CALCUTTA HIGH COURT

Kohinoor Pictures

Vs

State of West Bengal

(Sinha, J.)

21.09.1961

JUDGMENT

Sinha, J.

1. The petitioner in this case is a company incorporated under the Indian Companies Act and carries on business as a distributor of cinematographic films. The Minimum Wages Act, 1948 (11 of 1948) (hereinafter referred, to as the "said Act") is a Central Act to provide for the fixation of minimum rates of wages in certain employments. It came into operation from 15 March 1948. Under Clause (g) of Section 2, "scheduled employment means an employment specified in the schedule to the Act or any process or branch of work forming part of such employment. Clause (h) defines "wages" to mean all remuneration, capable of being expressed in terms of money. Certain amenities, however, specified therein, have been excluded. Under Clause (i), the word "employee" has been defined to mean any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed. Under Section 3, the appropriate Government shall fix the minimum rates of wages payable to employees employed in a scheduled employment. It is not disputed that the appropriate Government in this, case is the State Government of West Bengal. In fixing and/or revising the minimum rates of wages, Section 5 provides that the appropriate Government can proceed in two ways: The first is to appoint as many committees and subcommittees as it considers necessary to hold, enquiries and advise it in respect of such fixation or revision. The second method is to notify in the official gazette, its proposals, for the information of persons likely to be affected, so that they may make representations. After considering the advice of the committee or committees or such representations received by it, the appropriate Government may proceed to fix the minimum rates of wages. For the purpose of co-ordinating the work of such committees and sub-committees, the Government shaft appoint an advisory board. Section 9 deals with the composition of committees. This is important in the present case and must be set out:

Each of the committees, sub-commit-tees and the advisory board shall consist of persons to be nominated by the appropriate Government representing employers and employees in the scheduled employments, who shall be equal in number, and independent persons not exceeding one-third of its total number of members; one of such independent persons shall be appointed the chairman by the appropriate Government.

2. Section 11 provides that minimum wages payable under the Act shall be paid in cash, except where there is a custom to pay wages wholly or partly in kind, in which case the appropriate Government may authorize the payment thereof wholly or partly in kind. Clause (3) of Section 11 provides that if the appropriate Government is of the opinion that provision should be made for the supply of essential commodities at concession rates, the appropriate Government may, by notification in the official gazette, authorize the provision of such supplies at concession rates. Clause (4) provides that the cash value of wages in kind and of concessions in respect of supplies of essential commodities at concession rates, shall be estimated in the prescribed manner. Section 12 lays down that where the minimum wages have been prescribed for any scheduled employment, the employer shall pay to every employee, wages at a rate not less than the minimum rate of wages so fixed for that class of employees, in that employment, without any deductions except as may be authorized, within such time and subject to such conditions as may be prescribed. Section 27 gives power to the appropriate Government to add to the schedule. It provides that the appropriate Government, after giving by notification in the official gazette not less than three months' notice of its intention so to do, may, by like notification, add to either part of the schedule, any employment in respect of which it is of opinion that minimum rates of wages should be fixed under the said Act. The original schedule in the said Act did not contain any heading relating to the cinema industry. In exercise of powers under Section 27 of the said Act, the State Government by notification, dated 19 May 1959, published in the Calcutta Gazette on 4 June 1959 added to Part I of the schedule the heading--"Cinema Industries," which thereupon became one of the scheduled employments. On 8 January 1960, by notification in the official gazette, the Government appointed an advisory committee. Three members were appointed as "independent persons." They are Sri S.M. Bhattacharyya, I.A.S., Labour Commissioner, West Bengal as chairman and Sri S.R. Mookerjee, Deputy Labour Commissioner, West Bengal and Sri Abani Kumar Ghosh, M.L.A., as members. Upon the purported advice of the said advisory committee, the appropriate Government published a notification, dated 16 May 1960, fixing the minimum rates of basic wages per month payable to--

(1) employees employed in the cinema houses (exhibition) of the cinema Industries in West Bengal;

(2) employees employed in the distributing units in the cinema industies in West Bengal; and (3)

employees employed in the production sides, viz., studios producing units and laboratories in West Bengal.

