CALCUTTA HIGH COURT

Bengal Motion Pictures Employees

Vs

Kohinoor Pictures Private Ltd

(H Bose, C.J. G Mitter , J.)

14.08.1963

JUDGMENT

Bose, C.J.

1. This is an appeal from an order of Sinha J. made on a writ petition quashing a notification dated the 16th May, 1960 issued under the Minimum Wages Act, 1948 and directing the respondents to forbear from giving effect to the same.

2. On 19th May, 1959 the Government of the State of West Bengal in exercise of its powers under Section 27 of the Minimum Wages Act, 1948 issued a notification, adding the cinema industry in West Bengal in Part 1 of the Schedule 1 to the said Act as one of the scheduled employments. This notification was published in tha Calcutta Gazette on 4th June 1959. On 16th May 1960 the said State Government issued a notification fixing the minimum wages of several categories of employees employed in the cinema industry in West Bengal in exercise-of its powers under Section 3 of the Minimum Wages Act This notification was published in the Calcutta Gazette-dated the 19th May 1960. On 31st May, 1960 one Surendra Ranjan Sarkar and two others made an application to this Court under Article 226 of the Constitution for a writ in the nature of mandamus calling upon the State of West Bengal to recall, annul and cancel the said notification dated the, 16th May, 1960. On the same date this Court issued a Rule Nisi and this application was numbered as Matter No. 134 of 1960. The basis of me said application in Matter No. 134 of 1960 was that certain meetings of the Advisory Committee mentioned? in Section 5 of the Minimum Wages Act were not properly held and the advice purported to be given by the said Committee at meetings alleged to have been held after the 4th May 1950 was illegal and void. As the decision of the question raised was found to involve serious disputes on questions of facts, Sinha, J. made an order on 9th June, 1961 by which permission was given to the said petitioners to withdraw the application with liberty to take such proceedings or suits as they might be advised. On the 11th June 1961, a letter was written by the Deputy Labour Commissioner to one Nishat Cinema at Howrah insisting upon the implementation of the provisions of the said notification dated the 16th May 1960, with effect from the date of the said notification. On 13th July 1961 the solicitors for the said Nishat Cinema-wrote a letter to tha Secretary, Labour Department, Gov ernment of West Bengal, challenging the legality and validity of the notification dated 16th May 1960 on grounds mentioned in the said letter and calling upon the Government to withdraw or cancel the said notification and to refrain from

giving effect to the same. On 18th July 1961 the Labour Commissioner, West Bengal, wrote a letter to the Secretary, Bengal Motion Picture Association, respondent No. 2, intimating that a conference would be held on the 19th July 1961 at his Chamber to discuss-the matter of lockout in the cinema house which had taken place at that time. A copy of this letter was forwarded to the Bengal Motion Picture Employees union, being the appellant before us. As a result of the meeting held by the Labour Commissioner a memorandum of settlement was entered into between the Bengal Motion Picture Association, Bengal Motion Picture Employees Union and Bengal Provincial Trade Union Congress by which it was inter alia agreed as follows;

> "(a) The management of Cinema House in West Bengal agree to inform the employees that it has accepted in principle the said notification prescribing minimum wages for the workers of the cinema industry in West Bengal.
> (b) In view Of the fact that the financial position of the management does not peirmit full implementation of the said notification, the management is applying within 15 days to the State Government for a revision under the Minimum Wages Act.
> (c) The list of houses that have informed Bengal Motion Picture Association about its intention for immediate implementation is enclosed. Those houses will immediately inform their employees and Government about the steps they intend to take for immediate implementation of the Minimum Wages notification."

3. On 28th July, 1961 the respondent Kohinoor Pictures Private Ltd. wrote a letter to the Secretary, labour Department, challenging the notification dated the 16th May 1960 and calling upon the Government to re-frain from giving effect to the said notification or enforcing the provisions thereof. But as no reply was received from the Government an application was moved (by the respondent Kohinoor Pictures Private Limited before 'this Court under Article 226 of the Constitution challenging the notification dated 16th May 1960 and the agree-went dated 20th July 1961 and a Rule Nisi was issued by Sinha, J. on the 3rd August 1961 and an interim injunction was issued by the learned Judge restraining the State of West Bengal from giving effect to the notification dated the 16th May 1960 as against the said Kohi-noor Pictures Private Limited. The grounds on which the validity of the notification dated the 16th May i960 was challenged are set out in paragraph 20 of the petition.

4 .The principal grounds are as follows:

(a) The Committee which was constituted under the provisions of the Minimum Wages Act for advising the Government, under a notification dated the 8th January, 1960, purported to include as independent members Sri S. N. Bhattacharya, I. A. S., Labour Commissioner, West Bengal, as Chairman, and Sri S. R. Mukherjee, Deputy Labour Commissioner, West Bengal, and one Sri Abani Kumar Ghosh, M.L.A.; but Sri S. N. Bhattacharya and Sri S. R. Mukherjee were not independent persons as contemplated in the said Act, and as such the constitution of the Committee was illegal and was contrary to the provisions of Section 9 of the Act, and the advice given by the Committee was bad.
(b) The notification had fixed different minimum tates of wages for the same class of workers in the sane scheduled employment in the same locality and such fixation was discriminatory and contrary to the provisions of the Act and were ultra vires the Constitution of India.
(c) The fixation of minimum wages with reference to areas or localities on the basis of population was arbitrary and illegal.

(d) The basic wages have not been correlated as to any workload or hours of work and is therefore dis criminatory as the work foad and hours are not the same for all the employees engaged even in the same categories of employment in the same localities.
(e) There are serious irregularities and discrepancies in the classifications and even the same categories are included in different classes.
(f) Persons who are not regular employees have been brought within the purview of the notification.
(g) Although the notification dated the 19th May 1959 included the cinema industry only in the schedule to the Act as a schedule employment, the notification dated 16th May 1960 has fixed minimum rates of wages for employees in the cinema house and those employed by the Distributors and Producers of cinematographic films.
(h) The notification has fixed the minimum rates of wages and Oearness Allowance arbitrarily and without reference to the prevailing wages in any locality and/or similar industry and the rates fixed are abnormally high.
(i) The memorandum of settlement entered into on the 20th July 1961 which contemplates revision of the notification dated 16th May 1960 will make the fixation of wages more discriminatory and the agreement is itself illegal and void.

