(2014) 09 KL CK 0162

In the High Court Of Kerala

Case No : WA. No. 584 of 2014 in WP(C). 31500/2013

The General Secretary	APPELLANT
Vs	
The New Indian Express	RESPONDENT

Date of Decision : 22-09-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(a), 19(1)(g), 32
Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 — Section 1, 10, 10(4), 11, 11(1)

Citation : (2014) 4 ILR 219 : (2014) 3 KHC 869 : (2014) 4 KLT 318 : (2015) LabIC 116

Hon'ble Judges : Harun-Al-Rashid, J;Alexander Thomas, J

Bench : Division Bench

Advocate : Thampan Thomas, Advocate for the Appellant; M. Gopikrishnan Nambiar, P. Gopinath, P. Benny Thomas, Advocates K. John Mathai, Government Pleader and P.A. Reziya, Advocate for the Respondent

Judgement

Alexander Thomas, J.—This appeal has been filed by the 3rd respondent (Employees'' Association) in W.P. (C). No. 31500/2013, to impugn the judgment of the learned Single Judge rendered in that Writ Petition (Civil) on 3.3.2014. The facts necessary for the disposal of this appeal are as follows.

2. The writ petitioner-newspaper company instituted the above said Writ Petition (Civil) to impugn Exts. P10 and P11 orders for recovery of the amount notified as per Ext. P1 notification dated 24.10.2008 issued under Section 13A of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955. The said notification under Section 13A of the Act was issued to regulate the grant of interim rates of wages to working journalists, which has been ordered at the rate of 30% of the basic wages. The writ petitioner-newspaper company refused to pay the interim wages as per Ext. P1 on the ground that they had entered into individual settlement with vast majority of the employees (working journalists and non-journalist newspaper employees), by offering them interim relief of wages at the rate of 25%. The

members of the appellant-Employees'' Association [R-3 in the W.P. (C).] did not enter into any such agreement and claimed interim rates of wages as statutorily notified under Ext. P1. The appellant-Employees'' Association complained before the authorities concerned about the non-payment of interim rates of wages by the writ petitioner notified as per Ext. P1 and accordingly, after issuance of show-cause notice as per Ext. P3 herein, the competent revenue recovery officers concerned issued the impugned Exts. P10 and P11 for recovery of the interim rates of wages notified as per Ext. P1 by taking recourse to recovery proceedings under Section 17 of the above said Act. It was in the back ground of these facts and circumstances that the writ petitioner-newspaper establishment had approached this Court by filing W.P. (C). No. 31500/2013 seeking the following relief''s:

"i) issue a writ of certiorari calling for the records leading to Exts. P3, P10 & P11 notices and quash the same,

ii) declare that the claim raised by the 3rd respondent and the workers concerned for interim relief at the rate of 30% is not sustainable under law,

iii) pass an interim order staying all further proceedings pursuant to Exts. P3, P10 and P11 notices,

AND

iv) grant such other relief as this Hon''ble Court may deem fit and proper in the circumstances of the case."

Many of the newspaper establishments including the writ petitioner had challenged the validity of the aforementioned Act and the proceedings taken thereunder, which resulted in the final notification under Section 12 thereof (Ext. P9 herein), by preferring Writ Petitions under Article 32 of the Constitution of India before the Supreme Court. The Apex Court in the judgment dated 7.2.2014 in the case ABP Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, , repelled the challenge on all counts and dismissed all the Writ Petitions and issued the following directions in paragraphs 73 thereof, which read as follows:

"73) In view of our conclusion and dismissal of all the writ petitions, the wages as revised/determined shall be payable from 11.11.2011 recommendations of the Majithia Wage Boards. India the arrears up the when the Government of notified

All to March, 2014 shall be paid to all eligible persons in four equal instalments within a period of one year from today and continue to pay the revised wages from April, 2014 onwards."

