

(2009) 06 KAR CK 0100
In the Karnataka High Court
Case No : Writ Petition No. 10663 of 2008

The Karnataka Planters' Association and Sri. I.S. Umesh
Chandra Gowda

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 26-06-2009

Acts Referred:

Minimum Wages Act, 1948 — Section 5 (1), 5 (1) (b), 5 (2)

Citation : (2010) 124 FLR 666 : (2009) ILR (Kar) 2938

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : A.G. Holla, for P.D. Vishwanath, for the Appellant; Jagdeesh Mundargi, GA for R1-R2, M.C. Narasimhan Associates, for R3-R6, T.S. Anantharam, for R7, D. Leelakrishna and M.A. Appaiah for R8-R10, for the Respondent

Final Decision : Dismissed

Judgement

Subhash B. Adi, J.—This Writ Petition is directed against the notification No. KAAE-11 LMW 2004 dated 25.3.2008 published in Karnataka Gazette dated 24.4.2008 produced at Annexure-K.

2. Petitioner No. 1 is an Association of Planters established in the year 1958. Petitioners-2 and 3 are the members of the first petitioner. There are about 4,67,000 labourer employed in Coffee estates in Karnataka and their wages are fixed under the provisions of Section 5 Sub-section (1) of the Minimum Wages Act, 1948 (hereinafter referred to as the Act"). State Government by notification dated 19.2.2004 had published a draft notification calling for objections, wherein the State Government had indicated the minimum wages for the workers working in Cincona, Rubber, Tea, coffee and mixed plantations at Rs. 70.10 paise. In response to the same, the first petitioner No. 1 -Association had filed a statement of objections as per Annexure-B. In this regard, the State Government had constituted an Advisory Board (hereinafter referred to as the Board*) under

the chairmanship of second respondent and the said Board had convened several meetings and had submitted its recommendation. The State Government by its notification dated 25.3.2008 revised the minimum wages of the workers in Cincona, rubber, tea and coffee plantation at Rs. 84.50 paise as per Annexure-K. While determining the minimum wages, the average Consumer Price Index (C.P.I.) was taken at 2967 points and provided for payment of Dearness Allowance at 3 paise per point per day for every increase in points over the State Consumer Price Index. Applying the said price, the State Government has fixed the minimum wages at Rs. 84.50 paise.

3. The case of the petitioners is that, in a notification issued in 1999, the basic minimum wages was fixed at Rs. 52/- and the said sum was determined by adding Dearness Allowance at 2 paise for the earlier basic wages i.e., Rs. 40/- for the year 1996 and addition of 5% to the same. The earlier practice followed by the State was that, basic minimum wages under the impugned notification at Rs. 52/- with merger of V.D.A. (Variance Dearness Allowance) from 1980.5 to 2967 i.e., 2.5 paise per point i.e., Rs. 24.66 paise, in all, Rs. 76.66 paise + 5% increase as per practice i.e., Rs. 3.83 paise, total Rs. 80.49 paise, rounded off to Rs. 80.50 paise, but as a result of wrong calculation arbitrarily done by the impugned notification, the minimum wage is fixed at Rs. 84.50 paise. The said decision of fixing the minimum wages was questioned by the employers in W.P. No. 17636/2004 and connected matters. This Court held that, the said determination was not in accordance with the provisions of the Act and Rules made thereunder and directed the authorities to re-consider the matter.

4. While the said Writ Petition was pending, the Board took up the matter for discussion and the proceeding dated 3.8.2006 of the Advisory Board discloses that, the discussion about the V.D.A. was deferred as the matter was pending before this Court and as such no discussion took place. However, arbitrarily, in violation of Mandatory provisions of the Act and Rules made thereunder, the Government issued notification u/s 5(1)(b) of the Act, fixing the minimum wages as per Annexure-K. The State has not made proper consultation with the Board and the procedure followed in fixing the minimum wages is contrary to the prevailing practice and the law. It is also stated that, wages and Dearness Allowance are fixed as one package and there cannot be two separate method of calculation, one for Dearness Allowance and another for basic wages. The wages are paid per day, which includes weekly rest day. Rule 24 Sub-rule (4) of the Karnataka Minimum Wages Rules, 1958 (hereinafter referred to as the Rules") does not provide for any procedure of calculating the Dearness Allowance and the basic wages to fix the minimum wages. The revision of the basic wages is arbitrary and not supported either under the practice followed earlier or is done with intelligible and reasonable criteria nor is based on legal principle prescribed under the Act and the Rules.