5. In the affidavit-in-opposition which was filed on behalf of the Government and affirmed by one Ashutosn Roy, the Assistant Secretary, Labour Department, on the 26th of August 1961 it is inter alia stated that the Government of West Bengal fixed the minimum wages after carefully considering the conditions of the industry and the report of the Committee appointed by the Government to advise the Government in the matter of such fixation of minimum wages. It is further stated in this affidavit that the notification dated 16th May 1960 having been challenged immediately after the publication in the Calcutta Gazette, the Government had no opportunity to fix hours of work for different categories of employees under Section 13 of the Minimum Wages Act. The rule finally came up for hearing before Sinha, J. and by his judgment delivered on the 21st September 1961 the learned Judge made the rule absolute and quashed the notification dated the 16th May 1960. It Is against this order that the present appeal has been preferred.

6. Before the learned Judge two principal points had been ifrged. The first was that the Advisory Committee had not been properly constituted inasmuch as the Labour Commissioner' Sri Bhattarcharya and the Deputy Labour Commissioner Sri Mukherjee were not "independent persons" as contemplated by the Act but they were employees of the Government and so the notification1 fixing minimum wages which was based on the advice of such a Committee Was bad, and the second point was that the notification fixing the minimum wages in the scheduled employment, namely, cinema industry, is not in accordance with the provisions of the Minimum Wages Act.
7. The learned trial Judge has found that the Labour Commissioner and the Deputy Labour Commissioner who were included in the Advisory Committee were not Independent persons as contemplated in the relevant provisions of the Minimum Wages Act and he has further fomd that the fixation of the minimum wages by the notification dated 16th May 1960 has not been in accordance with the provisions of the Act. Before us the findings of the learned Judge have been challenged by the Bengal Motion Picture Employees Union which is the appellant before us. The learned Advocate. General appearing for the State of West Bengal has supported the contention raised on behalf of the appellant.

8. The relevant provision of the Minimum Wages Act which has a bearing on the question whether the labour Commissioner and the Deputy Labour Commissioner included in the Advisory Committee are independent per-sorts or not is Section 9 of the Act which is as follows:

> "Each of that Committees, sub-committees 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."

9. The meaning of the word' "Independent" as given in the Oxford Dictionary is "not dependent on authority; not dependent on others for forming opinion or for guidance of conduct etc., not in a position of subordination, self-governing, autonomous and free; not subject to external control; not influenced or biased by opinion of others; thinking or disposed to think for oneself."But the actual words occurring In Section 9 of the Minimum Wages Act, 1948 havereceived judicial interpretation in different High Courts in India. The earliest in point of time which has been brought to our notice is a decision of a single Judge of the Punjab High Court reported in Jaswant Rai v. State of Punjab, . In this casei one of the points which was taken for challenging the constitution of the Advisory Committee which was constituted by the Government, was that the Labour Commissioner who was nominated a member of the Committee and was appointed a Chairman thereof was not an independent person as he was an official of the Government. In repelling this contention Sishan Narain, J. observed:

> "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 nonofficial can be considered to be an independent person.
> To my mind an 'independent' perscn in this context-means' a person who is neither an employer nor an employee in the employment for which 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 the 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."

The next case to which our attention has been drawn is a decision of the Madhya Pradesh High Court reported in Narottamdas Harjiwandas v. P. B. Gowarikar, . This is a decision of the Division Bench consisting of Dixit C, J. and Pandey, J. In "this case also the Advisory Board which was constituted by the State Government consisted of the Labour Commissioner as the Chairman and another member of the Committee was the Director of Economics and Statistics and the validity of the constitution of the Committee was challenged an the ground that the Labour Commissioner and the Director of Economics and Statistics being Government officials

could not be regarded as independent persons within the meaning of Section 9 of the Minimum Wages Act, 1948. In accepting the contention the learned Chief Justice observed as follows:

> "We are not prepared to accept the stand taken on behalf of the State that the expression 'independent persons' ae used in Section 9 means persons who are independent only of employers and employees in the scheduled employment and includes an official. The ordinary connotation of the words 'independent person' is a person who is not dependent on any body, authority or organise tion 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. This is so especially when the Government itself controls or runs a scheduled employment. It is not disputed that the opponent-State controls employment in public motor transport as also in a tannery at Gwalior ..... Then again in a welfare State as envisaged by the Directive Principles of State Policy embodied in Part IV of the Constitution, the State cannot be regarded as a mere passive on-looker in the determination of wage structure or of minimum wages. ..... The State is therefore actively interested in wage earners and in the matter of fixation of minimum wages in any scheduled employment. If the State is thus an interested party, then a Government Official cannot by any stretch of reasoning be regarded as an independent person for the purpose of Section 9. The expression 'independent person' must be construed to mean as one who is independent of the employers and the employees as well as the Government. A Government servant's freedom of action and thought is limited by the fact that he is required to act for carrying out Government's policy."

10. Then after expressing dissent from the decision of the Punjab High Court the learned Chief Justice further observed:-

> "lf, as we think, Shri Oak, Labour Commissioner and Sri Mehta, Director of Economics and Statistics, being officials cannot be regarded as independent persons within the meaning of Section 9, their the board as constituted was without any 'independent member. The constitution of the Board would thus be contrary to Section 9. As pointed out by the Supreme Court in Bijay Cotton Mills Ltd. v. State of Ajmer, (S) , the inclusion "of independent members who are expected to take a fair and impartial view, is essential for the validity of the Board."