The learned Single Judge held that the writ petitioner-newspaper establishment has to satisfy the entire arrears due with effect from 11.11.2011 as per the Justice Manjithia Wage Board Award, by March 2015 and that the enhanced wages are to be paid from April 2014 and that the remittance of the arrears of the Wage Board Award would necessarily have to concede to the above said orders of the Apex Court and directed the revenue recovery officer concerned to accept the amounts now paid by the writ petitioner and that further recovery be made in accordance with the judgment of the Supreme Court. It was observed in the impugned judgment that the subsequent event makes Ext. P1 interim award inoperative. As the writ petition was disposed of by holding that the subsequent event makes Ext. P1 interim order inoperative and issuing directions for payment of amounts essentially covered under Ext. P9 final notification, the aforementioned Employees'' Association has preferred this Writ Appeal. Aggrieved by the judgment in the W.P. (C), the appellant herein had preferred Review Petition, R.P. No. 243/2014, which was dismissed by the learned Single Judge on 27.3.2014. It is thereafter that the appellant has preferred this intra-court appeal.

3. Heard Sri. Thampan Thomas, the learned counsel appearing for the writ appellant, Sri. P. Benny Thomas, the learned counsel appearing for the 1st respondent-newspaper establishment (writ petitioner) and the learned Government Pleader appearing for the official respondents.

4. The writ appellant and the writ petitioner reiterated their respective submissions based on the pleadings in the Writ Petition and the Writ Appeal.

5. The main finding rendered by the learned Single Judge is to the effect that the subsequent events in the issuance of Ext. P9 final notification dated 11.11.2011 and the directions issued by the Apex Court in paragraph 73 of the aforementioned judgment reported in ABP Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, make Ext. P1 interim award inoperative. The main issue that arises for consideration in this appeal is as to whether the liability of the newspaper establishment to pay the interim rates of wages notified as per Ext. P1 issued under Section 13A, would extinguish, on the issuance of the final notification issued as per Ext. P9 under Section 12 of the above said Act ?

6. The matters relating to fixation or revision of rates of wages and related matters are covered by the aforementioned Act framed by the Parliament, viz., "Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955" (Central Act No. 45 of 1955). Section 8(1) of the Act envisages that the Central Government may fix the rates of wages in respect of working journalists and revise from time to time at such intervals as it thinks fit, the rates of wages fixed under that Section or specified in the order made under Section 6 of the Working Journalists (Fixation of Rates of Wages) Act, 1958, etc. Section 9 thereof provides for the procedure for fixation and revision of such rates of wages and for such purpose in respect of working journalists under the Act, the Central Government shall, as and when necessary, constitute a Wage Board, which consists of three persons representing employees in relation to newspaper establishments, three persons representing working journalists and four independent persons, one of whom shall be a person who is, or has been, a Judge of a High Court or the Supreme Court and who shall

be appointed by that Government as the Chairman thereof. Section 10 deals with the manner and method of the making of the recommendations by the Wage Board, which inter-alia, provide for calling of representations from interested persons and Section 10(4) expressly mandates that in making any recommendation to the Central Government, the Board shall have due regard to the cost of living, the prevalent rates of wages for comparable employment, the circumstances relating to the newspaper industry in different regions of the country and to any other circumstances which to the Board may seen relevant. Section 11 of the Act provides the powers and procedure of the above said Wage Board and it is stipulated in Section 11(1) that subject to the provisions contained in sub-section (2), the Board may exercise all or any of the powers which an Industrial Tribunal constituted under the Industrial Disputes Act, 1947, exercises for the adjudication of an industrial dispute referred to it and shall, subject to the provisions contained in this Act, and the rules, if any, made thereunder and have power to regulate its own procedure.

7. The constitutional validity of the above said Act has been considered on occasions more than one by the Apex Court. The Apex Court has consistently held that the provisions of the Act do not in any way violate the fundamental rights guaranteed under Articles 19(1)(a) and 19(1)(g) etc. and that the Act has been engrafted by the Parliament with the laudable objective for the amelioration of the conditions of service of working journalists and non-journalist newspaper employees. In the case reported in Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others, , the Constitution Bench of the Supreme Court held the above said Act to be intra vires the Constitution. The attack made against the Act before the Constitution Bench was that the procedure for fixation of wages of working journalists by the appointment of the statutory Wage Board, as envisaged in the Act, creates a class of privileged workers with the benefits and rates, which are not conferred upon the other employees of industrial establishments and that the Act has left fixation of rates of wages to an agency invested with arbitrary and uncanalised powers to impose an indeterminate burden on the wage structure of the press, to impose such employer-employee relations as in its discretion it thinks fit and to impose such burdens and relations for such time as it thinks proper, etc. (See para 162 of Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others, . It was primarily contended before the Constitution Bench in Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others, , that the impugned Act has selected working journalists for favoured treatment by giving them a statutory guarantee of gratuity, hours of work and related benefits, which other persons in similar or comparable employment had not secured and in making provisions for fixation of their wages without following the normal procedure envisaged in the Industrial Disputes Act, 1947 and the following contentions were primarily urged for the consideration of the Apex Court as can be seen from para 210 of the above said decision:

"1. In selecting the Press industry employers from all industrial employers governed by the ordinary law regulating industrial relations under the Industrial Disputes Act, 1947 and Act 1 of 1955 the impugned Act subjects the Press industry employers to discriminatory treatment.

2. Such discrimination lies in

(a) singling out newspaper employees for differential treatment;

(b) saddling them with a new burden in regard to a section of their workers in matters of gratuities, compensation, hours of work and wages;

(c) devising a machinery in the form of a Pay Commission for fixing the wages of working journalists;

(d) not prescribing the major criterion of capacity to pay to be taken into consideration;

(e) allowing the Board in fixing the wages to adopt any arbitrary procedure even violating the principle of audi alteram partem;

(f) permitting the Board the discretion to operate the procedure of the Industrial Disputes Act for some newspapers and any arbitrary procedure for others;

(g) making the decision binding only on the employers and not on the employees, and

(h) providing for the recovery of money due from the employers in the same manner as an arrear of land revenue.

3. The classification made by the impugned Act is arbitrary and unreasonable, insofar as it removes the newspaper employers vis-?-vis working journalists from the general operation of the Industrial Disputes Act, 1947 and Act 1 of 1955.

8. In paragraphs 212 to 216 of the Express Newspaper (P) Ltd.''s case reported in AIR 1958 SC 578 the Constitution Bench of the Apex Court has held as follows:

''212. We have already set out what the Press Commission had to say in regard to the position of the working journalists in our country. A further passage from the Report may also be quoted in this context:

"It is essential to realize in this connection that the work of a journalist demands a high degree of general education and some kind of specialized training. Newspapers are a vital instrument for the education of the masses and it is their business to protect the rights of the people, to reflect and guide public opinion and to criticize the wrong done by any individual or organization however high placed. They thus form an essential adjunct to democracy. The profession must, therefore, be manned by men of high intellectual and moral qualities. The journalists are in a sense creative artists and the public rightly or wrongly, expect from them a general omniscience and a capacity to express opinion on any topic that may arise under the sun. Apart from the nature of their work the conditions under which that work is to be performed, are peculiar to this profession.

Journalists have to work at very high pressure and as most of the papers come out in the morning, the journalists are required to work late in the night and round the clock. The edition must go to press by a particular time and all the news that breaks before that hour has got to find its place in that edition. Journalism thus becomes a highly specialized job and to handle it adequately a person should be well-read, have the ability to size up a situation and to arrive quickly at the correct conclusion, and have the capacity to stand the stress and strain of the work involved. His work cannot be measured, as in other industries, by the quantity of the output, for the quality of work is an essential element in measuring the capacity of the journalists. Moreover, insecurity of tenure is a peculiar feature of this profession. This is not to say that no security exists in other professions but circumstances may arise in connection with profession of journalism which may lead to unemployment in this profession, which would not necessarily have that result in other professions. Their security depends to some extent on the whims and caprices of the proprietors. We have come across cases where a change in the ownership of the paper or a change in the editorial policy of the paper has resulted in a considerable change in the editorial staff. In the case of other industries a change in the proprietorship does not normally entail a change in the staff. But as the essential purpose of a newspaper is not only to give news but to educate and guide public opinion, a change in the proprietorship or in the editorial policy of the paper may result and in some cases has resulted in a wholesale change of the staff on the editorial side. These circumstances, which are peculiar to journalism must be borne in mind in framing any scheme for improvement of the conditions of working journalists."

(para 512).

213. These were the considerations which weighed with the Press Commission in recommending the working journalists for special treatment as compared with the other employees of newspaper establishments in the matter of amelioration of their conditions of service.