5. While the writ petition was pending, an application was filed for impleading some of the Unions. This Court by order dated 29.8.2008 allowed I.As.II and

III/2008 and permitted the applicants to come on record and they were impleaded as respondents-3 to 6 and respondent No. 7, they have filed separate objections. Again three Trade Unions filed an application in I.A.IV/2008. This Court by order dated 12.11.2008 allowed the said application and permitted those applicants to come on record as respondents-8 to 10. State Government also filed objection on behalf of respondents-1 and 2.

6. It is the case of the State that, by notification dated 16.2.1999, the minimum wages was fixed at Rs. 52/- per day by taking into consideration V.D.A. at 2.5 paise per point and same was calculated by taking into consideration difference in CPI points multiplied by 2.5 paise VDA multiplied by 30 divided by 26 and the minimum wages is calculated as per the impugned notification. It is stated that, weekly holidays/rest days is taken into consideration to apply multiplier of 30 days divided by 26 days and the said calculation is perfectly in consonance with Rule 24 Sub-rule (4) of the Rules.

7. The case of the contesting respondents supporting the impugned notification is that, the rate of neutralization of 3.5 paise was based on Shanthappa Committee recommendation and the recommendation of the said Committee was followed by the Karnataka Minimum Wages Advisory board. Pros and cons between 2.5 p.m. and 3.5 p.m. was thoroughly discussed by the Advisory Committee in a meeting held on 17.10.2007 and minimum wages has been determined. It was unanimously accepted to fix the rate of neutralization at 3 paise and accordingly, the minimum wages has been determined. It is also stated that, in case of minimum wages, Court should not interfere, if it is not fair wages, what is fixed is only the minimum wages and petitioners have not alleged that the minimum wage fixed is a fair wage and if that is not fair wage and the Act being a social legislation, the Court should not interfere with the fixation of minimum wages. It is further contended that, even if the Board has not tendered any advise to the government, it will not prevent the State from finalising the minimum rate of wages and on that ground, writ petition cannot be entertained.

8. Heard Sri. A.J. Holla, learned Senior Counsel for the petitioners, Sri. M.C. Narasimban, learned Senior Counsel for the respondents-3 to 6. Sri. T.S. Anantharam. learned Counsel for respondent No. 7, Sri. D. Leelakrishna, learned Counsel for respondents-8 to 10 and Sri. Jagadeesh Mundargi, learned Government Advocate for respondents-1 and 2. Perused the records.

9. Sri. A.G. Holla, learned Senior Counsel submitted that, the method of calculation of minimum wages is arbitrary, unreasonable and contrary to the prevailing practice, provisions of the Act and the Rules made thereunder. The determination of minimum wages is not scientific and based on no criteria. He also submitted that, the Advisory Board constituted u/s 7 of the Act had not deliberated on the determination of the minimum wages as a writ petition was pending before this Court He also submitted that, the approach of the State Government in issuing notification suffers from illegality and irregularity.

10. He referred to the provisions of Section 2 Clause (d) of the Act, to submit, as to what is the cost of living index number and further referred to Section 3 as regards to fixation of minimum wages and submitted that, the impugned notification is violative of the procedure prescribed u/s 5 of the Act, as there is no compliance with the requirement of Section 5(2) of the Act Inasmuch as State Government could issue a notification only after considering the advice of the Committee appointed u/s 5 Sub-section (1) Clause (b) of the Act and in this case, the Advisory Committee had not even discussed the subject in view of the pendency of the writ petition and as such, the determination of minimum wages is done in violation of the provisions of Section 5 Sub-section (2) of the Act

11. He referred to Rule 24 Sub-rule (4) of the Rules and submitted that, determination of minimum wages has to be based on neutralising point 2.5 paise multiplied by the difference of CPI point with 30 days i.e., which would make one month and it cannot be divided by 26. In this regard, he further submitted that, there is no provision under the Act or the Rules, which provides for determination of minimum wages by a method adopted by the State. Such a practice is not acceptable in law.

12. To support his contention that, minimum wages includes Dearness Allowance as one package, he relied on a decision reported in *Airfreight Ltd. Vs. State of Karnataka and Others*, and submitted that, there cannot be two components, it is one package, which has to be taken into account. He further relied on a decision reported in *Bijay Cotton Mills Ltd. Vs. The State of Ajmer*, and submitted that, minimum wages must be fair and practical and cannot be done in haste. He also relied on another decision reported in *Karnataka Planters' Association Vs. State of Karnataka*, and submitted that, for the purpose of determining the minimum wages, the authority cannot determine the minimum wages based on the general conditions of the employee or on the ground of social justice, and it must be in accordance with law. He also submitted that, the petitioners had filed their objections to the draft notification, however, the objections are not considered by the State. The State on the basis of the general assumptions has fixed the minimum wages. He further contended that, unless the determination of minimum wages is according to law, any determination on the basis of providing social justice is ultra vires. He also relied on the decisions reported in *Bidi, Bidi Leaves" and Tobacco Merchants Association Vs. The State of Bombay*, and *Delhi Development Authority, N.D. and Another Vs. Joint Action Committee, Allottee of SFS Flats and Others*,

