The Pabbojan Tea Co. Ltd., Etc.

Vs

The Deputy Commissioner, Lakhimpur, etc.

Civil Appeals Nos. 288-291 of 1966

(CJI K. N. Wanchoo, G. K. Mitter JJ)

18.08.1967

JUDGMENT

MITTER, J. –

The central question in these appeals is, whether the civil court had jurisdiction to entertain the suits and grant the reliefs claimed.

The facts are as follows :- By a notification dated March 11, 1952 the Governor of Assam fixed the minimum wages which were to come into force with effect from March 30, 1952, consisting of basic wages and dearness allowance in terms of cl. (i), sub-s. (1) of s. 4 of the Minimum Wages Act, 1948, at the rates specified in the Schedule to the notification payable to the employees employed in tea plantations in the different districts of Assam. Under the notification, the rates were to be exclusive of concessions enjoyed by the workers in respect of supplied of food-stuff and other essential commodities and amenities which were to continue unaffected. Further, the existing tasks and hours of work were to continue until further orders. The Schedule shows that the notification was to apply to "ordinary unskilled labour" which was again sub-divided into three classes, namely (a) adult male (16 years and above); (b) adult and female (16 years and above) and (c) working children (below 16 years and above 12 years). The rates were again to be different in the different districts of Assam which were, broadly speaking, divided into three sections. On April 16, 1952 the Government of Assam published the Minimum Wages Rules which fixed the number of hours in the case of an adult for a normal working day to nine hours, subject to a maximum of 48 hours in a weed. On June 2, 1953, the Deputy Commissioner of Lakhimpur served a notice on the manager of one of the appellants, Borhapjan Tea estate to the effect that the minimum wages prescribed had not been paid to a number of employees in accordance with the prescribed rate. The addressee was required to pay the outstanding amount of wages with the requisite amount to delayed compensation to the employees in conformity with s. 20(3) of the Minimum Wages Act and report compliance on or before the 10th of June, 1953. The manager was further directed to show cause why prosecution should not be sanctioned for violation of the provision of the said Act. A list of the employees with their names was given showing 24 men labourers, 58 women labourers and one girl labourer. Similar notices were issued to the managers of the other tea estates. The managers submitted written replies to the authority denying liability for payment of the amount claimed in the notice. By order dated June 2, 1954 the above mentioned authority directed the different tea estates to pay the difference between the full minimum wages and the amounts actually paid the labourers. It does not appear that the authority concerned held any inquiry or received any evidence beyond meeting the managers of the four tea estates at the premises of the Doom-Dooma Club where Government Labour Officer was also present. He however recorded an order dated June 2, 1954 to the effect that the contention of the managements of the tea estates that the Lettera Challans who by reason of their

old age, infirmity and physical defects etc. were incapable of performing a full normal working day's work could not be accepted. According to the order, "the point for decision was, whether a Lettera Challan worker was entitled to the same rate of wages as ordinary labour working full normal working days". From the order, it appears that the authority concerned knew of the employment of this kind of sub-normal workers by various tea estates but he held that, in the absence of an order for exemption by the Government in terms of s. 26 of the Minimum Wages Act, he had to guide himself by the notification mentioned. He held further that under the Act and the Rules, Lettera Challan labour, in spite of the amount of work (time or task rate) performed by them was to be treated as ordinary labour entitled to wages for a full normal day. He therefore directed that the tea estates should pay the difference between the full minimum wages and the amount actually paid, together with compensation which he fixed at three times the amount payable to each worker. The tea estates filed four separate suits for a declaration that the orders of the Deputy Commissioner, Lakhimpur dated June 2, 1954 were illegal and void and without jurisdiction and a further declaration that the employees mentioned (sub-normal workers) were not entitled to full minimum wages without performing a normal day's task or without working the prescribed number of working hours. The Subordinate Judge framed a number of issues including one regarding the maintainability of the suits, heard evidence and came to the conclusion that the decisions or orders of the Deputy Commissioner were all final in terms of the Minimum Wages Act and the suits were barred "under the provisions of the Act". The learned Judges of the High Court of Assam, by a majority, upheld the decision of the Subordinate Judge.