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215....The working journalists are thus a group by themselves and could be classified as such apart from the other employees of newspaper establishments and if the legislature embarked upon a legislation for the purpose of ameliorating their conditions of service there was nothing discriminatory about it. They could be singled out thus for preferential treatment against the other employees of newspaper establishments. A classification of this type could not come within the ban of Article 14. The only thing which is prohibited under this article is that persons belonging to a particular group or class should not be treated differently as amongst themselves and no such charge could be levelled against this piece of legislation. If this group of working journalists was specially treated in this manner there is no scope for the objection that that group had a special legislation enacted for its benefit or that a special machinery was created, for fixing the rates of its wages different from the machinery employed for other workmen under the Industrial Disputes Act, 1947. The payment of retrenchment compensation and gratuities, the regulation of their hours of work and the fixation of the rates of their wages as compared with those of other workmen in the newspaper establishments could also be enacted without any such disability and the machinery for fixing their rates of wages by way of constituting a Wage Board for the purpose could be similarly devised. There was no industrial dispute as such which had arisen or was apprehended to arise as between the employers and the working journalists in general, though it could have possibly arisen as between the employers in a particular newspaper establishment and its own working journalists. What was contemplated by the provisions of the impugned Act, however, was a general fixation of rates of wages of working journalists which would ameliorate the conditions of their service and the constitution of a Wage Board for this purpose was one of the established modes of achieving that object. If, therefore, such a machinery was devised for their benefit, there was nothing objectionable in it and there was no discrimination as between the working journalists and the other employees of newspaper establishments in that behalf...

welfare 216.... Even considering the Act as a measure of social legislation the State could only make a beginning somewhere without embarking on similar legislations in relation to all other industries and if that was done in this case no charge could be levelled against the State that it was discriminating against one industry as compared with the others. The classification could well be founded on geographical basis or be according to objects or occupations or the like. The only question for consideration would be whether there was a nexus between the basis of classification and the object of the Act sought to be challenged. In our opinion, both the conditions of permissible classification were fulfilled in the present case. The classification was based on an intelligible differentia which distinguished the working journalists from other employees of newspaper establishments and that differentia had a rational relation to the object sought to be achieved viz. the amelioration of the conditions of service of working journalists.''

This position has again been reiterated by the Apex Court, as can be seen from the observations in the case Express Publications (Madurai) Ltd. and Another Vs. Union of India (UOI) and Another, .

9. The Apex Court in ABP Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, , held in paragraph 25 thereof that mere passage of time by itself would not result in the invalidation of the Act and its objects and that the validity of the Act once having been upheld by a Constitution Bench of the Apex Court in Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others, , the same cannot be challenged now contending that it has outlived its object and purpose and has been worn out by the passage of time. The Apex Court in paragraph 26 of ABP Pvt. Ltd.''s case (supra) has noted that even in Express Publications (Madurai) Ltd. and Another Vs. Union of India (UOI) and

Another, , the Apex Court has consciously reiterated the spirit of law laid down in Express Newspapers Pvt. Ltd.''s case (supra) reported in AIR 1958 SC 578 etc. The Apex Court further held in para 29 of the ABP Pvt. Ltd.''s case (supra) that it is true that the newspaper industry, with the advent of electronic media, continues to face greater challenges similar to the ones as observed by the Press Commission as noted by the Constitution Bench decisions (supra) and that the contention of the newspaper establishments that though the newspaper industry may be growing, growth of electronic media is relatively exponential, in fact, substantiates the very necessity of why a wage board for working journalists and non-journalists newspaper employees of newspaper industry should exist, etc. After placing reliance on paragraphs 34 and 35 of Express Publications (Madurai) Ltd. and Another Vs. Union of India (UOI) and Another, , the Apex Court in ABP Pvt. Ltd.''s case supra, held that such preferential classification made by the Parliament in favour of working journalists is well justified and that the State could only make a beginning somewhere without embarking on similar legislation in relation to all other industries and if that was done, no charge could be levelled against the State that it was discriminating against one industry with the others and that such classification could well be founded on geographical basis or be according to objects or occupations or the like and the fact that even after more than half a century similar benefit has not been extended to the employees of any other industry will not result in invalidation of benefit given to employees of newspaper industry. In paragraph 72 of ABP Pvt. Ltd.''s case (supra), the Supreme Court ordered to dismiss all the Writ Petitions and did not accept any of the grounds urged by the petitioners therein and in paragraph 73, it was ordered as follows:

"73) In view of our conclusion and dismissal of all the writ petitions, the wages as revised/determined shall be payable from 11.11.2011 when the Government of India notified the recommendations of the Majithia Wage Boards. All the arrears up to March, 2014 shall be paid to all eligible persons in four equal instalments within a period of one year from today and continue to pay the revised wages from April, 2014 onwards."