13. He further submitted that, once wage is fixed, there is no question of fixing of wages again and again, only the VDA has to be revised. In this regard, he relied on a decision of the Apex Court reported in *Dr. B. Singh Vs. Union of India (UOI) and Others*, and submitted that, what is paid by the planters by way of wages is much more than the minimum wages. He relied on Annexure-S and submitted that, in all Rs. 145.72 paise is paid. He further submitted that, the revision of minimum wages is contrary to law and is not sustainable in law.

14. Sri. M.C. Narasimhan, learned Senior Counsel appearing for respondents-3 to 6 submitted that, the test that is required to be considered is as to whether the wages fixed is minimum wage or a fair wage. Normally, fixation of minimum wages will not be interfered, as providing minimum wages is one of the requirement under Article 21 of the Constitution of India. He submitted that, the revision of wages is required to be done after every five years and in this case, the revision is done after nine years. If the wages fixed under the notification is minimum wages. Courts will not get jurisdiction to strike down the notification.

15. He submitted that, fixing 3 paise is not in dispute nor is disputed before the Advisory Committee. What is disputed is only the method of calculation. If the wages fixed is not fair wage, court will not interfere with the fixation of minimum wages. In this case, it is not shown as to the revision of wages is fair wage. As regard to the consultation with the Board by the State is concerned, it is not a mandatory requirement The State, if takes into consideration the objections and issues notification and if the Court finds that, what is fixed is minimum wages, there is no reason for the Courts to go into the other details. Issuing of notification u/s 5 being the legislative act, there is no requirement for the State to assign the reason for its decision. Workers have to be paid for the weekly rest day and it is in this context, the method of calculation has been adopted by using 26 divider. He further submitted that, as per Annexure-S, daily wage was paid at Rs. 86.64 paise prior to 25.3.2008 and what is now fixed is Rs. 84.50 paise and there is no reason for this Court to find out as to whether the fixation of minimum wages is justified or not, as in the face of it is below the minimum wages.

16. In support of his contention as regard to the power of the Court to interfere with the fixation of minimum wages, he relied on the decisions reported in U. Unichoyi and Others Vs. The State of Kerala, (paras-17 and 18); The Workmen represented by Secretary Vs. The Management of Reptakos Brett and Co. Ltd. and another, (paras-10 and 24); Airfreight Ltd. Vs. State of Karnataka and Others, ; 1985(I) LLJ 412 in the matter of Ministry of Labour & Rehabilitation and Anr. v. Tiffin"s Barytes Asbestos & Paints Ltd. and Anr.; The President Cinema Workers Union Affiliated to Bharatiy Mazdoor Sangh Vs. The Secretary Social Welfare and Labour Department and Others, and submitted that, the delay in fixing the minimum wages is fatal to the workers.

17. As regards to the calculation, learned Senior Counsel submitted that, even earlier also, State has followed the same procedure i.e., dividing the components by 26, as per Annexures-Q and R - notifications dated 11th February 1982 and 3rd April 1991 respectively, uniform procedure is followed. Referring to the said notifications, he submitted that, it is a standard practice that, in the matter of determination of minimum wages, the revision takes place in basic wages + Dearness Allowance. As the minimum wage is now determined after 9 years, no fault could be found, and what is fixed is only minimum wages. Though the draft notification was issued in 2004, but final notification was issued only in 2008.

18. In support of his contentions, he also relied on a decision reported in Mangalore Ganesh Beedi and Allied Beedi Factories Workers Association Vs. State of Karnataka and Others, ; Digvijay Woollen Mills Ltd. Vs. Shri. Mahendra Prataprai Buch, and submitted that, the Court cannot sit in appellate jurisdiction to find out as to whether, the minimum wages fixed is correct or not unless the fixation is not a minimum wages and is a fair wage or is done arbitrarily and capriciously. He also relied on a decision reported in Karnataka Film Chamber of Commerce Vs. State of Karnataka, (paras-29 and 30).