11. The latest decision to which our attention has been drawn is a decision of the Kerala High Court , D. M. S. Rao v. State of Kerala. In this case the person who was appointed as an independent member in the Advisory Committee and who was also jnade a Chairman of the Committee was one Sri Menon who was a Professor of Economics, Maharaja's College, Ernahulam. It was the appointment of this Chairman who was a Government Official that was challenged. Vaidialingam J. agreed with the view expressed by the Punjab High Court in the case already referred to and expressed his dissent from the decision of the Madhya Pra-desh High Court and observed:-

> "But with great respect to the learned Judges of the Madhya Prodesh High Court, I am not inclined to adopt their construction of the expression 'independent person as one who is

independent of the employers and the employees as well as the Government. In my view, If I may say so with respect, there is no such indication available from the provisions of Section 9 of the Minimum Wages Act. When it speaks of persons to be nominated by the Government to the Committee representing employers and employees in the scheduled employments and also of nominating an 'independent person', in my view, the object of the enactment is that the 'independent person' should be one who has nothing to do with the employers or employees in the scheduled employment in question. It may be that under particular circumstances, when an industry, in which the State Government as an employer may also be vitally interested and in which case It can be considered to be an employer, it may not be proper to nominate an official to the Committee treating him as an independent member.

But I am not certainly inclined to hold that excepting in circumstances mentioned above, it is not open, to the State Government to nominate officials, who are to-tally unconnected with employers or employees regarding the scheduled employment in question."

12. In the case of U. Unichoyi v. State of Kerala, the Advisory Committee which was constituted by the Government of Kerala for the purpose of advising in the matter of fixation of minimum wages in respect of employment in the tile industry there were eight members, three of whom were the employers' representatives and three the employees' representatives and Mr. V. R. Pillai and Mr. G. S. Pillai were nominated in the Committee as independent members. Mr. V. R. Pillai who was nominated as the Chairman was an M. A., M. Sc. in Economics of the London University and was a Professor of Economics in the University College at Trivandrum. Mr. G. S. Pillai was the District Labour Officer. But no objection appears to have been raised before the Supreme Court that the District Labour Officer could not be regarded as an independent member within the meaning of Section 9 of the Minimum Wages Act and the Supreme Court in arriving at its decision appears to have been much influenced by the fact that the Government had acted on the reconmendations of the Committee which consisted of two independent members, that is, Mr. V. R. Pillai and Mr. G. S. Pillai who had secured concurrence of the representatives of the employers as well as the employees in the matter of recommendation forwarded to tha Government. If the point had been a substantial one then it would have been natural to expect that an objection would be raised as to the defect in the constitution of the Advisory Committee by the learned Advocate appearing for the petitioners who Had raised all sorts of points for challenging the validity of the notification impugned In that case.

13. It is further to be noted that the object with which the Minimum Wages Act, 1948 was enacted has been very clearly brought out in some of the decisions of the Supreme Court. In the case ofEdward Mills Co. v. State of Ajmer, (S) B. K. Mukherjea, J. who delivered the judgment of the Supreme Court observed (at page 32):

"The legislative policy is apparent on the face of the present enactment. What it aims at is the statutory fixation of minimum wages with a view to obviate the chance of exploitation of labour. The Legislature undoubtedly intended to apply this Act not to all industries but to those industries only where by reason of unorganised labour or 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 these facts that the list of trades has been drawn up in the schedule attached, to the Act. But tha list is not an exhaustive one and it is the policy of the Legislature not to lay down at once and for all times to which industries the Act should be

applied. Conditions of labour vary under different circumstances and from State to State and the expediency of including a particular trade or industry within the schedule depends upon the variety of facts which are by no means uniform and which can best be ascertained by the person, who is Placed in charge of the administration of a particular State."

14. Such being the object of the Act, it is natural to expect that Government would seek the assistance of persons who are well conversant with the conditions of labour, the industrial competition, the profits from tha industry and various other relevant factors which are to be considered in fixing the minimum wages. There can hardly be any room for doubt that persons like the Labour Commissioner or the Deputy Labour Commissioner are tha most suitable persons to be consulted for the purpose. Moreover, in my view, the expression 'independent' as-used in the context of Section 9 of the Minimum Wages Act means a person other than those who are employers and' employees in relation to the scheduled employment in respect of which the minimum wages are sought to be fixed. Any person who cannot be characterised as an employer or employee of the particular scheduled employment is an independent person within the meaning of Section 9 at the Act. The fact that the person nominated to function as an independent member in the Committee is a Government official is no bar to such nomination. There is no indication in the Act 'that a Government official-is disqualified from functioning as an independent person and there is no warrant for any suggestion that Labour Commissioner will not act in a disinterested manner or that the Government in discharging its duties and functions under the Act in fixing the minimum wages is likely to take sides with the wage-earners or To act in a manner jprejudicial to the interest of the em-ployers. I hold that the learned Judge's finding that the' notification dated the 16th May 1960 is bad because the constitution of the Advisory Committee was defective inasmuch as the Labour Commissioner and the Deputy Labour Commissioner are not independent persons within the meaning of Section 9 of the Act is erroneous and cannot be sustained.

15. The next point which arises for consideration in this case is whether the impugned notification dated the 16th May 1960 is in accordance with the provision of the Minimum Wages Act For the purpose of deter mination of the various questions raised in relation to this point, it is necessary to set out the notification dated the 16th May I960 which was published in the Calcutta Gazette dated the 18th May 1960. The said notification is as follows:

"Registered No. 0207 No. 227 (1) THE CALCUTTA GAZETTE EXTRAORDINARY Published by Authority.
Vaishakha 28.
Wednesday May 18, 1960 Saka 1882.

