until further orders were not at all patent and if the determination thereof had to be made by the authority appointed u/s 20(T) of the Act, it would involve, in cases of dispute, recording of considerable evidence and an adjudication of the same after a consideration of the arguments advanced before the authority by both the parties.

63. The Supreme Court, however, did not decide the jurisdiction of the Deputy Commissioner to interpret; a notification issued under the Act. The Supreme Court refused to intervene mainly on two grounds. Firstly both the Deputy Commissioner and the High Court came to the same conclusion. Secondly the matter did not go to the Supreme Court directly as an appeal from the orders of the Deputy Commissioner. First there was a petition under Article 226 of the Constitution before the High Court and the High Court had power to refuse the writs if it was satisfied that there was no failure of justice. In the appeals from the orders of the High Court, the Supreme Court was satisfied that there was no failure of justice.

64 In these appeals however, it is necessary to decide if the Deputy Commissioner (Authority) had the jurisdiction to interpret the notification. u/s 20(1) of the Act the Authority has to hear all claims arising out of payment of the minimum rates of wages. It is true that the Act does not expressly provide that the Authority will decide what kind of employees is covered by a particular notification, but before ordering payment of minimum wages, the Authority will have to be naturally satisfied that the employees in question are entitled to such wages. It is also true that a dispute arising between the management and labour regarding the construction of the notification could be referred to the Industrial Tribunal for adjudication, but that does not take away the jurisdiction of the

Authority to interpret the same. Therefore, I find no force in the first submission made by Mr. Goswami.

65. Now, as regards the correctness of the interpretation made by the Authority we should first know what is a "Lettera Challan Labour". In every garden there is a class of labourers known as "Lettera Challan". Those labourers who can not work for a full normal working day due to their incapacity, old age, infirmity or some physical defect choose themselves to be enrolled as "Lettera Challan". Whereas the ordinary labourers who are called "Tan mota" work for the full day, the "Lettera Challan" Labourers work only for half the day i.e. they do not go to work after the recess. Moreover, the "Lettera Challan" labourers are never employed in plucking, pruning or hoeing. This fact is admitted by the solitary defence witness who was examined. These "Lettera Challan" labour used to draw lower wages than the other labourers. When the minimum wages were fixed for the "ordinary unskilled labour" the management increased the wages of "Lettera Challan" but did not give them the minimum wages fixed by the notification saying that the notification did not apply to them. The Authority himself finds that there is a class of labourers known as "Lettera Challan" as distinct from the other ordinary unskilled labourers of the garden as will be evident from the following observation made by him.

In the circumstances, though the point for a special rate for Lettera Challan cases seems to require detailed examination for review of the law in this regard, both in the interest of general labour and also the Industry, I see no reason in the present case why the management should be exempted from payment of the full rate of the minimum wages as fixed by Government under the existing law.

66. Moreover, he put the points for decision as follows-. "The point for decision is whether a Lettera Challan worker is entitled to same rate of wages as ordinary labour working full normal working days."

67. In the result, therefore, the Authority's conclusion was that there was a class of labour known as "Lettera Challan" labour in the tea gardens as distinct from the ordinary labour. He, however, held that these "Lettera Challan" labour must be given the minimum wages although they might work less than others, unless they were offered work for the full day and they declined to do the same.

68. Section 15 of the Act reads as follows:

Wages of worker who works for less than normal working day. - If an employee whose minimum rate of wages has been fixed under this Act by the day works on any day on which he was employed for a period less than the requisite number of hours constituting a normal working day, he shall, save as otherwise hereinafter provided, be entitled to receive wages in respect of work done by him on that day as if he had worked for a full normal working day:

Provided, however, that he shall not be entitled to receive wages for a full normal working day:

- (i) in any case where his failure to work is caused by his unwillingness to work and not by the omission of the employer to provide him with work, and
- (ii) in such other cases and circumstances as may be prescribed.

69. Thus if an employee whose minimum rate of wages has been fixed by the day, works on any day for a shorter period than the requisite number of hours constituting a normal working day, he is entitled to receive wage for a full working day unless (i) deduction from wages is provided by rule framed under the Act, (ii) the failure to work is caused by unwillingness of the worker himself and not by deliberate refusal on the part of the employer to utilise the services of the employee.