The evidence of the managers of the tea estates was to the effect that in each tea garden there was a number of workers described at Lettera Challans who were unwilling to perform the normal tasks which were available to them as normal labourers, that they worked for only half the day and were unwilling to work for the full day as other labourers.

In order to determine whether a suit challenging the decision of the authority under the Act is maintainable or not, it is necessary to take a note of the object of the Act and its provisions in general. The Act was clearly aimed at providing for fixing minimum rates of wages in certain employments which were defined as scheduled employments. An 'employee' meant any person who was 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 had been fixed. S. 3, empowered the appropriate government to fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either Part by notification under s. 27. Under sub-s. (2) of s. 3 Government might fix a minimum rate to wages for time work, a minimum rate of wages for piece work, a minimum rate of remuneration in the case of employees employed on piece work for the purpose of securing to such employees minimum rate of wages on a time work basis, and 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. The section also empowered the Government to fix different minimum rates in respect of different scheduled employments as also different classes of work in the same scheduled employment for adults, adolescents, children and apprentices as also for different localities. Under s. 4 the minimum rate of wages fixed might consist of basis rate of wages and a special allowance at a rate to be adjusted or a basis rate of wages with or without the cost of living allowance. S. 12 made it obligatory on the employer to pay to every employee engaged in a schedule employment wages at a rate not less than the minimum rate of wages fixed by the notification. Under s. 13 it was open to the appropriate government to fix the number of hours of work which were to constitute a normal working day in regard to any scheduled employment. S. 15 provided 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 to 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 him 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."

S. 20 with the marginal note "claims" is divided into seven sub-sections. Sub-s. (1) empowers the appropriate government to appoint a person of the qualifications mentioned to be the authority to hear and decide all claims arising out of payment of less than the minimum rates of wages. Sub-s. (2) provides for the application to the said authority for a direction under sub-s. (3) in all cases where an employee has any claim of the nature referred to in sub-s. (1). Such application may be made inter alia by the employee himself or any legal practitioner or any official of a registered trade union. Sub-s. (3) runs as follows :-

"When any application under sub-section (2) is entertained, the Authority shall hear the applicant and the employer, or give then 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 -

(i) in the case of a claim arising out of payment of less than the minimum rates of wages, the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid, together with the amount of such compensation as the Authority may think fit, not exceeding ten times the amount of such excess;

(ii) in any other case, the payment of the amount due to the employee, together with the payment of such compensation as the Authority may direct payment of such compensation in cases where the excess or the amount due is paid by the employer to the employee before the disposal of the application."

Sub-s. (4) empowers the authority to levy a penalty not exceeding Rs. 50/- if he is satisfied that the application was either malicious or vexatious. Sub-s. (5) prescribes for the manner of recovery of the amount directed to be paid under the section. Under sub-s. (6) "every direction of the Authority under this section shall be final".

Sub-s. (7) clothes every Authority appointed under sub-s. (1) with the powers of a civil court under the Code of Civil Procedure for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents etc. S. 24 contains an express provision for the bar of suits of certain kinds. It reads :

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

(a) forms the subject of an application under section 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 palintiff, or

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

Under s. 25 any contract or agreement by which an employee relinquishes or reduces his right to a minimum rate of wages etc. is to be null and void. Sub-s. (1) of s. 26 empowers the appropriate government, subject to such conditions as it may think fit to impose, to direct that the provisions of the Act shall not apply in relation to the wages payable to disabled employees.

Our task is to ascertain whether the above provisions of the Act impose a bar on the institution of suits of the nature described in this case either expressly or impliedly. The question of maintainability of civil suits to challenge actions purported to have been taken under certain special statutes has engaged the attention of this Court in a number of cases in recent years as also of the Judicial Committee of the Privy Council before the establishment of this Court. Under s. 9 of the Code of Civil Procedure "the courts have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred". In Secretary of State v. Mask & Co. (67 I.A. 222, 237) the question was, whether the order of the Collector of Customs on an appeal under s.188 of the Sea Customs Act from a decision or an order passed by an officer of Customs as to rate of duty leviable under a tariff excluded the jurisdiction of the civil court to entertain a challenge on the merits of the decision of the Officer of Customs. It was pointed out that the determination of the question depended on the terms of the particular statute under construction and decisions on other statutory provisions were not of material assistance except in so far as general principles of construction were laid down. The Board relied upon the exposition of law by Willes, J. in Wolverhampton New Waterworks Co. v. Hawkesford ([1859] 6 C.B. (N.S.) 336) that -