19. Sri. Anantharam, learned Counsel appearing for the respondent No. 7 adopted the arguments of learned Senior Counsel Sri. M.C. Narasimhan and further submitted that, there is no change in the method of calculation of minimum wages, which is evident from Annexure-Q, even in 1984 also, same method was adopted for determining the minimum wages. He also relied on Annexures-Q. R and M and submitted that, at all relevant time, the same method was adopted and is accepted by the employers. He also relied on Annexure-S and submitted that, what is paid is not inclusive of Dearness Allowance and has to be worked out in addition to basic wage of Rs. 86.64 paise. To support his argument on interpretation of Rule 24 Sub-rule (4) of the Rules, he relied on the provisions of Payment of Gratuity Act, and submitted that, payment has to be made for the rest day or the weekly holiday and it is in consonance with the same. Divider of 26 is applied so as to determine the wages for the rest day also. He further submitted that, though the writ petition was pending, there was no prohibition for the Advisory Committee to discuss and deliberate on the subject nor the State Government is bound by the recommendations or suggestions of the Advisory Committee. He submitted that, the issue of notification is legislative act and no reasons are required to be assigned, he relied on a decision reported in Mangaldre Ganesh Beedi's case (supra) (paras-41. 42. 45 and 48). He further submitted that, the minimum wages cannot be struck down merely on the ground of technicalities and to support this contention, he relied on a decision reported in Ministry of Labour and Rehabilitation and Another Vs. Tiffin's Barytes Asbestos and Paints Ltd. and Another, . The Minimum Wages Act being a social legislative for the benefit of the workers, it has to be interpreted liberally and particularly payment of minimum wages being one of the obligations unless it is found that, what is fixed is not minimum wages, there is no reason for the Court to interfere with the notification.

20. Sri. D. Leelakrishna, learned Counsel appearing for respondents-8 to 10 adopted the arguments of Sri. M.C. Narasimhan, learned Senior Counsel.

21. Sri. Jagadeesh Mundargi, learned Government Advocate relied on proviso to Rule 24, and submitted that, the calculation of minimum wages or revision is done in consonance with the said provisions and this practice is followed since the beginning, there is no mistake in determining the minimum wages. He also submitted that, CPI points and neutralisation at 3 paise are not at all in dispute. The only issue that is raised is, as to the method of calculation and the

consultation with the Advisory Board. He submitted that, though there was a writ petition pending before this Court, it did not prevent the Advisory Committee to deliberate on the subject nor there is any dispute as regard to the fixation of Dearness Allowance at 3 paise and this has been unanimously accepted by the Advisory Board in its meeting held on 17.10.2007 as per Annexure-R

22. In the light of the above contentions, the points that arise for consideration are as under

(1) Whether the revision of minimum wages as per notification dated 25.3.2008 published in official gazette on 24.4.2008 is contrary to the provisions of the Minimum Wages Act and Rules made thereunder?

(2) Whether the notification suffers from violation of provisions of Section 5 Sub-section (2) of the Act?

(3) Whether the Court can interfere with the fixation of minimum wages?

23. In a country like India, fixation of minimum wages has become inevitable, as the labour is still cheap and unorganized. Though collective bargaining has assumed share in certain highly organized industries, industry is not capable of putting a face of collective bargaining and look after its own interest. Amongst the problems relating to the industrial labour in India, standardisation of wage rates and fixation of minimum wage is most important one and it would be difficult to conceive of industrial peace without fixation of the proper wages.

24. Way back in 1928, Government of India faced to appoint Royal Commission on Indian Labour to enquire and report on existing conditions of labour in industrial undertakings and plantations on health, efficiency and standard of living of the workers and on relation between the employers and employees and to make recommendations. The Commission after going through several problems laced by the labour in industrial undertakings and plantations considered the question of fixing wages for beedi making, wool cleaning, mica factories, etc., It recommended investigation and necessary legislation thereafter. In the year 1944, a Rege Committee was appointed by the then Government of India to survey the basic wage level in most of the Indian level industries, which Committee reported that the wage level is extremely low. Thereafter, a Central Pay Commission was appointed in 1946, which recommended that the Government should take some steps forward in giving effect to the living wages principle in dealing with the employees, who are virtually on the poverty line and also observed that in no case a man's wage should not be less than living wage. At the same time, a Bill was also introduced in the Indian Legislative Assembly on 11th February 1946, which was referred to the Select Committee in March 1947 and certain amendments were made by the Committee and several new clauses were added. The new Select Committee appointed, submitted its report on January 28, 1948 and the Bill was passed by the Dominion Legislature on 9th February 1948. With the advent of development of socio-economic culture and the concept of social justice, the basic features of wages have undergone

progressive change. The concept of wage can never be absolute and shall have to be viewed comparatively. The periodical revision of minimum wages and wage structure, therefore, became absolutely necessary. Though Act does not define minimum wages, but different reports have found a distinction between subsistence wages, minimum wages, fair wages and living wages.