70. The learned Authority first held that the "Lettera-Challan" labour was entitled to minimum wages under the notification, although they did not work for a full working day. He then disposed of Section 15 by saying that no rule was framed by the Government allowing any deduction. He did not apply his mind at all to the second condition viz., if there was unwillingness on the part of the "Lettera Challan" labour to work for the full normal working day. On the other hand, it appears from the evidence of the defence witness that he himself, out of his own accord, became a "Lettera Challan" labour as he fell from a house and had pain on his chest and was advised by the doctor to become a "Lettera Challan" labour. This shows that a labourer became "Lettera Challan" only when he was not willing to work for the full normal working day.

Be that as it may, the Deputy Commissioner did not give any finding on the point. Section 15 of the Act, however, will not be attracted at all if the notification does not apply to "Lettera Challan" labour. The notification fixes basic wages per day for adult males, adult females and children. Thus the wages are co-related to the normal working day, which according to Rule 24 of the Assam Minimum Wages Rules is 9 hours for adults and 4½ hours for children. Therefore, the notification cannot possibly apply to an adult who, according to the condition of his service, does not work for full 9 hours per day. Moreover, the use of the word "ordinary" in the notification is significant. The notification could fix minimum wages for unskilled labourers of the plantations. 2: But instated the Govt. have fixed it for the ordinary skilled labour. The dictionary meaning in the word "ordinary" is "normal".

Thus the notification applies to the unskilled labourers of the and art to those who do not work full time, and thus regarded as sub-normal. The Authority itself makes a distinction between the "Lettera Challan" labour and "ordinary" labour when he fixes the point for determination by saying "the point for decision is whether a Lettera Challan worker is entitled to the same rate of wages as ordinary Labour working full, normal days." It appears that the Government was aware of the employment of sub-normal workers in the gardens, and used the word "ordinary" in the notification with a purpose and not as something redundant. In these circumstances, I think, the interpretation of the learned

Authority that the notification is applicable to "Lettera Challan" labour is completely erroneous.

71. The next question is whether before giving his order the Authority made an enquiry under the Jaw. I have already quoted above Sections 20 and 22 of the Act. Under Sub-section (2) of Section 20 when an employee is paid less than the minimum wage fixed for his class of work under the Act, the employee himself, or a legal practitioner or any official, a registered Trade Union authorised in writing to act on his behalf or any Inspector or any person acting with the permission of the Authority may apply to such Authority for a direction under Sub-section (3). Under Rule 27 of the Assam Minimum Wages Rules, this application has to be made in a prescribed form and in duplicate. The application has to be verified at the foot. Rule 29 provides that when such an application is made the Authority shall serve upon the employer by registered post a notice in form IX to appear before him on a specified date with all the relevant documents and witnesses, if any, and shall inform the applicant of the date so specified. The prescribed notice in form IX is as follows:

To

....

(Name: description and place of residence.)

Whereas has made the above-said applica tion to me under the Minimum Wages Act, 1948, you are hereby summoned to appear before me in person or by a duly authorised agent, and able to answer all material questions relating to the appli cation," or who shall be accompanied by some per son able to answer all such questions, on...the day of 19 at O" clock in the noon, to answer the claim; and as the day fixed for the appearance is appointed for the final disposal of the "application, you must be prepared to produce on that day all the witnesses upon whose evidence, and all the documents upon which you intend to rely in support of your defence.

Take notice that in default of your appearance on the day before-mentioned, the application will be heard and determined in your absence.

Date.... 19

Signature of the Authority.

72. It may be noted that the above notice provides that the employer will be told that the elate fixed is for final disposal of the application. Then the Authority under Sub-section (3) of Section must give an opportunity to the employee to be heard and after such further enquiry, if any, as in may consider necessary, may make its order. In the present case the Authority did not follow the above procedure at all. He used a aside to the employers as follows.

Subject: Non-payment of Minimum Wages under the Minimum Wages Act, 1948.

1. That you have not paid the minimum wages to the following employees in accordance with the prescribed rate as fixed by the Government with effect from the date, of the implementation of the said Act.

You are hereby directed to pay the outstanding amount of wages with the requisite amount of delayed compensation to the employees in conformity with Section 20(3) of the Minimum Wages Act, 1948 and report compliance on or before 10th June, 1953.