As I shall presently show, this notification not only fixed the minimum rates of basic wages but also did various other things which are the subject-matter of attack in this case. A copy of the notification is annexure A to the petition. On 31 May 1960, one Surendra Ranjan Sarkar and two others made an application to this Court under Article 226 of the Constitution, inter alia, for a writ in the nature of mandamus calling upon the State of West Bengal to recall, annul or cancel the said notification, dated 16 May 1960. The said application was numbered as Matter No. 134 of 1960. There was an interim injunction prohibiting and restraining the , respondents in that application from giving effect to the impugned notification so far as the petitioners were concerned in that rule. The result was that the State Government did not take any further steps pending the disposal of the rule, to implement the said notification. On 9 June 1961, permission was given to the petitioners in that application to withdraw the same with liberty to take other legal proceedings as they may be advised. This was because it was found that there were serious disputes as to facts. On 11 July 1961, a letter was written by the Deputy Labour Commissioner, West Bengal, to various employers that the minimum rates of wages fixed by the Government in notification, dated 16 May 1960 must be implemented within a fortnight. Thereafter certain disputes were raised and it seems that the Labour Commissioner, the respondent 6, called a meeting of the respondents 2, 3 and 4. The respondent 2 is an association of employers and is registered under the Indian Companies Act. The respondents 3 and 4 are trade unions of the employees, registered under the Trade Union Act. On 20 July 1961, it is stated that an agreement was reached, a copy whereof is annexure C to the petition.

It is stated that the appropriate Government was going to revise the notification on the basis of such agreement. I might point out here that Section 25 of the said Act runs as follows:

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

3. All parties have admitted before me that in view of this section, the so-called agreement is of no effect. Actually in this case, I am not concerned with the question as to whether the appropriate Government was going to revise the notification in accordance with the said agreement. What I have got to determine is as to whether the notification as published is in accordance with the provisions of law. This application was made and the rule was issued on 3 August 1961. In this application, two points have been taken. The first is that the advisory committee has not been properly constituted inasmuch as two of the so-called "independent

persons" nominated by the State Government are not independent persons at all, but employees of Government. The second point that has been taken is that the notification fixing the minimum wages in the scheduled employment, namely, the "cinema industries" is not in accordance with the provisions of the Act. As I have stated above, the composition of committees is to be made as provided for In Section 9 of the said Act. The complaint is that two of the persons nominated by Government are Government servants, namely, the Labour Commissioner and the Deputy Labour Commissioner, West Bengal. The question to be decided is as to whether these persons can be said to be "independent persons" within the meaning of the expression as used in Para. 9 of the said Act. In order to consider this point, it will be necessary to clear the ground by referring to certain decisions laying down the legal position of an advisory committee.

4. The first case is a decision of the Supreme Court--Edward Mills Co., Ltd., Beawar and Ors. v. State of Ajmer and Anr. 1954--II L.L.J. 686. In that case, Section 27 of the said Act was challenged as ultra vires. It will be remembered that Section 27 gives power to the Central Government to add to the schedule. It was held that the legislative policy was apparent on the face of the said Act. What it aimed at was the statutory, fixation of minimum wages with a view to obviate the chance of exploitation of labour. The legislature intended to apply the Act not to all industries but to those industries only where by reason of unorganized labour or the want of proper arrangement for effective regulation of wages or for other causes, the wages of labourers in a particular industry were very low. It is with an eye to this fact that the list of trades had been drawn up in the schedule attached to the Act, but the list was not an exhaustive one and it was the policy of the legislature not to lay down at once and for all time, to which industry the Act should be applied. There was therefore no delegation of essential legislative functions. Speaking about the committees appointed under Section 5 of the said Act, Mukherjee, J., held that such a committee was only an advisory body and that the Government was not bound to accept any of its recommendations. It was held that mere procedural irregularities would not vitiate the final report fixing the minimum wages. The next case cited Is Bijay Cotton Mills, Ltd. and Ors. v. State of Ajmer 1955--I L.L.J. 129. It was held in that case that the material provisions of the Minimum Wages Act were not ultra vires of the Constitution, because the securing of living wages to labourers is conducted in the general interests of the public, and this was one of the directive principles of State policy embodied in Article 43 of the Constitution. Although the restrictions imposed by them, interfere to some extent with the freedom of trade and business guaranteed under Article 19(1)(g) of the Constitution, these restrictions are reasonable, and being imposed in the interest of the general public, are protected by Clause (6) of Article 19. Speaking about advisory committees, Mukherjee, J., said as follows:

As regards the procedure for the fixing of minimum wages, the "appropriate Government" has undoubtedly been given very large powers. But it has to take into consideration, before fixing

wages, the advice of the committee if one is appointed. or the representations on its proposals made by persons who are likely to be affected thereby. Consultation with advisory bodies has been made obligatory on all occasions of revision" of minimum wages, and Section 8 of the Act provides for the appointment of a Central Advisory Board for the purpose of Advising the Central as well as the state Government, both in the matter of fixing and revision of minimum wages.

Such central advisory body is to act also as a Co-ordinating agent for Co-ordinating the work of the different advisory bodies. In the committees or the advisory bodies the employers and the employees have an equal number of representatives and there are certain independent members besides them who are expected to take a fair and impartial view of the matter. These provisions, in our opinion, constitute an adequate safeguard against any hasty or capricious decision by the appropriate Government.