PART I. Orders and Notification by Governor of the West Bengal. The High Court, Government Treasury Ext.
GOVERNMENT OF WEST BENGAL LABOUR DEPARTMENT.
NOTIFICATION No. 2949L.W/LW/IA-88 16th May 1960. In exercise of the power conferred by clause (a) of sub-sec. (1) of Section 3 read with Sub-Section (2) of Section 5 of the Minimum Wages Act, 1948 (XI of 1948) the Governor, after considering the advice of the Committee appointed under clause (a) of Sub-section (11) of Section 5 of the said Act by this department notification No. 43 L W./LW/IA-164/58 dated the 8th January, 1960 is pleased hereby to fix with effect from the date of this notification the rates specified in the schedule below to be the minimum rates of wages payable to the employees employed in cinema industries in West

Bengal, being an employment added to Part I of the schedule to the said Act by this department notification No. 3145L. W/LW/IA-164/58 dated the 19th May 1959, under Section 27 of the said Act, published at page 2093 of Part I of the Calcutta Gazette of the 4th fune, 1959.

THE SCHEDULE.

1. The following shall be the minimum rates of basic wages per month payable to the employees employed in cinema houses (exhibition) of the cinema industries fn the areas specified below in West Bengal:-

Category Calcutta & Howrah Air conditioned Houses Other houses Towns with population of one lal hand above according to 1951 Census report Other areas Rs.
np.
Rs.
nP.
Rs.
nP.
Rs.
np.
Un-skilled
42.
37.
35.
32. Semi-skilled
50.
45.
45.
37. Skilled
75.
65.
65.
55. Clerk
75.
65.
85.
55. Engine Driver No. 1.

Operator No. 1, Air Conditioning operator.
85.
75.
75.
65. Head Operator, Head Air conditioning operator, Head Electrician
140.
120.
120.
100. Publicity Officer Supervisor
80.
70.
70.

60. Cashier/ Accountant
85.
75.
75.
70. Asst. Manager
120.
110.
110.
100. Manager
210.
180.
180.
150.
2. The following shall be the minimum, rates of basic wages per month payable to the employees in the distribution units of the cinema industry in West Bengal.
Category.

Basic wages per month.

...
Rs.
nP.
Unskilled ...
40. Clerk ...
75. Film Inspector/Representative ...
65. Stenographer ...
85. Booker/Salesman/Asst. Manager ...
120. Accountant/Cashier ...
85. Manager ...
210.
3. The following shall be the minimum rates of basic wages per month payable to the employees employed by the Production side, viz, studio, producing units and laboratories in West Bengal.
Category.
Studios.
Producing units.
Laboratories.

Rs. nP Rs. nP.
Rs. nP Un-skilled 36.00 45.00 40.00 Semi-skilled 51.00 60.00 55.00 Skilled 70.00 100.00 75.00 Highly skilled 120.00 150.00 125.00 Clerks 70.00 70.00 70.00 Accountant/Cashier 85.00.
...
85.00 Assistant Manager/Laboratory Officer-in-charge 120.00 ...
120.00
4. The following shall be the minimum rates of, dearness allowance per month payable in addition to basic wages to the employees employed in the cinema industry in all its branches, viz., cinema houses, distributing unit, studios, producing units and laboratories:-

Range of Amount of dearness allowance Calcutta and Howrah Municipal area.
Other areas.

Rs.nP.
Rs.nP.
Up to Rs. 50 ...
35.00 32.00 Rs. 51 to 100 ...
45.00 40.00 Rs. 100 to 1 50 ...
50.00 45.00 Rs. 151 to 200 ...
55.00 50.00 Rs. 201 and above ...
60.00 55.00 5 (a). The rate of dearness allowance shall correspond to the average consumers price index numbers for the year 1959 as published by the competent authority appointed under clause (c) of Section 2 of the Act. Dearness allowance shall be adjusted both upwards and downwards with change in the consumers price index numbers.
(b) Dearneiss allowance shall not be revised unless there has been a change of points in the consumers price index numbers and before a lapse of one year from the date of notification.
(c) The rate of change of dearness allowance shall be at the rate of Rs. 4.00 for every 20 points for air categories of workers.
6. Apprentice shall receive 2/3rds of the basic pay and dearness allowance applicable to the category in which he is appointed and the period of his apprentice 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 pay and dearness allowance applicable to the occupation in which he is appointed.
7. Employees who are in receipt of higher wages shall continue to enjoy the same.
8. Existing privileges such as free uniform, snacks and meals, free housing shall continue in addition to the minimum wages notified herein.
9. Classification of occupation under different categories mentioned in- paragraphs 1, 2 and 3 shall be as shown in the appendix.
The minimum rates of wages for the employees corn-manly known as free lancers employed by the producers, shall not in any case be less thait that of the permanent workers of the respective categories.
APPENDIX Classification of categories of employees in different branches of the cinema industry : --

1. Cinema Houses : --

Categories--

Unskilled -- Traffic Lineman, Chocolate Boy, Peon, Soda Fountain Hamal, Bearer, Sweeper, Durwan, Main-servant, Shifter, dispenser. Bar Attendant, Watchman, Poster Boy, Gate-Keeper.

Semi-skilled -- Usher, Doorman, Gatekeepar, Fireman, Assistant Polishwala, Assistant Painter, Assistant Carpenter.

Skilled and clerical -- Assistant Engineer, Driver, Assistant Electrician, Assistant Operator, Assistant Airconditioning operator, Polishwala, Painter, Carpeater, Care-taker, Telephone operator, Soda Fountain Manager, Bar-Manager, Booking and other clerk.

2. Distributing Units :

Category --

Unskilled -- Peon, Sweeper, Mali, Bearer, Durwan, Watchman, and occupations of like nature.

3. Production concern: --

Category.

Studios.
Producing Units.
Laboratory.
Unskilled Office-boy, Durwan, Sweeper, Mali.
Production Boy.
Office Boy or Laboratory Boy, Durwan, Sweeper, Mali.
Semi-skilled 3rd Asst.
camera
man, camera Mazdoor, Junior Carpenter, Painter, Setting Mazdoor, studio Lighting Electrician, Assistant make up man, dresser.
2nd Asst. Editor, 3rd Asst. Director and/or clapper Boy.