So the provisions of the aforementioned Act have to be seen as an employee welfare legislation engrafted by the Parliament with the laudable objective of amelioration of the conditions of service of working journalists and non-journalists newspaper employees.

10. The interim rates of wages as per Ext. P1 notification have been issued by virtue of the enabling powers conferred under 13A of the Act, which reads as follows:

"13A. Power of Government to fix interim rates of wages.-

(1) Central Notwithstanding of anything that it is necessary so to do, it may, contained in this Act, where the Government is opinion after consultation with the Board, by notification in the Official Gazette, fix interim rates of wages in

respect of working journalists.

(2) Any interim rates of wages so fixed shall be binding on all employers in relation to newspaper establishments and every working journalist shall be entitled to be paid wages at a rate which shall, in no case, be less than the interim rates of wages fixed under sub-section (1).

(3) Any interim rates of wages fixed under sub-section (1) shall remain in force until the order of the Central Government under section 12 comes into operation."

11. The final notification as per Ext. P9 has been issued by virtue of the powers conferred under Section 12 of the above said Act, which reads as follows:

"12. Powers of Central Government to enforce recommendations of the Wage Board.-(1) As soon as may be, after the receipt of the recommendations of the Board, the Central Government shall make an order in terms of the recommendations or subject to such modifications, if any, as it thinks fit, being modifications which, in the opinion of the Central Government, do not effect important alterations in the character of the recommendations.

section(2) the Central Government may, if it thinks fit,-Notwithstanding anything contained in sub-(1),

(a) make such modifications in the recommendations, not being modifications of the nature referred to in sub-section (1), as it thinks fit:

Provided that before making any such modifications, the Central Government shall cause notice to be given to all persons likely to be affected thereby in such manner as may be prescribed, and shall take into account any representations which they may make in this behalf in writing; or

(b) refer the recommendations or any part thereof to the Board, in which case, the Central Government shall consider its further recommendations and make an order either in terms of the recommendations or with such modifications of the nature referred to in sub-section (1) as it thinks fit.

(3) Every order made by the Central Government under this section shall be published in the Official Gazette together with the recommendations of the Board relating to the order and the order shall come into operation on the date of publication or on such date, whether prospectively or retrospectively, as may be specified in the order."

It can thus be seen that sub section (3) of Section 12 of the Act mandates that on the Central Government publishing in the official gazette etc. the order made under Section 12(1) along with the recommendations of the Board relating to the order, such an order shall come into operation on the date of its publication in the gazette or on such date, whether prospectively or retrospectively, as may be specified in the order. In this case, Section 13 of the Act is also relevant, which reads as follows:

"13. Working journalists entitled to wages at rates not less than those specified in the order.-On the coming into operation of an order of the Central Government under section 12, every working journalist shall be entitled to be paid by his employer wages at the rate which shall in no case be less than the rate of wages specified in the order."

Section 13 mandates that on coming into operation of an order of the Central Government issued under Section 12, every working journalist shall be entitled to be paid by his employer wages at the rate which shall in no case be less than the rate of wages specified in the order.

12. The provisions of Section 13A have already been quoted above. Sub section 3 of Section 13A of the Act mandates that any interim rates of wages fixed under sub-section (1) of Section 13A shall remain in force until the order of the Central Government under Section 12 comes into operation.