5. The question was also considered in another Supreme Court judgment--Management of all Tea Estates in Assam v. Indian National Trade Union Congress, Dibrugarh and Ors. 1953--II L.L.J. 291. Bhagwati, J., said as follows (at p. 294):

The other fallacy lies in this that the report of the minimum wages committee was considered by the learned Counsel for the appellant as the final word on the subject. The minimum wages committee was merely an advisory body and under Section 5 of the Minimum Wages Act. the function of the committee was to collect materials, make enquiries and advise the Government in the matter of the fixation or revision of the minimum wages. The Government was not bound to adopt that report. It could accept it either wholly or in part or it could also modify it.... If it was thus competent to the Government to accept only a part, of the report and substitute its own decision for such part of it as did not meet with its approval, it could not be urged that the report of the minimum wages committee governed the situation.

6. In Madhya Pradesh Mineral Industry Association, Nagpur v. Regional Labour Commissioner (Central), Jabalpur 1960--II L.L.J. 254, it was laid down that the provisions of the Minimum Wages Act were intended to achieve the object of doing social justice to the employees employed in the scheduled employments by prescribing minimum rates of wages for them and so, in construing the said provisions, the Court should adopt what is sometimes described as the beneficient rule of construction. Where the relevant words are capable of two construction, preference may be given to that construction which helps to sustain the validity of the impugned notification. Such occasion would only arise if two constructions are reasonably possible. It will thus be seen that the advisory committee has a purely advisory function. It is obligatory however to bring it into existence and to allow it to tender its advice, but Government is not bound to take its advice or any part of it. If, therefore, it is obligatory to bring the committee into existence and

to allow it to tender its advice, it follows that the committee must be brought into existence validly, in accordance with the provisions of the Act. I now come to the first point taken, namely, as to whether the Labour Commissioner and the Deputy Labour Commissioner of the Government of West Bengal can be considered as "Independent persons" within the meaning of the expression as used in Section 9 of the said Act. Upon this point, there are two conflicting views. The first view Is that of a single Judge of the Punjab High Court--Jaswant Rai Beri v. State of Punjab A.I.R. (1958) Pun. 425. In that case, the Labour Commissioner of Punjab was a nominee of Government to act as chairman and secretary of the advisory committee. The objection was that the Labour Commissioner being an official under Government, could not be considered to be an "Independent person." Bishan Narain, J., said as follows:

The Labour Commissioner is an official though not under this Act. It is, however, not laid down anywhere in the Act or elsewhere that an official of the Government cannot be nominated as a member of the committee or that only a non-official can be considered to be an independent person.

To my mind, an 'independent' person in this context means a person who is neither an employer nor an employee in the employment for which the minimum wages are to be fixed, Presence of independent persons is necessary in these committees to safeguard the interests of those whose requirements are met by the trade concerned. In a welfare State, it is the business of the Government to create conditions wherein private employers can carry on their trade profitably as long as workmen are not exploited.

In such circumstances the appointment of a Labour Commissioner who is conversant with the employment conditions cannot be objected to on any valid or convincing ground. I, therefore, hold that the appointment of the Labour Commissioner as representing independent interest was valid and therefore his appointment as chairman was also valid.

7. A Division Bench of the Madhya Pradesh High Court has taken a contrary view. In Narottamdas Harjiwandas v. P.B. Gowarikar 1961--I L.L.J. 442, a question arose as to whether Government officials, such as Labour Commissioner and Director of Economics and Statistics were "independent persons" within the meaning of Section 9 of the said Act. The Punjab decision of a single Judge mentioned above, was dissented from. The learned Judges said as follows (at p. 451):

We are not prepared to accept the stand taken on behalf of the State that the expression 'independent persons' as used in Section 9 means persons who are independent only of employers and employees in the scheduled employments and include an official. The ordinary connotation of the words 'independent parson' is a person who is not dependent on anybody, authority or

organization and who is able to form his own opinion without any control or guidance from any outside agency.

In the matter of fixation of minimum wages, the contesting parties are no doubt the employers and the employees. But the Government who fixes the rates of wages is not absolutely disinterested in the matter....