Skilled 2nd Asst. Camera man and /or Focus puller, sound room man, Senior Carpenter, Charge hand painter, Charged hand setting Mazdoor, Maintenance and shop electrician.
2nd Asst. Director, and/or continuity man, and Asst. camera man and/or focus puller, Asst. Production Manager.
Dark room, Asst. Gr. Asst. Asst. Projectionist, Asst. Electrician, film checking and clearing-incharge 2nd Asst.
Highly Skilled Asst. Cameraman (1st Assistant) Asst. Sound Recordist, Modeller, Tile card writer, setting department to charge, hand carpenter floor charge hand lighting electrician (Head electrician) background painter.) Asst. Cameraman (1st Asst.) Asst. Art. Director (1st Asst.) Asst. Auditor.
Chief Projectionist, Chief Electrician, Maintenance Mechanic Asst., Sound Recordist.

By order of the Governor Sd. S. K. Banerjee, Jt. Secretary to the Governor of West Bengal."*
16. It is also convenient at this stage to refer to the material provisions of the Act which have a bearing on the questions at issue, Section 2(g) defines a scheduled employment as follows:-
"Scheduled employment means an employment specified in the Schedule, or any process or branch of work forming part of such employment."
Section 2(h) defines wages as follows:
"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.
Section 2(i) defines an- employee as follows:
"Employee means any person who is employed for hire, reward to do any work, skilled or unskilled, manuat or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes "
Section 3(3) provides that in fixing or revising minimum rates of wages, different minimum rates of wages may be fixed for different scheduled employment, different classes of work in the same scheduled employment, adults, adolescents, children and apprentices and different loca lities.
Section 4 provides that any minimum rate of wages fixed or revised may inter alia consist of a

basic rate of wages and a special allowance at a rate' to be ad justed or a basic rate of wages with or without the cost of living allowance and the cash value of the conces sions in respect of supplies of essential commodities at concession rates where so authorised or an all inclusive rate allowing for the basic rate, the cost of living allow ance and the cash value of the concessions, if any.

Section 5 lays down the procedure for fixing and revising the minimum wages and it contemplates inter alia appointment of Committees by the appropriate Government to hold enquiries and advise the Government in respect of fixation or revision of the minimum wages. It also provides for the issue of notification for fixation of rates of minimum wages or for revision thereof.

Section 7 provides for the constitution of an Advisory, Board for advising the appropriate Government generally in the matter of fixing and revising minimum rates of wages and also for co-ordinating the work of the Com-mittees and sub-committees appointed under Section 5.

Section 8 deals with appointment of a Central Advisory Board by the Central Government

Section 9 provides for persons to be nominated for constitution, of Committees, sub-Committees and Advisary Board. This section has been set out in extenso in an earlier part of the judgment

Section 10 provides for correction by appropriate Government of clerical or arithmetical error or errors arising from any accidental slip or omission in any order fixing or revising the minimum rates of wages under this Act.Section 11(1) provides that minimum wages oayable under this Act shall be paid in cash. But this section also contains three other clauses providing for payment of wages in kind under certain circumstances and for the supply of essential commodities at concession rates and how the cash value of wages in kind and of concession is to be estimated.

Section 12 casts an obligation upon the employer to pay every employee Engaged in a scheduled employment under him wages at a rate not less than minimum rats of wages fixed by the Government subject to deductions and as may be authorised and subject to such conditions as may be prescribed.

Section 13 provides that in regard to scheduled employment in respect of which minimum rates of wagas have been fixed, the appropriate Government may fix the working hours and the days of rest as therein indicated.

Section 20 provides for claims being made by employees in respect of the minimum wages fixed and also provides for appointment of the authority to hear and decide such claims and lays down the procedure in relation thereto.

Section 22A deals with penalty for contravention of certain provisions of the Act and of rifles or order made thereunder.

Section 25 provides that any contract or agreement whether made before or after the commencement of the Act whereby an employee either relinquishes or reduce; his right to a minimum rate of wages or any privilege or concession accruing to him under the Act shall be null and void in so far as it purports to reduce the minimum rate of wage's fixed under the Act.

Section 26(2-A) provides that the appropriate Government may having regard to the terms and conditions of service applicable to any class of employees in a scheduled employment generally or in a scheduled employment in a local area [or to any establishment or a part of any establishment in a scheduled employment) decides that it is not necessary to fix the minimum wages in respect of such employees of that class as are in receipt of wages exceeding such limit may direct by notification in the Gazette and subject to such conditions as it may, think fit to imposethat the provisions of the Act or any of them shall not apply in relation to such employees.

Section 30 empowers the appropriate Government to make rules for carrying out the purpose of the Act and the specified purpose mentioned in Sub-Section (2) of that section.