25. Fixing of minimum wages is one of the directive principles of State Policy wherein the State shall endeavour to secure by suitable legislation or economic organization or in any other way to all the workers, agricultural, industrial or otherwise, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. The object behind directive policy under Article 43 of the Constitution of India is to secure economic and social justice to the people of India. It is in this regard, Act envisages that, minimum rate of wages should be fixed in respect of scheduled employment keeping the objects of providing sustenance and preserving his efficiency as a worker in view. In the background of Article 39, 39(e), 42 and 43 of the Constitution requires that, the State must endeavour to make policy towards securing the right to an adequate means of life to the citizens of the country. It is in this background, several amendments have been brought in to the provisions of the Act

26. In this case, the workers are plantation labours: namely, Cincona, Rubber, Tea or Coffee plantation. Plantation labour is one of the scheduled employment since 1948. Minimum wage was fixed for the first time for Cincona, Rubber, Tea or Coffee plantation in the year 1952 and was revised in 1976, 1979, 1982, 1984, 1991, 1996 and 1999 and now by the present impugned notification dated 25th March 2008 published in Official Gazette on 24th April 2008.

27. From time to time, the minimum wages has been revised. One of the notification is dated 6.2.1999 wherein the minimum wage for the plantation labour was fixed at Rs. 76.27 paise (Rs. 52/- + VDA Rs. 24.27 paise). In order to arrive the minimum wages per day, daily rate wages and VDA for different categories of employees are computed by dividing monthly wage by 26 vis-a-vis in order to determine the dairy wage, monthly wage was divided by 26. This is the consistent practice that is followed from time to time. Even in notification dated 11th February 1982, same formula was adopted viz., the minimum daily rate wages was worked out by dividing the monthly wages by 26. There was a Bipartite agreement u/s 18 Sub-section (1) of the Industrial Disputes Act between various labour union functioning in plantation in Karnataka and Karnataka Planters' Association on 20th April 2005 wherein under Clause-2 of the terms and conditions, daily wage was determined by taking into consideration the resultant figure on the basis of working out VDA per CPI point i.e., Consumer Price Index number. In the impugned notification, daily rate of minimum wages is determined taking into consideration the CPI points and determining Dearness Allowance per day and also determining the daily wage by dividing the monthly rate by 26 and is now fixed at Rs. 84.50 paise.

28. To appreciate the contentions raised by the learned Senior Counsel for the petitioners, it is useful to refer to few of the provisions of the Act Section 2 Clause (d) of the Act defines "cost of living index number", which reads as under.

(d) "cost of living index number", in relation to employees in any scheduled employment in reaped of which minimum rules of wages have been fixed means the index number ascertained and declared by the competent authority by notification in the Official Gazette to be the cost of living index number applicable to employees in such employment.

An authority determines living index number applicable to different employment Wage is defined u/s 2 Clause (h) of the Act, which reads as under

(h) "wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes house rent allowance, but does not include:

(i) the value of:

(a) any house- accommodation, supply of light, water, medical attendance, or

(b) any other amenity or any service excluded by general or special order of the appropriate Government;

(ii) any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;

(iii) any travelling allowance or the value of any travelling concession;

(iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(v) any gratuity payable on discharge.

No doubt, there is no definition of minimum wages. Obviously, the minimum wages cannot be defined, it has to be determined depending upon the various circumstances and class of employment Section 3 deals with fixing of minimum rate of wages. It mandates that the appropriate Government shall fix the minimum rate of wages payable to employees employed in different employment specified in Part-I and Part-II of the Schedule. Section 3 Sub-section (1) Clause (b) of the Act provides for review at such interval as it may think fit and such intervals not exceeding five years. However, it does not prevent the appropriate Government to review minimum wages even if it is not revised immediately after expiry of five years. Different minimum wages could be fixed for different scheduled employments, different classes of work in the same scheduled employment, adults, adolescents, children and apprentices and different localities. It can also be fixed for hour, day or month or by such other larger wage period as may be prescribed.

29. Section 4 deals with minimum rate of wages, which includes, basic rate of wages and special allowance at the rate to be adjusted at such intervals and in such manner as the appropriate Government direct, to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers or basic rate of wages with or without the cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concession rates, where so authorised or all inclusive rate allowing for the basic rate, cost of living allowance and the cash value of the concessions, if any.

30. Thus, from Section 4 of the Act it is clear that, rate of wages includes basic pay of wages and special allowance at a rate to be adjusted at such intervals and in such manner as appropriate Government directs.

31. Section 5 deals with the procedure for fixing and revision of minimum wages. Minimum wages can be fixed by appointing as many committees and sub-committees as Government considers necessary to hold enquiries and advise in respect of such fixation or revision, as the case may be or the Government by issuing notification in the Official Gazette publish its proposals for information of persons likely to be affected thereby and calling upon the proposals by giving two months' time. However, when the appropriate Government proposes to revise the minimum rate of wages by issuing notification, it shall consult the Advisory Board also. Advisory Board is constituted u/s 8 of the Act and Section 9 deals with composition of committee.