8. With respect, I agree with the decision of the Madhya Pradesh High Court. The learned "Advocate-General appearing on behalf of the State has argued that the standard of "independent person" as fixed by the learned Judges of the Madhya Pradesh High Court is unattainable in practical life. He said that a person who would be able to act in an advisory committee of a particular industry must be connected with the industry in one way or another and an absolutely independent person would either be unobtainable or whose participation in the committee would be worse than useless. In referring to the ordinary connotation of the word "independent person," the learned Judges were not laying down a definition. They were only referring to the expression in its amplitude. While it may be necessary to out down or restrict the dictionary meaning in a particular case, the person who can fee described as an "independent person," must be independent of something or other, Otherwise, there is no sense in using that expression. The learned Judge of the Punjab High Court seems to think that it would be sufficient if the person is independent of the two immediate disputants, namely, the employer and the employee. But, as pointed out by Dixit, C.J., the Government in such matters is not at all a disinterested person. The fixation of minimum wages, it must be remembered, is an operation compelling the employer to make a payment, whether he wishes it or not, and in most cases contrary to his wishes. In the process of this compulsory fixation of the rates, three parties are involved,--the employer, the employed and Government. If the advisory committee is really to consist of "independent persons," they should be independent of all the three categories. In other words, they should not be amenable to control by any of them. The learned Advocate-General has argued that all Government servants are not necessarily subservient. To say that all Government servants are subservient would be fatuous. It is however common experience that this class of executives can seldom be made to swim against the tide. It is not that they do not posses the strength, but because they seldom possess the necessary amount of Initiative or inspiration which leads people to champion lost causes.

9. The matter may be looked at from another point of view. Let us assume that there are but two parties concerned in the fixation of minimum rate of wage, namely, the employer and the employee. Government, in such a case, almost has the position of an impartial arbitrator; because it must hold the scales even between the two groups, saving the worker from exploitation and the entrepreneur from extinction. In carrying out this delicate operation, it is obliged to take advice

from a committee, which not only consists of the representatives of the actual disputants but of some independent persons. It is obvious, that in such a case, justice should not only be done but seem to be done and Government should not not have officials amenable to its control in the advisory committee. It is not that such control will necessarily be exercised. Bat, neither labour nor capital should have the remotest ground for thinking that Government could in such a case, shape the advice which it was seeking to get. I am aware that this advice when tendered to Government may not be taken at all. That however means nothing. The fact that in an exceptional case, the advice of the committee may be ignored, is not a reason for detracting from the quality of that advice. It may be true that the Labour Commissioner and the Deputy Labour Commissioner are persons who have personal knowledge of the facts that are necessary to be dealt with by the advisory committees. That, however, is no compelling reason for putting them there. There are other considerations which outweigh the advantages to be gained by their presence. In my opinion, therefore, the appointment of the Labour Commissioner and the Deputy Labour Commissioner, West Bengal, as members of the advisory committee was not in accordance with law, and the advisory committee, of which they were members, had not been properly constituted. If this is so, the notification at once becomes defective, because it was published without considering the advice tendered by a properly constituted advisory committee. As I have stated above, this is obligatory under the law.

10. My attention has been drawn to an unreported judgment of the Supreme Court--U. Unichoyi and Ors. v. State of Kerala [Petition No. 102 of 1958, judgment, dated 14 April 1961--Reported in 1961--I L.L.J. 631]. In that case, an advisory committee was appointed to hold enquiries and advise the Government in fixing minimum rates of wages in respect of employment in the tile industry. The Government of Kerala nominated one Sri G.S. Pillai, the District Labour Officer, as an Independent member of the committee. It is argued that the Supreme Court did not consider such an appointment as being contrary to law. Unfortunately, this objection was not at all raised or considered. It was assumed that this official was an independent person and nothing was said, against him. In my opinion, it cannot be said that the point was at all decided by the Supreme Court.

11. I now come to the second point, namely, as to whether the impugned notification which is annexure D to the petition, is in accordance with the provisions of the said Act. I have, at the commencement of the judgment, given a summary of the relevant provisions of the Bald Act. The object is to provide for the fixation of minimum rates of wages in certain employments. The object of the statute is to fix the minimum rate of wages below which an employer cannot make payment to workmen employed by him. He is not obliged to pay at the minimum rates, that is to say, he may pay more, but not less. The provisions of the said Act are all meant to assist this process of fixing the rates of minimum wages and its payment. The word "wages" has been

defined to mean all remuneration, capable of being expressed in terms of money. The minimum rate of wages fixed or revised by the appropriate Government, in respect of scheduled employments, may be fixed in three ways:

Firstly, it may consist of a basic rate of wages and a special allowance at rates to be adjusted according to the cost of the living index number applicable to a particular class of workers (which is known as the 'cost of living allowance '); or it may consist of a basic rate of wages with or without the cost of living allowance and the cash value of the concession in respect of supplies of essential commodities at concession rates, where so authorized; or thirdly, it may be an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

12. It will be remembered that minimum wages payable under the Act must be paid in cash, unless under special circumstances, when it may be directed to be paid either wholly or partly in kind. There is a specific provision in Sub-section (3) of Section 11 that Government may direct supplies of essential commodities at concession rates to be made to workmen. Such a direction would be, therefore, within the four corners of the Act. Since, however, minimum" wages have to be paid in cash, the cash value of wages in kind and of the concession for the supply of essential commodities at concession rates, have to be estimated in the prescribed manner. In fixing the rates of minimum wages, we have to consider the following heads:--

1. The manner of fixation.--(i) According to time, when it is called 'minimum time-rate'.

(ii) According to the nature of work, e.g., for piece-work, when it is called 'minimum piece-rate.'