"where a liability not existing at common law is created by a statue which at the same time gives a special and particular remedy for enforcing it"

the party must adopt the form of remedy given by the statue. S. 188 of the Sea Customs Act was one of a number of sections contained in Chapter XVII of the Act headed "Procedure relating to offences, appeals etc." and included ss. 169 to 193. S. 182 provided for liability of confiscation or increased rates of duty in certain cases. S. 188 laid down that any person deeming himself aggrieved by any decision or order passed by an officer of Customs under the Act may, within three months from the date of such decision or order, appeal therefrom to the Chief Customs Authority, or, in such cases as the Local Government directs, to any officer of Customs not inferior in rank to a Customs-Collector and empowered in that behalf by name or in virtue of his office by the Local Government. Such officer or authority may thereupon make such further enquiry and pass such order as he thinks fit, confirming, altering or annulling the decision order appealed against any every order passed in appeal under this section was to be subject to the power or revision conferred by s. 191, final.

According to the Judicial Committee ss. 188 and 191 contained a precise and self-contained code

appeal in regard to obligations which were created by the statute itself, and it enabled the appeal to be carried to the supreme head of the executive government. The Board observed :

> "It is difficult to conceive what further challenge of the order was intended to be excluded other than a challenge in the civil courts."

The well known dictum of this judgment to be found at p. 236 is that the exclusion of the jurisdiction of the civil courts is not to be readily inferred, but such exclusion must either be explicitly expressed or clearly implied and even if jurisdiction was excluded the civil courts would still have jurisdiction to examine into cases where the provisions of the Act had not been complied with, or the statutory tribunal had not acted in conformity with the fundamental principles of judicial procedure.

In Pyx Granite Co. Ltd. v. Ministry of Housing and Local Government ([1960] A.C. 260, 286) Viscount Simonds observed :

> "It is a principle not by any mean to be whittled down that the subject's recourse to Her Majesty's courts for the determination of his rights is not to be excluded except by clear words."

In Raleigh Investment Co. Ltd. v. Governor General in Council (74 I.A. 50, 62) where the plaintiff-appellant had filed a suit claiming a declaration that certain provisions of the Indian Income-Tax Act purporting to authorise the assessment and charging to tax of a non-resident in respect of dividends declared or paid outside British India, but not brought into British India, were ultra vires the legislative powers of the Federal Legislature and for repayment of the sums mentioned, the Judicial Committee observed, while dismissing the appeal, that

> "In construing the sections it is pertinent, in their Lordship's opinion, to ascertain whether the Act contains machinery which enables an assessee effectively to raise in the courts the question whether a particular provision of the Income-tax bearing on the assessment made is or is not ultra vires. The presence of such machinery, though by no means conclusive, marches with a construction of the section which denies an alternative jurisdiction to inquire into the same subject matter."

The Judicial Committee examined the different provisions of the Indian Income-tax Act in some detail including s. 67 of the Act and came to the conclusion that as the machinery provided by the Act could be effectively adopted by the assessee complaining of ultra vires assessment "jurisdiction to question the assessment otherwise than by use of the machinery expressly provided by the Act would appear to be inconsistent with the statutory obligation to pay arising by virtue of the assessment."

It must be noted at once that the above extreme proposition of law has not found favour here. This Court was not prepared to accept the dictum in the judgment to the effect that even the constitutional validity of the taxing provision would have to be challenged by adopting the procedure prescribed by the Income-tax - see Firm and Illuri Subbayya Chetty & Sons v. The State of Andhra Pradesh (([1964] 1 S.C.R. 752, 760). In this case, the Court had to examine whether s. 18-A of the Madras General Sales Tax Act, 1939 excluded the jurisdiction of civil courts to set aside or modify any assessment made under the Act s. 18-A there provided that no suit or other proceeding shall, except as expressly provided in this Act, be instituted in any court to set aside or

modify any assessment made under this Act. It was common ground that there was no express provision made in that Act under which the suit could be said to have been filed. It was there emphasised that :