32. The object of constituting Advisory Board is to advise appropriate Government generally in the manner of fixation or revision of minimum rates of wages by the Government Section 30 confers power on the appropriate Government to make rules. In consonance with the provisions of Section 30, the State Government by its notification dated 18th April 1959 has framed the rules called The Karnataka Minimum Wages Rules, 1958". Chapter IV of the Rules deals with computation and payment of wages, hours of work and holidays. Rule 21 deals with mode of computation of the cash value of wages in kind and of concessions, which deals with supply of essential commodities at concession rate for the purpose of taking into consideration the cash value of such concession. Rule 24 deals with weekly day of rest wherein an employee in the scheduled employment in respect of which minimum rates of wages have been fixed under the Act, shall be allowed a day of rest every week called as "the rest day" ordinarily Sunday, but employer may fix any other day of the week as the rest day, The rest day has to be taken into account for consideration of his continuous employment in the scheduled employment for a period of not less than six days in a week. Rule 24 Sub-rule (2) deals with requirement of an employer to pay wages equal to the average of daily wages during the preceding week for the rest day. In case the employee works on the rest day, then he shall be paid wages in addition to the payment of wages for the rest day. Wages payable for the rest day on which he has worked for the substituted rest day would be equal to the

average daily wages during the preceding week, in order to work out wages for the rest day or substituted rest day by dividing monthly rate of wages by 26. Only in case if there is any doubt in determining the wages, matter has to be referred to the Commissioner of Labour in Karnataka.

33. Thus, from the provisions of Rule 24, it is clear that, an employee is entitled for a rest day in a week and is also entitled for wages equal to average daily wages of the preceding week. It is in this context where the employee is paid daily wages and who works six days in a week, for one rest day in a week, he is to be paid wages for seven days for having worked for six days. It is in this context, the monthly wages is divided by 26 to determine his daily wages and accordingly, a procedure has been followed by appropriate Government in the matter of fixing or revision of minimum wages. Provisions of Rule 24 provide for determination of minimum wages for a day. Reading of Rule 24 makes it clear that, there is no ambiguity or confusion.

34. Learned Senior Counsel for the petitioners does not dispute that, from the inception the practice in the industry has been to fix the daily wages of the employees in accordance with the provisions of Rule 24 Sub-rule (4) proviso of the Rules to cover four holidays. It is obviously so, as worker gets wages of seven days for having worked for six days i.e., payment for the rest day.

35. No doubt, it is true that the Advisory Committee is expected to take fair and impartial view in the matter and the Government to decide the rates of minimum wages fairly without giving any room for hasty and capricious decision.

36. In this regard, learned Senior Counsel for the petitioners had relied on a decision in the case of Bijay Cotton Mills Ltd. (supra) and had referred to para-6 of the said judgment to support his contention that the consultation with the Advisory Board is obligatory on all occasions of revision of wages. In the said judgment at para-4, it is observed as under.

4. ...If the labourers are to be secured in the enjoyment of minimum wages and they are to be protected against exploitation by their employers, it is absolutely necessary that restraints should be imposed upon their freedom of contract and such restrictions cannot in any sense be said to be unreasonable. On the other hand, the employers cannot be heard to complain if they are compelled to pay minimum wages to their labourers even though the labourers, on account of their poverty and helpless ness, are willing to work on lesser wages.

It is also observed at para-6 thus:

6. ...These provisions, in our opinion, constitute an adequate safeguard against any hasty or capricious decision by the "appropriate Government.

Thus, from the decision it is clear that, the legislation has provided adequate safeguard in the matter of fixation of minimum rate of wages.

37. Apex Court in a judgment reported in Bidi, Bidi Leaves" and Tobacco

Merchants Association Vs. The State of Bombay, has observed that, appropriate Government cannot claim the wide powers possessed by the Industrial Tribunal under the Industrial Disputes Act. The authority or appropriate Government necessarily has to exercise its power under the relevant provisions of the Act and not based on general considerations of social justice or even considerations for introducing industrial peace. It is the case of Government exercising power in altering the terms of the contract. In this context, the Apex Court in the said decision considered the power of the Industrial Tribunal and the power of the appropriate Government under the provisions of the Minimum Wages Act and distinguishing the same, it is held that, the conditions of service under the contract cannot be altered by an appropriate Government in exercise of power under the provisions of the Act. There cannot be any different opinion on this aspect. In this case, it is not pointed out as to how the Government is exercising its power outside the scope of the provisions of the Act.