13. It is true that interim rates of wages issued under Section 13A(1) shall remain in force only until the order of the Central Government under Section 12 comes into operation, by virtue of the provisions in Section 13A(3). In a case, where a newspaper establishment has refused to pay to the working journalists the interim rates of wages notified under Section 13A(1), can the newspaper paper establishment contend that their liability to pay the interim rates of wages under Section 13A(1) would extinguish for ever immediately on coming into force of the final order issued under Section 12(1) of the Act ? In other words, the crucial question is as to whether the liability of a newspaper establishment to pay the interim rates notified under Section 13A(1) would extinguish immediately on coming into force of the order notified under Section 12(1) ? and Whether the employer can be heard to contend that such interim rates of wages not paid to the working journalists cannot be enforced for payment by the statutory authorities concerned, merely on account of the promulgation of the final order issued under Section 12(1) of the Act ?

14. Section 13A(2) would provide the main key to this issue. Section 13A(2) mandates that any interim rates of wages so fixed shall be binding on all employers in relation to newspaper establishments and every working journalist shall be entitled to be paid wages at a rate which shall, in no case, be less than the interim rates of wages fixed under sub-section (1). Sections 16 and 17 of the Act would also throw sufficient light for a proper determination of this issue. Section 16 reads as follows:

"16. Effect of laws and agreements inconsistent with this Act.-(1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the commencement of this Act:

Provided that where under any such award, agreement, contract of service or otherwise, a newspaper employee is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the newspaper employee shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act.

(2) Nothing contained in this Act shall be construed to preclude any newspaper employee from entering into an agreement with an employer for granting him rights or privileges in respect of any matter which are more favourable to him than those to which he would be entitled under this Act."

Section 17 provides as follows:

"17. Recovery of money due from an employer.-(1) Where any amount is due under this Act to a newspaper employee from an employer, the newspaper employee himself, or any person authorised by him in writing in this behalf, or in the case of the death of the employee, any member of his family may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to him, and if the State Government, or such authority, as the State Government may specify in this behalf, is satisfied that any amount is so due, it shall issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue.

(2) If any question arises as to the amount due under this Act to a newspaper employee from his employer, the State Government may, on its own motion or upon application made to it, refer the question to any Labour Court constituted by it under the Industrial Disputes Act, 1947 (14 of 1947), or under any corresponding law relating to investigation and settlement of industrial disputes in force in the State and the said Act or law shall have effect in relation to the Labour Court as if the question so referred were a matter referred to the Labour Court for adjudication under that Act or law.

(3) The decision of the Labour Court shall be forwarded by it to the State Government which made the reference and any amount found due by the Labour Court may be recovered in the manner provided in sub-section (1)."

Section 17 mandates that where any amount is due under the Act to a newspaper employee from an employer, the newspaper employee himself, or any person authorised by him or family member of such deceased employee, may without prejudice to any other mode of recovery, make an application in the manner envisaged therein for recovery of such amounts due to him etc. Section 17 does not in any way dilute or whittle down the power to recover any amount due under the Act including an amount not paid under Section 13A(1), merely on account of the issuance of the final order under Section 12(1) of the Act. Section 16 mandates that the provisions of the Act shall have the effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award or agreement or contract of service etc. Of course, Section 16(1) proviso and Section 16(2) enables the newspaper employee to claim any benefits which are more favourable to him, than the one provided under the Act, etc. Therefore, the liability of a newspaper establishment to pay the interim rates of wages notified under Section 13A(1) of the Act will not be extinguished merely on account of the issuance of the final order under Section 12(1) of the Act. True that on issuance of the notification under Section 12(1) of the Act, such notification would regulate the payment of wages for the periods covered by that notification as can be seen from Section 12(3) of the Act. But if the interim wages notified under Section 13A(1) have not been paid by the newspaper establishment to a working journalist for the period covered under Sec. 13A(3), the liability of the employer to pay such interim rates of wages will not be extinguished in any manner merely on account of the issuance of the notification under Section 12(1) and recovery proceedings set in motion under Section 17 cannot be said to have abated merely on account of the issuance of the notification under Section 12(1).