17. The various points of attack on the validity of the notification put forward by the respondents may now be considered. The clauses which are made the subject of challenge are clauses (6), (7), (8) and (9). Clause (6) which fixes the period of apprenticeship as not to exceed one year and which also fixes maximum period of probation of an employee as one year is impugned as being beyond the powers of the appropriate Government while exercising its powers and functions under the Minimum Wages Act. It is argirad that the Government may fix a different minimum rate of wages for apprentices as has been done in the present case, namely, 2/3rd of the basic pay and dearness allowance applicable to the category in which he is appointed, but the Government has no authority under any provisions of the Act to fix the period of apprenticeship. Similarly the Government has no power to fix the period of probation of an employee under any of the provisions of the Act. It is submitted-that the Government's function under the Act is confined only to the fixation of minimum wages in the manner laid-down in the Act; but it has no power to fix or alter any other terms of employment of an employee in a schedule employment. Reliance was placed in support of this pro-, position on a decision of the Supreme Court , Bidi, Bidi Leaves, and Tobacco Merchants' Association, Gondia v. State of Bombay in which it has been pointed out that the Government when it purports to issue a notification under the provisions of the Minimum Wages Act cannot claim the wide powers possessed by the Industrial Tribunal under the Industrial Disputes Act. The powers and authority of the Government would necessarily be conditioned by the relevant provisions under which it purports to act and the validity of a notification issued by the Government must therefore be judged not by general considerations of social justice or even consideration for introducing industrial peace, but they must be judged solely and exclusively by the test prescribed by the> provisions of the statute itself. In this case the notification which, was issued by the Gov-erjtment under the Minimum Wages Act fixing minimum rates of wages in respect of employment in Tobacco (including Bidi making) Manufactories was impugned on the ground that the Government had no power to make provision for deciding as to the extent to which "chhat" will be permitted or directing action to be taken ty the employer and employee relating to bad bidi. The contention was that the clause relating to such matter purported to make provision for the settlement of dispute between the employer and the employes which were matters for industrial adjudication and were outside the purview of tne Government's power under the relevant section in the Minimum Wages Act. The Supreme Court held that the impugned clauses purported to modify the terms of contract of employment other than remuneration in material particular and this was plainly outside the jurisdiction or the authority of the State Government. It was further pointed out that such clause might very well form the subject-matter of reference for industrial adjudication but it could not form the subject-matter of a notification prescribing minimum rates of wages under Section 3 or 4 or 5 of the Act and the validity of such clause could not be supported either by any express provision in the Act or by invoking the doctrine of implied power. The Supreme Court laid stress on the definition of the term "wages" as given in the Act and pointed out that the definition of the term "wages" postulates the binding character of the other terms of the contract and brings within the purview of the Act only one term and that relates to wages and no other, and that being the position it was difficult to hold that by implication the very basic concept of the term "wages" could be ignored and the other term of the contract could be dealt with by the notification issued under the relevant provisions of the Act.

18. At page 493 paragraph 18 of the judgment, the Supreme Court made the following observations:-

"The significance of the definition contained in section 2(h) lies in the fact that the rate of wages may be increased but no change can be made in the other terms of the contract. In other words, the Act operated on the wages and does not operate on the other terms of the contract between the employer and the employee. That is the basic approach which must be adopted in determining the scope and effect of the powers conferred on the appropriate Government by the relevant provisions of the statute authorising it to prescribe minimum rates of wages or to revise them."

19. Tested in the light of the proposition laid down by the Supreme Court, there is no other alternative but to hold Wat the fixation of the period of apprenticeship and probation by the notification is beyond the authority of the Government and as such they must be declared as invalid.

20. The next clause which is made the subject of challenge is clause (7) and which is as follows:-

"Employees, who are' in receipt of higher wages, shall continue to enjoy the same."

21. With regard to this clause the nature of the attack is that the Government has no power under the Minimum Wages Act to provide by a notification issued tinder the Act that the employees who were getting higher wages than the minimum wages fixed by the notification shall for ever continue to receive such wages and that the employer will be precluded in future from reducing such wages under any circumstances. It is pointed out that this is the nett effect of the wording of cl. (7) and as by this clause the Government has purported to affect a term of employment other than that relating to minimum wages to be fixed by the Government under the Act, such clause is invalid. It appears to me that applying the test laid down by the Supreme Court in the clause in question must be held to be beyond Ihe Jurisdiction or authority of the Government to insert in a notification issued under Section 5(2) of the Minimum Wages Act. Moreover to say that employees will continue to get higher wages is not a fixation of minimum lvages at all; because there is no rate specified in such a clause. The amount of this higher wages may be different in different cinema establishments. The Government by clause (7) converts this voluntary payment into compulsory payment without any rhyme or reason and in a purely arbitrary manner. I, therefore, hold that cl. (7) is not warranted by the provisions of the Minimum Wages Act.

22. The next clause' which is challenged as invalid is clause (8) which is as follows:-

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

23. In support of the validity of this clause, reliance has been placed by the appellant on a decision of the Supreme Court reported in (S) AIR 1957 SC 205 Management of all Tea Estates in Assam v. Indian National trade Union Congress, Dibrugarh. In this case the facts were that the Management of the Tea Estate in Assam represented by the' Indian Tea Association, Calcutta, used to supply certain quantities of rice and other articles of food at concession rates to their workmen. Before February 1950 the supply of rice at such concession rates to an adult male worker was five seers per week, but from February 1950 the rice quota was reduced by half a seer per week and for thd said cut the employers agreed to pay cash compensation at the rate of 6 pies per working day. Thereafter due to shortage of cereals, the Government of India introduced in November 1950 an all India cereals ration scheme which laid down that no adult male worker was entitled- to get more than 31 seers of rice per week with the raisult that there was a further

cut of another seer of rice per week in the supply of rice at concession rates. The workmen claimed compensation in cash for this cut in the rice auota which led to an industrial dispute between the employers and the workman and the Government referred the dispute for adjudication, to an Industrial Tribunal. On 11th December 1951 the Tribunal gave its award which was published in the) Gazette on the 2nd February 1952. The Tribunal held that the system of rice benefit at concession rate was , 3 part of the workers' wage and the employers were under a legal obligation to pay cash compensation to the workmen for the said cut in the supply of rice, ft also fixed the rate of compensation for the rice cut. The employers filed an appeal being Appeal No, Cal 26 of 1952 before the Labour Appellate Tribunal and questioned the rate of compensation which had been awarded. The Labour Appellate Tribunal accepted the contention of the employers and reduced the rate of compensation for the rice cut. The award of the Labour Appellate Tribunal was pronounced on the 2nd April, 1954. In the meantime on llth March, 1952 the Government of Assam issued a notification in exercise of the powers conferred on it by the Minimum Wages Act and fixed the minimum wages of workmen' employed in the tea gardens of Assam at certain cash rates. The minimum wages so fixed consisted of basic wages and dearness allowanqe at the rates specified in a schedule annexed to the notifi-cation. There was a clause in this notification being paragraph 2 thereof which was as follows:
"(2) The rates are exclusive of concessions enjoyed by the workers in respect of supplies of food stuffs and other essential commodities and other amenities which will continue unaffected. The existing tasks and hours of work may continue until further orders."