You are also directed to show cause before the undersigned by that date why prosecution should not be sanctioned against you for violation of the provisions of the said Act.

Sd. Illegible. Deputy Commissioner, Lakhimpur.

73. It may be seen from the above notice that the employers were not even told that an application had been filed against them by the Inspector. There is nothing to show if the Authority satisfied himself that it was made in the prescribed form and properly varified. The employers were not asked to bring any witness nor were they apprised of any material questions raised against them which they were supposed to meet. They were not told that the date fixed was for final disposal. On the other hand, a confusion was created by asking the employers to show cause against prosecution. The question of prosecution arises only after an application u/s 20(2) is disposed of Sub-section (3) of Section 20 clearly lays down that no Court can take cognizance of an offence for nonpayment of minimum wage unless an application u/s 20(2) is granted wholly or partly.

So, when the notice in the aforesaid terms was sent to the employers by the Authority, it only could mean that the Authority already gave a finding that the minimum wage was not payable. Thereafter the employers gave some written explanations and the Authority met the employers at a Club to which they went with their lawyer. Ho heard them there and then a few months later passed the impugned order. The employers alleged that they thought that the so-called enquiry at the club was only an informal discussion.

74. P. W. A. F. Ward, the Manager, Dhoedam Tea Estate deposed as follows:

The Deputy Commissioner did not hold any enquiry but he held a meeting at Doom Dooma Club at 3 P.M. (I.S.T.) where all the Managers concerned were present and the Government Labour Officer was also there. This was on 17th February 1954. The Deputy Commissioner did not record any evidence. We explained the position to the Deputy Commissioner denying liability but nothing was recorded. After about 40 minutes the meeting broke up. After that we received the order of the Deputy Commissioner dated the 2nd June 1954.

75. P. W. R. H. E. Aeird, Manager, Rupai Tea Estate deposed as follows:

The Deputy Commissioner did not take evidence of letter as nor did ho record any other evidence. The Deputy Commissioner came to Doom-Dooma Club and

held a meeting of all the Managers at 3 P.M. The Deputy Commissioner did not record any proceedings. It was just a discussion.

76. P. W. A. R. Gordon, Manager of Pabhojan. Tea Estate deposed "Regarding this case we had a discussion with the Deputy Commissioner at Doom-Dooma Club. I was present. I think Mr. Goswami our Advocate. was there. The Deputy Commissioner made enquiries. In the case before the Deputy Commissioner Mr. Goswami was acting on our behalf."

77. P. W. H. R. W. King, Manager of Duamara Tea Estate deposed thus:

A notice was received from Deputy Commissioner as did Manager of the Associated Company. We did not admit liability. The Deputy Commissioner did not take any evidence when he went to Doom-Dooma Club where he was for about an hour and had a discussion.

From the above it is quite clear that no enquiry u/s 20 of the Act was held by the Authority. The Authority did not issue any notice in the prescribed form and thereby misled the Appellants and the so-called enquiry which he held at the Club appears to be nothing but an informal discussion. It is a fundamental principle of natural justice that when an inquiry is provided by law before a person is saddled with financial liability, such an inquiry is not a mere formal requisite. In such circumstances, the Authority had no jurisdiction to order payment of any minimum-wage.

It may be noted that under proviso I of Sub-section (2) of Section 20 of the Act, an application under the said Sub-section is to be submitted" within six months from the date on which the-minimum wages become payable. The learned Subordinate Judge gave a finding that the application, by Defendant No. 2 as the Inspector before the Authority was made more than six months after the minimum wages became payable. But he presumed that the Authority "was aware of the law and must have satisfied himself that there was sufficient cause for delay". He held that when the Authority allowed the application, it must be presumed that he condoned the delay. I do not think that any such presumption is justified. There is no order on record made by the Authority condoning the delay. In the absence of an order, it cannot be said that the delay was condoned by implication. When the Authority made even a confusion between Sections 20 and 22 of the Act by issuing a notice for prosecution u/s 22 and dealing it as a notice u/s 20, it is difficult to say that he was aware of the law. Be that as it may, in the absence of an order condoning the delay, the application of the Inspector is prima facie barred by limitation.