15. Going by the scheme of the Act, we have no hesitation to hold that the primary ground urged by the writ petitioner that the interim relief under Section 13A will get merged with the final award under Section 12 and that the interim award is not enforceable after the notification of the final award is untenable and unsustainable. The notification issued under Section 12 would regulate the periods covered by that provision as envisaged in Section 12(3) of the Act. In view of this, the interim rates of wages notified under Section 13A(1) shall remain in force for the period mandated in Sec. 13A(3), which is until the order under Section 12 comes into operation and as per Section 13A(2), any interim rates of wages so fixed shall be binding on all employers in relation to newspaper establishments and every working journalist shall be entitled to be paid wages at a rate which shall, in no case, be less than the interim rates of wages fixed under Section 13A(1) and in case such interim rates are not paid by the employer, then the employee is at liberty to set in motion the recovery proceedings as envisaged in Section 17. The Apex Court in ABP Pvt. Ltd.''s case (supra) reported in AIR 2014 SC 1228, has not in any way considered the legality or correctness of Ext. P1 or about the enforcement of Ext. P1 herein and, the directions issued in para 73 of the said judgment are only in the matter of payment of revised wages notified under Ext. P9 herein as per Sec. 12(1). It is also brought to our notice that all the newspaper establishments, who approached the Apex Court except the writ petitioner, had already implemented the interim wages notified under Section 13A as per Ext. P1. Even in Ext. P8 Writ Petition (Civil) No. 87/2012 filed by the writ petitioner herein before the Apex Court, there was no specific challenge as against Ext. P1 herein. At any rate, the Apex Court in ABP Pvt. Ltd.''s case (supra) has dismissed all the Writ Petitions on all counts. The Writ Petitioner company has paid the interim rates of wages to all the employees, except the 68 members of the appellant Association, @ 25% of the basic wages.

16. In the instant case, the interim wages notified as per Ext. P1 as per Sec. 13A(1), has come into force with effect from 8.1.2008. It is notified in Ext. P9 notification dated 11.11.2011 issued under Sec. 12 that the Central Government has proposed to accept the recommendations of the Wage Boards, as contained

in Chapter XIX of Part V of the report, which is appended as Annexure 1(a) thereto and other provisions, subject to certain modifications specified in Ext. P9. Clause (2) of Sec. 1 of Chapter XIX thereof notified as Annexure 1(a) of Ext. P9 mentions that the award shall be deemed to have come into force on 1.7.2010. Clause (20) of Section 3 of the report notified in Ext. P9 also mentions that the revised pay scales shall become applicable to all employees with effect from 1.7.2010, etc. Explanation (1) appended under the above said Clause (20) defines "existing emoluments" of an employee shall mean his basic pay, variable dearness allowance at the all India coverage consumer price index number for industrial workers (Base 2001 = 100) at 167 during the period July 2009 to June 2010, convertible to CPI-IW (Base 1982 = 100) by the conversion factor of 4.63, and interim relief of 30% of basic pay sanctioned vide the notifications SO No. 2524(E) and 2525(E) dated 25th August, 2008 as applicable for working journalists and non-working journalist newspaper employees respectively. Though Ext. P9 dated 11.11.2011 has ordered the grant of the revised pay benefits retrospectively with effect from 1.7.2010, the Apex Court, in paragraph 73 of the judgment dated 7.2.2014 in ABP Pvt. Ltd.''s case supra specifically directed that the wages as revised shall be payable with effect from 11.11.2011, when the Government of India actually notified the recommendations of the Justice Majithia Wage Board and further that all arrears upto March, 2014 shall be paid to all eligible persons in four equal instalments within a period of one year from the date of the judgment (7.2.1014) and continue to pay the revised wages from April, 2014 onwards. Therefore, by the intervention of the judgment of the Apex Court, the effective date of grant of the revised wages as per Ext. P9 notification dated 11.11.2011, as envisaged in Section 12(3) is 11.11.2011. So the combined effect of Section 12(3) and Section 13A(3) and the directions in paragraph 73 of ABP Pvt. Ltd.''s case supra, leads to the irresistible conclusion that the interim wages notified as per Ext. P1 as per Section 13A(1) will be applicable for the period from 8.1.2008 upto 10.11.2011. The Writ Petitioner employer is legally bound to pay interim wages notified as per Ext. P1 as per Section 13A(1) to the members of the appellant-Association @ 30% of the basic wages for the above said period from 8.1.2008 upto 10.11.2011. In this context, it is also to be noted that going by the aforementioned definition of "existing emoluments" in Ext. P9, the existing emoluments received by the employees upto 11.11.2011 (the date of coming into force of the revised wages) shall include the basic pay, dearness allowance and interim relief of 30% of the basic wages notified as per Ext. P1, etc. The grant of the revised wages notified as per Ext. P9 as per Section 12 shall be in the manner ordered by the Apex Court in para 73 of the ABP Ltd.''s case supra and as already held hereinabove, the directions in the above said para 73 are only in the matter of payment of the revised wages notified as per Ext. P9 herein. The said directions do not in any way extinguish or dilute the liability of a newspaper employer to pay the interim wages notified as per Ext. P1 for applicable period. This case is only concerned with the issue regarding the liability to pay the interim wages notified as per Ext. P1 for the aforementioned applicable period in question.