(iii) A minimum rate for employees doing piece-work, known as the 'guaranteed time-rate,'

(iv) Overtime work when it is known as 'overtime-rate.'

2. Fixation according to class of work.--Different minimum rates of wages may be fixed for

(i) different kinds of employments;

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

(iii) same kind of employment in different localities; and

(iv) different rates for four different classes of workers, viz., adults, adolescents, children and apprentices.

3. Fixation according to wage period.--Minimum rates of wages may be fixed

(i) by the hour;

(ii) by the day;

(iii) by the month; or

(iv) by such other wage periods as may be prescribed.

13. Where rates are fixed by the day or by the month, the manner of calculating wages has to be indicated. Under Section 13, the number of hours of work in a working day should be fixed, and in a period of seven days there should be a day of rest. In making these fixations, various factors have to be borne in mind, namely, the nature of the work which may be intermittent, or which has to be urgently completed, and so forth. When rates of wages are fixed for a time period, the rate of overtime payment has also to be fixed and provision has to be made for a worker who works for a period, less than the requisite number of hours in a normal working day, in which case, a distinction has to be made between the case of his own unwillingness to work, and the omission of the employer to provide him with work. Lastly, a provision has to be made for fixing the rates of wages where an employee does two or more classes of work, to each of which a different minimum rate of wages is applicable. These are the different modes in which the minimum rate of wages has to be fixed and paid and the different problems which arise in course of such fixations. I shall now come to the notification in question, and see whether the minimum rates of wages have been fixed In accordance with the provisions of the said Act. The first effect that meets the eye is that the notification goes far outside the scope of the said Act. A typical example of this Clause (6) of the notification, which runs as follows:

An apprentice shall receive two-tbirds of the basic pay and dearness allowance applicable to the category in which he is appointed and the period of his apprenticeship shall not exceed one year.

The maximum period of probation of an employee shall be one year during which he shall be entitled to receive full basic pay and dearuess allowance applicable to the occupation in which he is appointed.

14. I have mentioned above that the fixation of minimum rates of wages may involve the fixation of wages according to a difference in the nature of the work or a difference in the nature of the person doing the work, or a difference in the locality in which the work is carried out. Thus, a different minimum rate of wages can be fixed for apprentices. The Government, however, has no authority under any provision of the Act to fix the period of apprenticeship. Similarly, it might consider an employee working on probation to be an apprentice, and fix a different rate for him. It has, however, no jurisdiction to fix the period of probation.

15. In Clause (9), it has been provided that the minimum rates of wages for employees commonly known as "free lancers" employed by the producers, shall not in any case be less than that of the permanent workers of the respective categories. Now "free lancers" are workers who come and go according to their free choice, and are not permanent employees. The provision treats them as a different class. The different categories in which workers can be divided is laid down in the statute and permanency of employment has not been prescribed as a basis for classification. There may be a difference in status between a worker permanently employed and one who is only temporary, but it cannot be said that they are doing different classes of work. According to Section 3(3)(a)(iii), it is open to Government to consider four classes of persons for the purposes of fixing or revising the minimum rates of wages, viz., adults, adolescents, children and apprentices. If there are different classes of employments or different classes of work in the same employment or the same class of work in different localities, then different rates may be fixed. But when it comes to fixing the rates with regard to different classes of workmen, then four divisions are permissible and are mentioned above. A "free lancer" belongs to no such division. If the Act wanted to make a further classification of workers into those who are permanently employed and those who are not, it would have Bald so. The next clause that is attacked is Clause (7), which provides that employees who are in receipt of higher wages shall continue to enjoy the same. As I have pointed out in Gairkhatta Tea Co., Ltd. v. State of West Bengal 1961--II L.L.J. 20, the object of the said Act is to fix the minimum rates of wages below which an employer cannot pay his employee. It gives no power to the Government to fix the actual wages that are to be paid. An employer can pay any amount he likes to the employee, provided, however that he must not fall below the minimum rates fixed by Government. The learned Advocate-General argues that in Clause (7), although the wording is unhappy, what was intended was to fix the minimum rates of wages in the case of employees who were in receipt of wages higher than the minimum wages fixed under the notification. In other words, what they were then receiving would be considered as the appropriate rates of minimum wages. If this be so, it must at once be held that in such oases the minimum rates of wages have been fixed arbitrarily, and not in accordance with the law. After all, in fixing the minimum rates, certain specified factors have to be taken into account, to ensure that the workman gets his wages at a rate which ensures a living wage with the essential amenities superadded thereto. In order to arrive at such a rate, the Government cannot act arbit rarily, but has to consider the cost of living allowance, the estimated value of concessions given to the employee and so forth. But to say that an employee should get whatever he was getting before the compulsory fixation was made, is to act arbitrarily. An employer may voluntarily pay his workman much more than the minimum rate. He may be paying his workmen too generously. In such a case, it is not the object of the said Act to compel him to continue to be generous to his workers. A voluntary payment and a compulsory payment are two different propositions altogether. Such rates must vary from