It is, however, argued by the learned Senior Govt. Advocate that there is no justification for the finding of the learned Subordinate Judge that the application by the Inspector was time-barred as this finding was based on no evidence. It may be noted that the minimum wages became payable from 30th March, 1952, and the notice on the employers was served in June, 1953, i. e., more than one year after. This itself is an evidence that the application became time-barred. It

may be contended that wages within six months prior to the date of application were not so barred. But at no stage the employers were given an opportunity of seeing the application filed by the Inspector. In the plaint the Plaintiffs alleged that the application by Defendant No. 2 was barred under the law. When a fact is specially within the knowledge of any person the burden of proving that fact is upon him u/s 106 of the Indian Evidence Act. The date of the application was known to the Authority (Defendant No. 1) and the Inspector (Defendant No. 2). But they took no steps to produce the application. Therefore, the Subordinate Judge was quite correct in making an adverse presumption against them that the application was beyond time.

80. A Division Bench of this Court in *H.G. Henson v. M. Sultan*, Deputy Commissioner, La- khimpur, AIR 1958 Assam x laid down the procedure that should be followed when an application u/s 20 of the Act was time-bar- red. It was observed as follows:

If the application is beyond time, the employer acquires a valuable right, and it is an elementary principle of law that a Court or Tribunal or Authority cannot deprive a party of a valuable right without hearing him. The proper procedure in such cases, where an application is filed beyond the period of six months mentioned in Section 20 of the Act, should have been not to admit the application, but to keep it pending, and to merely issue a notice upon the other side to show cause why the delay, if there was any good reason for it, should not be condoned.

81. But as I have said above, in the present case the Authority did not even record any order regarding the delay, and, therefore, it is apparent that he did not apply his mind to this aspect of the matter at all....

82. It is contended that u/s 20 (6) of the Act every direction of the Authority under the said Section is final, and, therefore, no civil suit can lie against such a direction. For a proper appraisal of this contention I may quote below the oft-quoted-observation made by Lord Esher, M. R. (1888) 21 QBD 313 which is as follows:

When an inferior Court or tribunal or body which has to exercise the power of deciding facts, is first established by Act of Parliament, the Legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things but not otherwise. There it is not for them conclusively to decide whether that -state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction. "But there is another state of things which may exist. The legislature may entrust the tribunal or body with a jurisdiction which includes the jurisdiction to determine whether the preliminary state of facts exists, as well as the jurisdiction", on finding that it does exist, to proceed further or do something

more. When the legislature are establishing such a tribunal or body with limited jurisdiction they also have to consider whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. "In the second of the two cases I have mentioned it is erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends"; and if they were given jurisdiction so to decide without any appeal being given, there is no appeal from such exercise of their jurisdiction.

83. In the present case the Act does not empower the Authority to determine whether a particular class of employees is covered by a particular notification. u/s 20 of the Act he has to direct payment of the minimum wage if it is shown to him that an employee is paid less than the minimum "rate of wage fixed for his class of work. In such circumstances, the Authority cannot conclusively decide whether that state of facts, i. e., that an employee has been paid less than the minimum rate of wage exists or not. An erroneous decision by the Authority on that fact will result in the exercise of a jurisdiction not vested in it and as such, his order will be without jurisdiction.

It is true, that in view of Sub-section (6) of Section 20, there is no provision for appeal or revision . against a direction passed by the Authority under that section. But the Minimum Wages Act does not | specifically exclude the jurisdiction of a Civil Court except for recovery of wages u/s 24 of the Act and a Civil Court may examine cases where the provisions of the Act have not been complied with and the Authority acted without jurisdiction. As I observed by the Supreme Court in Kiran Singh and Others Vs. Chaman Paswan and Others, it is a fundamental principle that a decree passed by a Court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it was sought to be enforced, or relied upon, even at the stage of execution and even in collateral proceedings.

84. As I have said above the learned Authority did not hold any enquiry as required u/s 20 of the Act and this is an additional ground to hold that the Authority acted without jurisdiction. In this connection the following observation made by the Privy Council in AIR 1940 105 (Privy Council) is apposite:

It is settled law that the exclusion of the jurisdiction of the Civil Court is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

85. In the result, therefore, the direction of the Authority is void and illegal and these appeals must be allowed.

PER CURIAM

86. In view of the decision by the majority the appeals are dismissed with costs.