17. Faced with this situation, Sri. Benny Thomas, learned counsel for the writ petitioner submitted that the writ petitioner-newspaper establishment is having financial problems and that is the reason why they offered to pay only interim rates of wages at the rate of 25% and not at the rate of 30% as notified under Section 13A(1) as per Ext. P1. Sri. Thampan Thomas, learned counsel for the writ appellant would contend on the basis of the pleadings in this appeal that during the years ending 31.3.2008 and 31.3.2009, the writ petitioner was in a good financial position as evident from the audited profit and loss accounts of the writ petitioner-company issued by the Registrar of Companies showing Rs. 3,71,25,218/- as profit for the year ending 31.3.2009 and Rs. 86,55,698/- as profit for the year ending 31.3.2010 as can be seen from Annexure A3 produced along with the appeal and that a combined reading of Ext. P2 in the Writ Petition and Annexure A3 produced in the Writ Appeal, shows that the accumulated loss is reduced to a great extent and that the writ petitioner-company has made a handsome profit of Rs. 15,54,29,930/- between the years ending 31.3.2010 and 31.3.2013 and that this shows high growth and yearly profitability of the writ petitioner company, etc. We are not called upon to adjudicate on this issue on the correctness or otherwise of the rival arguments now posed by the parties. We are only called upon to decide on the liability to pay the interim rates of wages notified under Section 13A(1) of the Act as ordered in the recovery proceedings impugned in the W.P. (C). However, we would only advert to the pleading of the writ petitioner that the vast majority of the employees except the members of the appellant-Association, have entered into individual agreements with the petitioner-company for receiving interim wages at the rates 25% and that such consenting employees have already received the interim wages at the agreed rate of 25% long ago and that they have not chosen to seek enforcement of Ext. P1 herein, etc. It is trite that the claims, if any, of those who have not chosen to agitate their rights in time, would be barred by delay and laches. We only make it clear that the benefit of this judgment leading to the dismissal of the W.P. (C). is confined to the upholding of the recovery proceedings in favour of the members of the appellant-Association, that has been impugned in the W.P. (C). Further, Sri. Benny Thomas, the learned counsel for the writ petitioner also submitted that the writ petitioner-newspaper establishment may also be given some leeway in the matter of payment of interim rates of wages under Section 13A to the members of the appellant-Association. We note that the writ petitioner-company has already paid interim wages to all the other employees except the members of the appellant-Association at the rate of 25% of the basic wages and therefore the dispute lies in a very narrow compass insofar as the differential amounts concerned with respect to interim wages is only to the tune of 5%, in order to constitute the whole 30% interim wages ordered under Ext. P1. Accordingly, we would order that the writ petitioner-newspaper establishment shall forthwith pay interim wages for the aforementioned applicable period in question, @ 25% to the members of the appellant-Association after deducting any amounts, if already paid, at any rate, within a period of one month from date of production of a certified copy of this judgment. The balance 5% so as to

constitute the entire 30% interim wages envisaged under Ext. P1, shall be paid to the members of the appellant-Association within a further period of two months therefrom. In case the aforementioned amounts are not paid within the above said time limit as directed above, then the competent authority among official respondents 2 to 5, shall proceed with the recovery proceedings of the interim wages notified in Ext. P1 and the official respondents shall ensure that the interim wages notified under Ext. P1 for the aforementioned applicable period from 8.1.2008 upto 10.11.2011 are paid to the members of the appellant-Association without any further delay.

In this view of the matter, we allow the Writ Appeal as indicated above and consequently set aside the impugned judgment in the W.P. (C). and accordingly dismiss W.P. (C). No. 31500/2013.