employer to employer or even from employee to employee and have no bearing upon the classifications made in the Act or permissible to be made under its provisions. I do not see therefore, how the rate of minimum wages can be fixed in this fashion. In the case of Gairkhatta Tea Company, Ltd. 1961--II L.L.J. 20 (supra) what had happened was that in certain oases the existing basic wages were known. The Government said that the minimum rates of wages will be fixed on the basis of existing basic wages plus something more. This fixation was approved by me. I held that in fixing the minimum rate of wages, Government could fix it at a rate equal to the existing rate, or in excess thereof, provided however that the existing rate is known and Government has exercised its mind in arriving at the new figures. In other words, the Government in calculating the minimum rate to be fixed, might arrive at a figure which is equal to the voluntary rate or at a figure more than such rate or less. It must however exercise its mind in fixing the rates, and the figure fixed should be an appropriate figure of minimum rates of wages after taking into consideration the necessary factors. To say that the employees who are in receipt of higher wages shall continue "to enjoy the same, is not a fixation of minimum rates of wages in accordance with the provisions of the Act, when the amount or the rate of such wages are not specified, and such rates have not been fixed according to the provisions of the said Act. I now come to Clause 8 which runs as follows;

Existing privileges such as free uniform, snacks and meals, free housing shall continue in addition to the minimum wages notified herein.

16. Upon this point, reliance has been placed by the respondents upon a Supreme Court decision: Management of all Tea Estates in Assam v. Indian National Trade Union, Dibrugarh 1956--II L.L.J. 291. In that case, the facts were as follows: The appellants, the Tea Estates in Assam, used to supply certain quantities of rice and other articles of food at concession rates to its workers. As the quantity of rice was suddenly rationed, the workers claimed cash compensation for the consequent reduction in supply. Thereupon, there was an industrial dispute raised, and a reference was made to an industrial tribunal for adjudication under the Industrial Disputes Act. By an award it was held that the employers were under a legal obligation to pay cash compensation to the workers for the out in the supply of rice. The rate of compensation was fixed. The appellate tribunal reduced the rate of compensation but otherwise uphold the award. In March 1952, the Government of Assam issued a notification under the Minimum Wages Act and fixed the minimum rates of wages of workers employed in the tea gardens of Assam, on certain terms, one of the terms of the notification was as follows:

(2) Rates are exclusive of all concessions enjoyed by the workers in respect of supplies of foodstuff and essential commodities and other amenities which will continue unaffected. The existing basic pay and hours of work may continue until further orders.

17. The matter ultimately went to the Supreme Court. The question to be decided there was as to whether credit should have been given for the cash value of the concession that had been given to the workers for the out of supply in rice, in fixing the rates of minimum wages. The argument advanced was that the minimum wages committee had takes this concession into account in fixing rate of minimum wages and Government should have followed the same procedure. The Supreme Court held that the Government was not bound to accept such advice. It was open to Government to fix; the rate of minimum wages exclusive of such payments. Imam, J., said as follows:

The Government was not bound to adopt that report. It could accept It either wholly or in part or it could also modify It and in this particular case, be it noted, the notification, dated 11 March 1952, expressly stated that the minimum wages as fixed by the Government consisted of basic wages and dearness allowance in terms of Section 4(1)(i) but as the workmen were getting essential commodities which included rice at concessional rates, such rights as also other amenities were preserved by Para. 2 of the notification. If it was thus competent to the Government to accept only a part of report and substitute its own decision for such part of it as did not meet with its approval, it could not be urged that the report of the minimum wages committee governed the situation. Assuming without admitting that the minimum wages committee included within its calculation of minimum wage the cash compensation which was being paid by the employers to the workmen for the cut in rice ration. it was open to the Government nevertheless to give the go-bye to it and recommend that the cash compensation be paid by the employers to the workmen as hithertofore in addition to the minimum wage which was fixed by the committee.