24. It appears that the minimum wages fixed by the notification exceeded the total of the cash wages which the employers were paying to their workmen and the value of the concession at which rice was being supplied as also the amount of compensation for the cut which they were directed to pay by the award. The employers therefore contended that the Government's minimum wages notification, had the effect of absorbing their cash compan-sation in the cash minimum wage that had been fixed and so they were under no obligation to pay after the date of this notification the compensation for the rice cut, over and above- the minimum wages fixed by the Government. The workmen on the other hand claimed that they were entitled to get the cash compensation that was hitharto paid to them for the rice cut over and above- the minimum wages that had been fixed. This dispute was again referred to an Industrial Tribunal and the Tribunal made its award on the 26th July 1954 and upheld the contention of the employers that the compensation for the rice cut had been merged in the minimum wages fixed by the Government. The workmen appealed to the Labour Appellate Tribunal which by its award dated 2nd April 1954 held that the compensation for the rice cut had at the time of the notification dated llth March 1952 become an amenity and by paragraph 2 cf the notification the Government had preserved all the amenities which the workman were enjoying. So the workmen of the tea gardens of Assam would be entitled to cash compensation for the rice cut as long as the cut remains in force but at the rate which was fixed by them in their award made in Appeal No.
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27 of 1952 in addition to the minimum wagss fixed in the Government's notification dated llth March 1952.

25. The question that was raised before the Supreme Court was whether the cash compensation for the rice cut which was being paid by the employers to the workmen before the llth March

1952 was merged in the minimum wages fixed by the Government or was saved by paragraph 2 of the notification as a concession enjoyed by the workers in respect of supply of food stuffs and other essential commodities or an amenity. The Supreme Court after examining the facts and the different awards of the Industrial Tribunal made in relation to the disputes recorded the following conclusion:

"It is clear therefore that the employers were before the 11th March 1952 when the minimum wages were fixed by the Government of Assam under a legal obligation to pay cash compensation to the workmen for the reduction in rice quota." (Page 209 last sentence of paragraph 8).

26. It was further held by the Supreme Court that the terms of paragraph 2 of the notification made it abundantly clear that in fixing the minimum wage the Government thought it proper that the employers should make available to the workmen, in addition to the minimum wage, all concessions enjoyed by them in respect of supply of food stuffs and other essential commodities and the other amenities which they used to enjoy. The concession which was being enjoyed by the workmen in respect of supply of food stuffs, namely, supply of 31/2 seers of rice at concession rates and also the cash compensation for the non-supply of 11/2 seers of rice was the concession which was being enjoyed by the workmen and that was the concession which was preserved to the workmen under paragraph 2 of the notification.

27. It will thus appear that in this case before the Supreme Court the award of the Industrial Tribunal had cast a legal obligation on the employers to pay cash compensation to the workers for cut in supply of rice. The Government by their notification issued under the Minimum Wages Act made it clear that this obligation of the employers would remain unaffected and the workers would be entitled to enjoy the concessions and receive the compensation in addition to the minimum wages which were fixed by the notification of the Government. It may also be pointed out that under Section 11(3) of the Minimum Wages Act the Government had the right to make provisions for supply of essential commodities at concession rates and so the cash compensation for cut in supply of rice could be validly preserved by paragraph 2 of the notification as had been done in that case. But in clause (8) which is before us for consideration the privileges specified have no relation to essential commodities. They are no doubt amenities enjoyed by the employees but no provision in the Minimum Wages Act is to be found which cm-powers the Government to make provisions for compelling the employers to provide for such amenities as is referred to in clause (8) in a notification issued under Section 5 of the Act. So this clause appears to be beyond the powers of the Government and is not warranted by the provisions of the Minimum Wages Act.

28. The next clause which is challenged is second part of clause (9) which is as follows:

"The minimum rates of wages for the employee's 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."

29. The argument attacking the validity of the clause is that these free lancers form a class by themselves but such classification is not permitted or contemplated by the provisions of the Minimum Wages Act. These free lancers are workers who are not permanent employees out who

at their own sweet-will come and work for short periods during the production of a film. But what clause (9) has purported to do is to put these free lancers in a different ciass of workmen but fixes for them the rate of minimum wages fixed for permanent employee's of the category in which the free lencers fall. If a free lancer belongs to either of the three categories -- adult, adolescent and child -- and does any work of the nature specified in the schedule to the notification dated 16th May 1960 he will get minimum wages at the rates specified in the schedule for permanent employees answering the specific description of the ciass of work in which he is employed. It appears to me that there is nothing wrong in this classification inasmuch as it is only the minimum rates of wages fixed for the permanent employees which will be the basis of calculation of the minimum rates of wages payable to adult, adolescent and children in respect of different classes of work specified in the schedule to the notifica tion. So the attack on the validity of clause (9) appears 1 to have no force.