38. In the matter of calculation of minimum wages, the Apex Court in a decision reported in *Workmen of the Bombay Port Trust Vs. Trustees of Port of Bombay*, , in terms of Rule 24 of the Rules, has considered the issue as regard to determination of minimum rates of wages per day and it is useful to refer to paragraph-14, which reads as under.

14. This brings us to the employer's claim that there has been constructive payment for the Sundays during this period viz., October 1953 to March 2, 1956. The argument is that the daily wage for these workmen was fixed by dividing all the components of the monthly scale of pay and allowances by 26 so that what a workman receives as daily wage is really 1/26th of the wage for 30 days. Thus, it is said, the total receipts for the 26 days, if no separate payment is made for the rest days will be $26 \times \frac{1}{26}$ th of 30 days' wage, that is, 30 days' wage. The fallacy in this argument is that it ignores the essential fact that once the daily wage is fixed at a certain figure it no longer retains its character of being 1/26th of the monthly wage. However arrived at, the daily wage is a daily wage and it is wrong to regard it as a certain fraction of the monthly wage. When the Central Government in making these Minimum Wages Rules made this provision for payment on a holiday it clearly intended that something in addition to what was being actually received for the six days of the week should be paid. This cannot be defeated by a statement that though in form six days wages were being paid, in fact and in substance, seven days wages were being paid. By no stretch of imagination can payment for six days be equated to payment for seven days.

It is clear from para-14 that, monthly scale of pay and allowance has to be divided by 26, so that the workman receives his daily wages i.e., 1/26th of 30 days. It is clear that, the employees are entitled for seven days wages for six days working.

39. The next contention that, there was no consultation of Advisory Board by the appropriate Government is concerned, no doubt, the Advisory Board is constituted to advise the State Government in making revision of minimum rates

of wages and the State Government exercising its power in fixing the minimum rates of wages requires to consider the reports of the Advisory Board. In the matter of fixation of minimum rates of wages, the Apex Court in the decision reported in *Bhikusa Yamasa Kahatriya Vs. Sangamner Akola Taluka Bidi Kamgar Union*, has held that, the delegation of power to the State u/s 5 of the Act is neither arbitrary nor uncontrolled. This Court in a decision reported in ILR 2006 Kar 1787 in the matter of *Karnataka Planters' Association* (supra) wherein a contention was raised as regard to consultation of Advisory Board by the appropriate Government and considering the records, it is observed that, the Government had sent proposal and also objections to the Advisory Board and Board did not have any counter proposal. In this background, this Court observed that, the Board was in agreement with the proposal of the Government and it is also held that, it is an effective consultation.

40. As far as this case is concerned, a preliminary notification dated 19th February 2004 was published in Official Gazette on 16th March 2004 inter alia calling for objections and suggestions and in this regard, objections were also filed by the petitioners. The Advisory Board also met on several occasions and insofar as minimum rates of wages for the plantation employees is concerned, discussion was made, however, it was pointed out that the Writ Petition is pending before the High Court. Nevertheless the Advisory Board in the light of the previous practice found that the minimum wages shall not be less than Rs. 2,225/-. Meetings were held on several occasions viz., on 3.8.2006, 8.3.2007 and 17.10.2007. After discussion, unanimously it is held that insofar as the plantation employees are concerned, the Dearness Allowance shall not be 3.5 paise, but it should be 3 paise per point and as far as fixation of 3 paise is concerned, learned Senior Counsel has not disputed the same. His contention was that since the matter was pending before this Court there was no discussion by the Advisory Board and no deliberation took place on the issue. However, from the records it shows that the Advisory Committee did meet on several occasions and had made discussion for which the petitioner No. 1 - Association is also a party and fixation of 3 paise Dearness Allowance from the records it shows that it is unanimous. If there is no counter proposal by the Advisory Board, as observed by this Court, it only shows that the Advisory Committee has agreed with the minimum wages proposed by appropriate Government.

41. Learned Senior Counsel for the petitioners had also submitted that, the minimum rate of wages is fixed as a package and not multiplying the components viz., Dearness Allowance by 30 and dividing the same by 26, and in this regard, there was writ petition in W.P. No. 17636/2004, No doubt the said writ petition was pending before this Court and was disposed of by order dated 13th February 2008. No doubt, the point of calculation of minimum wages was raised by the Counsel for the petitioners, but this Court disposed of the writ petition, by observing that the Government at determination of minimum wages cannot rely on the communication by Labour Commissioner addressed to the Labour Union and the Government has to independently decide and cannot

decide based on communication of the authority.