18. Now, so far as the cash compensation for the cutting of rics supply is concerned, there is no difficulty, because under Section 11(3) of the said Act, provision can be made for the supply of essential commodities at concession rates. But the difficulty arises from the fact that the notification under the Minimum Wages Act speaks about "other amenities" remaining unaffected. This part of the notification was upheld by the Supreme Court. But does it mean that under the Minimum Wages Act "other amenities" could be ordered? In my opinion, the answer should be in the negative. As I have stated above, under the said Act, all wages have to be paid in cash, except in the rare case where there is a custom for paying wagee in kind. Normally, therefore, the fixation of the rate of minimum wages must be in cash, and may include within it the cash value of amenities to be enjoyed by the workers. Apart, however, from the right of directing the supply of essential commodities at concession rates, I cannot find any provision in the Bald Act for compelling the employer to provide amenities in kind. This may be put in another way. The said Act authorizes the Government to fix the minimum rates of wages. Such fixation must be by way of cash payment. This cash payment may include many kinds of

amenities. These amenities, however, have to be evaluated and estimated according to the manner prescribed, and included in the rate of minimum wages ultimately fixed. Of course, it can fix the minimum rates of wages by excluding such amenities from consideration. In fact, according to the definition of "wages" in the said Act, certain specified amenities have got to be excluded. In my opinion, this is what was really done in the Supreme Court case cited above. There, the Assam Government was not creating any amenities in addition to the minimum rates of wages. It appeared, however, that; the workers were in enjoyment of certain amenities granted to them by the industrial courts. All that the Assam Government did was to make it clear that the cash amount payable for minimum wages did not include these amenities. There was no effort at creating the amenities under a notification published under the Minimum Wages Act. Coming back to Clause 8, it was open to Government to state that the minimum wages notified were exclusive of the privileges enjoyed by the workers as regards free uniforms, snacks, meals and free housing or that such rights if they exist, will remain unaffected. But under the Minimum Wages Act it had no right to Bay that those rights "shall continue." There is nothing to show that these rights were given to the workers under any award of an industrial tribunal. If it was given ex gratia, this notification would transform it into a legal right. Under the said Act, Government has no power to create such rights. Such things might come within the purview of the Industrial Disputes Act.

19. I now come to the classification made in the schedule annexed to the notification, as also the appendix annexed thereto, showing the classification of categories of employees. It will be remembered that the scheduled employment in this case is "cinema industries." We find in the schedule and the appendix, a division into three categories. The first category is "cinema house (exhibition)." The second class is "distributing unit," to which category the petitioner belongs, and the third category is "production side, viz., studios, producing unit and laboratories." The first argument that has been advanced is that this classification is unwarranted. Sri Chaudhuri argues that distributors cannot be a part of the cinema industry. According to him, it would be absurd to say that a petrol-pump selling petroleum is a part of the "oil industry" of the country. In my opinion, the matter depends upon the facts of each case. Whether the distributing part of an industry is connected or allied with the production part or the exhibition part, would be impossible to decide without evidence. I am unable therefore to hold that prima facie, the classification made into three classes as aforesaid, is an impossible one. Sri Chaudhuri then argues that assuming that these three classifications are justified, we find that there are further classifications inside each category which are unjustified, and that the same class of workers in these three categories have been treated differently as also inside each category itself. This also, to a certain extent, depends on the" facts of each case. I can However take notice of such defects, if it is so obvious as to be beyond dispute. It is found that in the first category, cinema houses in Calcutta and Howrah have been divided into two classes, namely--air-conditioned and those