> "..... while providing for a bar to suits in ordinary civil courts in respect of matters covered by s. 18-A, the legislature has taken the precaution of safeguarding the citizens, rights by providing for adequate alternative remedies. Section 11 of the Act provides for appeals to such authority as may be prescribed, s. 12 confers revisional jurisdiction on the authorities specified by it; s. 12-A allows an appeal to the appellate Tribunal; s. 12-B provides for a revision by the High Court under the cases specified in it; s. 12-C provides for an appeal to the High Court; and s. 12-D lays down that petitions, applications and appeals to High Court should be heard by a Bench of not less than two Judges.... It could thus be seen that any dealer who is aggrieved by an order of assessment passed in respect of his transactions, can avail himself of the remedies provided in that behalf by these sections of the Act. It is in the light of these elaborate alternative remedies provided by the Act that the scope and effect of s. 18-A must be judged."

In Kala Bhandar v. Municipal Committee ([1965] 3 S.C.R. 499) - a suit for refund of excess tax purported to be recovered under the Central Provinces and Berar Municipalities Act (2 of 1922) - this Court examined the principles laid down in the above cases and said :

> "Further, one of the corollaries flowing from the principle that the Constitution is the fundamental law of the land is that the normal remedy of a suit will be available for obtaining redress against the violation of a constitutional provision. The court must, therefore, lean in favour of construing a law in such a way as not to take away this right and render illusory the protection afforded by the Constitution."

The Court found that there was no machinery provided by the Act for obtaining a refund of tax assessed and recovered in excess of the constitutional limit and that the machinery actually provided by the Act was not adequate for enabling an assessee to challenge effectively the constitutionality or legality of assessment or levy of a tax by a municipality or to recover from it what was realised under an invalid law.

In Kamala Mills Ltd. v. State of Bombay ([1966] 1 S.C.R. 64, 75) this Court had to examine the question whether a suit filed by the Mills challenging assessments made under the Bombay Sales-Tax Act, 1946 was barred under the provisions of s. 20. The said section read as follows :

> "Save as is provided in s. 23, no assessment made and no order passed under this Act or the rules made thereunder by the Commissioner or any person appointed under s. 3 to assist him shall be called into question in any civil court, and saved as is provided in sections 21 and 22, no appeal or application for revision shall lie against any such assessment or order."

After examining the various sections of the Act including s. 5 the charging section, s. 10 imposing an obligation or dealers to make returns, s. 11 dealing with the assessment to tax and the procedure to be followed in respect thereof, s. 11-A dealing with turnovers which had escaped assessment and the right to prefer an appeal and a revision under ss. 21 and 22 of the Act, the Court said :

> "It would thus be seen that the appropriate authorities have been given power in express terms to examine the returns submitted by the dealers and to deal with the question as to whether the transactions entered into by the dealers are liable to be assessed under the relevant provisions of the Act or not. In our opinion, it is plain that the very object of constituting appropriate authorities under the Act is to create a hierarchy of special tribunals to deal with the problem of levying assessment of sales-tax as contemplated by the Act. If we examine the relevant provisions which conferred jurisdiction on the appropriate authorities to levy assessment on the dealers in respect of transactions to which the charging section applies, it is impossible to escape the conclusion that all questions pertaining to the liability of the dealers to pay assessment in respect of their transactions are expressly left to be decided by the appropriate authorities under the Act as matters falling within their jurisdiction. Whether or not a return is correct; whether or not transactions which are not mentioned in the return, but about which the appropriate authority has knowledge, fall within the mischief of the charging section; what is the true and real extent of the transactions which are assessable; all these and other allied questions have to be determined by the appropriate authorities themselves..... The whole activity of assessment beginning with the filing of the return and ending with an order of assessment, falls within the jurisdiction of the appropriate authority and no part of it can be said to continue a collateral activity not specifically and expressly included in the jurisdiction of the appropriate authority as such."

It was in the light of these provisions of the Act that s. 20 had to be examined and this Court held that "the words used were so wide that even erroneous orders of assessment made would be entitled to claim its protection against the institution of a civil suit" - see [1966] 1 S.C.R. at page 78. To quote the words of the judgment itself :

> "In every case, the question about the exclusion of the jurisdiction of civil court either expressly or by necessary implication must be considered in the light of the words used in the statutory provision on which the plea is rested, the scheme of the relevant provisions, their object and their purpose."