42. Even assuming that the writ petition was pending, whether the decision of the Government has become arbitrary? Even earlier also, taking into consideration the wages and the VDA as a component, minimum wages for a day has been determined. Even in the impugned notification, the same method is adopted in determining the minimum wages. What is required to be noticed is as to what wages the employee is entitled? Broadly, the wage structure can be divided into three categories - "basic minimum wage", which provides bare subsistence and is at poverty line level and little is "fair wage" and finally "the living wage", which comes at comfort level. It is not possible to demarcate these levels of wage structures with any precision. However, there are well concept norms which broadly distinguished one category of pay structure from another. Living wage should enable the earning to provide himself and his family not merely bare essential food, clothing and shelter but the measure of frugal comfort including education for children, protection against ill-health, requirement of essential social needs and the measure of assurance against more important misfairness including old age. Minimum wage must provide not merely for the bare subsistence of life but for the preservation of the efficiency of the worker. For this purpose, minimum wage must also provide for some measure of education, medical requirements and amenities. Fair wage stands on little higher pedestal. Thus, the minimum wage is not Mr. wage, but it is one for preservation of efficiency of a worker. Needs of worker as mentioned are required to be taken into consideration. It is not in dispute that, for 9 years, the revision of minimum wage for the plantation employees has not been made.

43. The next version that arises for consideration is, as to the scope of interference by this Court under Article 226 in the matter of fixation of minimum wages. The Apex Court in a judgment reported in *Ministry of Labour and Rehabilitation and Another Vs. Tiffin's Barytes Asbestos and Paints Ltd. and Another*, At para-3 it has observed thus:

It must be remembered that the Committee acts only as a recommendatory body and the fatal notification fixing minimum wages has to be made by the Government Notification fixing minimum wages, in a country where wages are already minimum should not be interfered with under Article 226 of the Constitution except on the most substantial of grounds. The legislation is a social welfare legislation undertaken to further the Directive Principles of State Policy and action taken pursuant to it cannot be struck down on mere technicalities.

In *Kamani Metals and Alloys Ltd. Vs. Their Workmen*, the Apex Court has observed that, the first principle is that, there is a minimum wage which in any event must be paid irrespective of the extent of profits, the financial condition of the establishment or the availability of workmen on lower wages. The minimum wage is independent of the kind of industry and applies to all alike big or small. It sets the lowest limit below which wages cannot be allowed to sink in all humanity. Taking into consideration of the observation made by the Apex Court,

considering the minimum wages fixed in 2008 at Rs. 84.50 paise, by no stretch of imagination, it could be understood as fair wage or unreasonable. If it is minimum wage, it is irrelevant to consider any technical error in the matter of calculation or determining the wage. Ultimately, the object of the Act is to provide the minimum wage to an employee irrespective of any procedure. This Court in a judgment reported in 2003(II) LLJ 861 in the matter of Mangalore Ganesh Beedi (supra), did consider the scope of the Act and fixation of minimum wages and at para-22 it observed as under:

A notification fixing minimum wages, in a country like ours where wages are already minimal should not be interfered with under Article 226 except on the most substantial of grounds. . .

This Court relied on a judgment reported in 1980 56 FJR 79 (AP) in the matter of Sree Kalyanarama Company Mine v. Government of India.

44. One must keep in mind that, for fixing the minimum wages, State is only discharging its constitutional obligation imposed upon it under the Directive Principles of State Policy. This is a constitutional duty towards the economically weaker section of the society and cannot be allowed to be defeated on a theory of capacity of the industry to pay, which is a judicial blast placed on the meaning of Article 19(1)(f) and 19(1)(g) of the Constitution of India. Capacity of an industry to pay has no application to exercise power by the State in fixing the minimum wages. State in issuing notification u/s 5 exercises the legislative power and there is no requirement for the State to give reasons for its decision.

45. Even taking into consideration of various aspects of the matter and taking into consideration the provisions of Sections 3, 4, 5, 7, 8 and 9 of the Act read with Rule 24 of the Rules and in the light of the decisions of the Apex Court, I am of the opinion that, the State Government has fairly and reasonably exercised its power conferred u/s 5 Clause (b) and there is compliance with the provisions of Section 5 Clause (b) proviso, as there is no counter proposal by the Advisory Board and Advisory Board has also deliberated on the issue. Even assuming that there are any technical error, broadly when the minimum rates of wages is fixed by the impugned notification and being most reasonably fixed after nine years, this Court cannot sit in appeal over the decision of the Government and particularly in the matter of fixation of minimum wages, the scope of interference by this Court under Article 226 being limited and the points raised by the learned Senior Counsel for the petitioners do not make out any case of arbitrary or capricious decision by the State nor the notification is in violation of the provisions of the Act or the Rules made thereunder, I do not find any merit in the contention. In the circumstances, the petition deserves to be dismissed.

Accordingly, the Writ Petition is dismissed.