which are not air-conditioned. I have pointed out above the various classifications which Government is authorized to make under the said Act. It could differentiate between different scheduled employments or different classes of work in the same employment or between different classes of persons as indicated above, or between different localities. Now, a difference is made here between unskilled workers in an air-conditioned cinema house, and in a house not air-conditioned. In the first case, the rate of minimum wages is higher than the other. Unskilled workers have, been specified in the appendix. For example, a mall (gardener) is an unskilled workman. Thus, a mali in a cinema house which is air-conditioned gets Rs. 42 per month, whereas a malt in a cinema house which is not air-conditioned, but which might be situate next door, gets Re. 37 per month. I am unable to find any rational basis whatsoever for this distinction. The work of a mali in a cinema house which is air-conditioned cannot be a different class of work to that of a mali in a house without air-conditioning. In fact, the air-conditioning of the house has no bearing upon his work at all. Even in the appendix, the classification of categories in some cases seems to be without sense. For example, a gate-keeper in a cinema house may be an unskilled worker as also a semi-skilled worker. An unskilled gate-keeper would get Rs. 36, whereas a semi-skilled one will get Rs. 51. Learned Counsel for the respondents have confessed that they have no knowledge of a gate-keeper who is semi-skilled. Now take the case of a sweeper. A sweeper is an unskilled worker. In an air-conditioned cinema in Calcutta, he will get Rs. 42 and in a cinema house not air-conditioned he gets Rs. 37. In a studio he will get Rs. 38. In a distributing unit he gets Rs. 40, whereas in a producing unit he gets Rs. 45. What is the basis of such difference. Is it the capacity to pay ? If so, that is not warranted by the Act, Is it the class of work? How can anybody say that swooping an air-conditioned cinema house is a different class of work from sweeping a cinema house which is not air-conditioned, or why sweeping a cinema house is a different class of work from sweeping a studio and why the latter work should be less remunerative. I should have thought that sweeping a studio would be a much more arduous task than sweeping the office of a "distributing unit. It does not seem, therefore, Chat the classifications made have been done upon any rational basis at all, and not certainly upon any basis laid down by the Act. Next, it was as argued that the classification according to localities has not also been properly made. It is stated that, division into "towns with population of one lakh and above" and "other areas" cannot be said to be a division according to locality. I do not see why not. It is stated that the population is to be taken according to the 1951 census report. A. glance at that report should indicate the names of the towns where the population is over a lakh. There does not seem to be any defect in such a classification. The next attack is with regard to the period. It is pointed out that the minimum--rates of wages has been fixed at a monthly rate, but no indication has been given as to the number of days in a month or the number of hours in a day. Thus, there is no means of calculating the wages of workmen for part of a month, Sri Chaudhuri has pointed out that under Section 16, If an employee does two or

more classes of work, to each of which a different minimum rate of wages Is applicable, the wages have to be apportioned. But no such apportionment can be made because there is no indication of the minimum wages to be paid for any part of a month. Sri Chaudhuri pointed out that in the cinema business, the employment In different classes of work of the same employee is often done, and from that point of view the notification Is unworkable. That this is so, is not disputed. But what has been stated by the respondents, as will be found from the affidavit of Ashutosh Roy affirmed on 24 August 1961, Para. 9, is that the Government of West Bengal would have issued further notifications to clarify such matters, but had "no opportunity" to do so. However, I am concerned with the notification as it stands, and not as to whether it can be suitably rectified. Sri Chaudhuri rightly emphasizes the fact that the liabilities of employers under the Act are onerous. Under Section 22, violations of the provisions of the Act amount to an offence, for which an employer can be imprisoned for a term which may extend to six months or to fine. Under the circumstances, it is not permissible to create rights and liabilities which are vague or unworkable, as also to travel beyond the permissible limits of the statute. Sri Acharya, appearing on behalf of the respondents, has argued that the hours of work are already regulated by other Acts, namely, the "Bengal Shops and Establishments Act" and the rules made thereunder, and the "Factories Act." In my opinion, this is scarcely an explanation. It may be that under other Acts, the hours of work in establishments in the cinema industry may be fixed. But, for the purpose of calculating the rates of minimum wages under the Minimum Wages Act, it is the Minimum Wages Act that must be looked into. An employer or an employee should not be left to hunt into other statutes for, assistance. As I said, Government itself has not taken this attitude', but has admitted that specifications have to be made under the said Act, but that In this particular case, it had no sufficient opportunity of doing so.

20. Lastly, Sri Acharya has taken the point of delay. He argues that the notification was issued on 16 May 1960 and this rule was taken out on 3 August 1961, For this reason, I have set out above, certain dates, which will show that immediately after the publication of the notification, an application was made challenging the same and a rule was issued by this Court. Thereupon further implementation of the same was stopped. It was only when the application was withdrawn that fresh notice was given by the authorities that the notification will be enforced and this application was made immediately thereafter. In my opinion, the delay has been sufficiently explained.

21. The result is that for reasons stated above, the fixation of the rates of minimum wages as has been done under the impugned notification No. 2949 LW/LW/1A-88/60, dated 16 May 1960, a copy whereof is annexure A to the petition, has not been validly made, in accordance with the provisions of the said Act. I have now to consider whether this notification should be set aside wholly or in part. It may be that a few figures therein are in accordance with the Act. In my

opinion, however, the whole notification amounts to a scheme of payment, and the various parts of it are interdependent on one another. It would be impossible to uphold a part of the scheme and strike down the other. The striking down of one part of the scheme will necessarily affect the others because, if it was known to Government that a particular part was bad, there is no knowing in which way the other parts might have been altered or omitted. It is quite likely that the entire scheme would have been refrained.

22. For the reasons aforesaid, this application must succeed. The rule is made absolute. There will be a writ in the nature of certiorari quashing the impugned notification, dated 16 May 1960 and there will also be a writ in the nature of mandamus directing the respondents not to give effect to the same. There will be no order as to costs. This will be without prejudice to the respondents proceeding in future in accordance with law, and fixing the minimum rates of wages in accordance with the provisions of the said Act.