The Court further said :

> "Whenever it is urged before a civil court that its jurisdiction is excluded either expressly or by necessary implication to entertain claims of a civil nature, the court naturally feels inclined to consider whether the remedy afforded by an alternative provision prescribed by a special statue is sufficient or adequate. In cases where the exclusion of the civil courts' jurisdiction is expressly provided for, the consideration as to the scheme of the statue in question and adequacy or sufficiency of the remedies provided for by it may be relevant but cannot be decisive. But where exclusion is pleaded as a matter of necessary implication, such considerations would be very important, and in conceivable circumstances, might even become decisive. If it appears that a statue creates a special right or a liability and provides for the determination of the right and liability to be dealt with by tribunals specially constituted in that behalf, and it further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, it becomes pertinent to enquire whether remedies normally associated with actions in civil courts are prescribed by the said statue or not. The relevance of this enquiry was accepted

> by the Privy Council in dealing with s. 67 of the Income-Tax Act in Raleigh Investment Co.'s case (I.A. 50) and that is the test which is usually, applied by all civil courts."

We may also not the case of K. S. Venkataraman & Co. v. State of Madras ([1966] 2 S.C.R. 229) where the above authorities were again examined at some length. Here too the main question was, whether the suit was not maintainable under s. 18-A of the Madras General Sales-Tax Act, 1939. It was held by a majority of this Court that the validity of an order by an authority acting under the provision of a statute which was ultra vires would be open to challenge in a civil court. Referring to the case of Firm Radha Kishan (Deceased) represented by Hari Kishan v. Administrator, Municipal Committee, Ludhiana ([1964] 2 S.C.R. 273) it was said that :

> "a suit in a civil court will always lie to question the order of a tribunal created by a statute, even if its order is, expressly or by necessary implication made final, if the said tribunal abuses its power or does not act under the Act but in violation of its provisions."

There can be no question in this case that the Minimum Wages Act cuts across the contract between the employer and the employee and wherever applicable the employer is obliged to pay the minimum wages or take the consequences of failure to pay it. Any employee who feels himself aggrieved by the refusal of the employer to pay the minimum wages fixed under the Act has the right to make a complain either by himself or through the prescribed agents to the Authority mentioned in the Act. Under sub-s. (3) of s. 20, the Authority has to hear the applicant and the employer or given them an opportunity of being heard and could straightaway give a direction as regards the alleged non-payment of the minimum rates of wages and such compensation as he thinks fit not exceeding ten times the amount of excess of the minimum wages over that which was paid. It is true that the sub-section provides for a further inquiry but such inquiry is to be at the discretion of the authority. The nature and scope of the inquiry would depend on the exact controversy raised in the case. If it be of a trivial nature, the tribunal can probably deal with it in a summary manner, but where it is alleged that the notification under the Act is not applicable to a certain class of workers it is the duty of the authority to give a proper hearing to the parties allowing them to tender such evidence as they think proper before making an order which may have far-reaching consequences. The authority in this case instead or recording any evidence and properly hearing the matter, disposed of it in a perfunctory manner which could hardly be called a hearing. As matter of fact, the only inquiry which took place in this case was a very informal one in the premises of the Doom-Dooma club for the space of half an hour or so when the Authority has a talk with the managers of the tea estates. There is no provision for appeal or revision against the direction of the Authority although he may levy a penalty to the extent of ten times the amount by which the minimum wages overtop the payment actually made. Whatever he says is the final word on the subject. All this can but lead to the conclusion that s. 20 was not aimed at putting a seal on the adjudication, if any, under it. It was to be of a nature which suited the discretion of the officer concerned although he was given the powers of a civil court in certain respects. In such a situation, it is impossible to hold that the legislature meant to exclude the jurisdiction of civil courts to go into the question of non-payment of minimum wages claimed as final. In our opinion, sub-s. (6) of s. 20 merely shows that the discretion of the Authority could not be questioned under any provision of the Act. It does not exclude the jurisdiction of the civil when the challenge is as to the applicability of the Act to a certain class of workers.

It is pertinent to note that s. 24 of the Act creates an express bar in respect of a particular kind of

suits, namely, suits for recovery of wages in certain eventualities. The obvious intention was that a poor employee was not to be driven to file a suit for the payment of the dificit of his wages but that he could avail himself of the machinery provided by the Act to get quick relief. It does not in terms bar the employer from instituting a suit when his claim is that he has been called upon to pay wages and compensation to persons who are not governed by the notification under the Minimum Wages Act.

On an analysis of the provisions of the Act, we find (1) suits of the nature to be found in this case are not expressly barred by the Act; (2) there is no provision for appeal or revision from the direction of the authority given under s. 20(3) of the Act; and (3) the authority acting under s. 20(3) might levy a penalty which might be as high as ten times the alleged deficit of payment which again is not subject to any further scrutiny by any higher authority. In view of our findings as above, as also the fact that the authority in this case dis-regarded the provision as to hearing and inquiry contained in the Act for all practical purposes, we hold that the civil court had jurisdiction to entertain the suits.

The question next arises as to whether the plaintiff's made out any case for relief. In our view, the plaintiffs were clearly entitled to relief. The notification dated March 11, 1952 was clearly applicable only to "ordinary unskilled labour". The word 'ordinary' has in our opinion, some significance. It means "usual, not exceptional". In other words, ordinary unskilled labour must mean unskilled labour prepared to work and working in the ordinary way. If under r. 24 of the rules framed under this Act the period of work is fixed at nine hours a day, a labourer who cannot work for more than half of it, does not fall within the category of ordinary unskilled labour. A letter a challan cannot work due to his incapacity, old age, infirmity, etc. According to the evidence of the managers of the tea gardens, they were unwilling to work for more than half the day because of their physical condition. It was due to their want of physical strength to work for nine hours a day and not the inability or unwillingness of the employer to find employment for them for a full day. Take for instance the facts in Pabbojan Company's case. According to the evidence of its manager, the labour force in the estate consisted of 1650 labourers while the number of sub-normal workers was 83 before March 30, 1952. It cannot be suggested that if the tea garden could provide work for 1567 labourers working nine hours a day, it could not do so for an additional number of 83 persons. As the manager said, these persons were unwilling to perform the normal tasks which were available to them as normal labourers. The manager also said that lettera challans (sub-normal workers) always go off at 11 or 12 midday. Take again the evidence of Bairagi, a worker of the Rupai Tea Estate. He said that some years before he was examined in court, he used to work as a carpenter. As a result of a fall from a house, he had pain on his chest and approached the doctor and requested him to enter his name as lettera challan. He frankly admitted that he got into lettera challan because he could not complete the full task. The evidence of the managers and of this the only witness on this point on behalf of labour establishes beyond doubt that lettera challan could not work a full day and as such they were not ordinary unskilled labour. As such their case would be covered by the proviso to s. 15 and they would not be entitled to receive wages for a full normal working day because to the unwillingness to work. It does not matter whether some of the lettera challans could also be said to be disabled employees who would come within the purview of s. 26(1) of the Act. From the evidence of the managers, it is clear that the system of lettera challans had been in force for very many years. The record does not show nor are we in a position to guess why an exception was not made in their case in the notification. But even in the absence of any mention of lettera challans in the notification, sub-normal workers who are unwilling to work for more than half a day are not entitled to receive what ordinary unskilled labourers working nine hours a day get. The object of the Act is to ensure some sort of industrial peace and harmony by

providing that labour cannot be exploited and must at least be provided with wages which are fixed at certain minimum rates. It would go against such a principle if the courts were to uphold that persons who cannot work for more than half a day should receive what others working a full day get. However, that is a matter which the appropriate government may consider.

We therefore hold that the orders of the defendant No. 1 dated June 2, 1954 were not binding on the plaintiffs-appellants. We declare that the subnormal workers of the tea estates (commonly known as Lettera challans) were not entitled to full minimum wages without performance of a normal day's task or without working the prescribed number of hours. We also direct a perpetual injunction to issue against the defendant No. 1 restraining him from enforcing the orders dated June 2, 1954. The appeals are therefore allowed and the decrees passed by the Subordinate Judge and the High Court of Assam are set aside. There will be no order as to costs.

Y.P.

Appeals allowed.

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