30. The next point challenging the validity of the notification is that the notification dated the 16th May 1960 is itself discriminatory. It is said that fixation: of different rates of minimum wages for employees working in different parts of the cinema industry is not contemplated by the Minimum Wages Act and the classification of the employees in the manner in which it has been done is also not permitted by the Act. The suggestion is that the entire classification has been done In an arbitrary manner. Now it appears on the face of the notification that there has been classification of the workers under different heads and different rates of minimum wages have been prescribed for different classes of workers working in the exhibition unit, distribution unit and production unit and different rates have also been fixed with regard to same class of workers working in air-conditioned houses and other houses in Calcutta and Howrah and in towns with population of one lakh and above and in other areas. But it Is clear from the materials on record (see paragraph 6 of the Affidavit of Ashutosh Roy) that the Government had appointed an Advisory Committee for the purpose of enquiring into the conditions of employment in the cinema industry and this Committee had submitted Its report arm the Government after considering the conditions of industry and the report had fixed the minimum rates of wages for the different workers employed in different classes of work in the cirema industry. It is also dear on the face of the notification that the conditions of employment in the cinema industry must have been found different in different areas and it is reasonable to assume that the examination of the relevant materials must have revealed that the employers in the various areas mentioned in the notification had varying capacity to pay wages to their employees, that their profits from the industry were unequal, that the industrial competition which they had to encounter from the industry in the different areas was not uniform, that the quantum and cost of production and the condition of labour were different in different places and it is on the basis of such difference peculiar to particular employers and employees that the different minimum rates of wages had been fixed by the notification. It is well settled that when a legislative enactment is challenged as being discriminatory or arbitrary the challenger must prove that the classification is not founded upon any intelligible differentia having a relation to the object sought to be attained by the enactment. So although ostensibly it might appear that the employees engaged in the different classes of work in different localities may have been unequally treated, that by itself would not amount to an arbitrary discrimination. Various factors may have played part in the matter of fixation of the minimum wages and if such factors had been available before this Court it might have been found that the classification is absolutely justified and is a reasonable one. It appears from the affidavit in opposition which has been filed on behalf of the Government that the classification with regard to locality was based on the fact that the sale proceeds of the industry

particularly its Exhibition Branch depends mainly upon the population of the locality and consequently it has been argued on behalf of the employers that inasmuch as the Supreme Court has pointed out in the case reported in Unichoyi's case, , that the capacity of the employer to pay is an Irrelevant consideration, the whole basis of fixation of different rates of wages for different classes of works employed in different localities in different kinds of cinema houses or in the same locality (air-conditioned houses and other house's in the same locality) falls to the ground. But it appears to me that what the Supreme Court has intended to lay down is that in fixing the minimum wages the question whether an, employer has the ability or capacity to pay the minimum wages fixed is not a material consideration and If the employers cannot pay the wages fixed, the only alternative open to- them is to close their business altogether; but the employers cannot plead tne inability to pay as a ground for challenging the rates of minimum wages. But I do not think that it was ever intended to lay down by the Supreme Court that the authorities charged with the duty of fixing the minimum waget under the Minimum Wages Act cannot at all take into consideration the extent of the profits made by such employere out of the industry in which they are engaged.

31. The Supreme Court in the case of , to which reference has already been made pointed out' that in an under-developed country which faces the problem of unemployment on a very large scale, it is not unlikely that labour may offer to work even on starvation wages. The policy of the Act is to prevent the employment of such sweated labour in the interest of general public and so in prescribing the minimum wage rates the capacity of the employer need not be considered. What is being prescribed is minimum wage rates which a welfare state assumes every employer must pay before he employs labour. It is further pointed out by the Supreme Court in this case that the minimum wage must provide not merely for the bare subsistence of life, but for the preservation of the efficiency of the workers and so It must also provide for some measure of education, merit-cal requirements and amenities. It is also pointed out by the Supreme Court that the observations made by Bhagwati J. in the case of Express Newspaper (Private) Ltd. v. Union of India, should not be construed as laying down a general principle governing the fixation of minimum wages, but should be limited to the facts of that case where the Supreme Court was dealing with a statutory wage structure or In other words with the question of fixation of a minimum pres-cribed by the statute containing several components in which case the capacity of the employer to pay may be a relevant consideration. The relevant observations of Bhagwati, J. in paragraph 61 may be set out hereunder:

> "It must however be remembered that whereas the bare minimum or subsistence wage would have to be fixed irrespective of the capacity of the industry to pay, the minimum wage thus contemplated postulates th capacity of the industry to pay and not fixing of wages which ignores the essential factors of the capacity of the Industry to pay could ever be supported,"

32. Reference may also be made to this connection to the case of (S) , where Mukherjea, J. observed :

> "It is well known that in 1928 there was a Minimum Wages Fixing Machinery Convention held at Geneva and the resolutions passed in that convention were embodied in the International Labour Code. The Minimum Wages Act is said to have been passed with a view to give effect to these resolutions (Vide South India Estate Labour Relations

Organisation v. State of Madras, (S) .) 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 restraint 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 that they are compelled to pay minimum wages to their labourers even though the labourers on account of their poverty and helplessness are willing to work on lesser wages."

33. In the Crown Aluminium Works v. Their Workmen; , the Supreme Court observed:

"There is however one principle which admits of no exceptions. No industry has a right to exist unless it is able to pay its workmen at least bare minimum wages. Jt is Quite likely that in under-developed countries where unemployment prevails on a very large scale, unorganised labour may be available on starvation wages; but the employment of labour on starvation wages cannot be encouraged or favoured in a modern democratic welfare State. If an employer cannot maintain his enterprise without cutting down the wages of his employees below a bare subsistence or minimum wage, he would have no right to conduct his enterprise on such terms."

34. So it is against this background that the observations of the Supreme Court in U. Unichoyi's case, Alt) 1958 SC 12, have to be understood. An employer is bound to pay the minimum wage and as I have already pointed out he cannot plead his incapacity as a ground for shirking his obligation to pay the minimum wage and accordingly it is said that minimum wage has to be fixed irrespective of the capacity of the employer to pay and the question of such capacity is an irrelevant consideration. But I do not think that the propositions laid down by the Supreme Court against such background are to be construed as laying down an inflexible rule- that conditions of the cinema industry or to be more specific the profits or income from the cinema industry cannot at all be taken Into consideration in fixing the minimum rate of wages.

35. As the attack on the ground of discrimination is based on the principle embodied in Article 14 of the Constitution' of India it will not be out of place to refer to certain observations of Das, J. made with reeard to the principle underlying Article 14 in the case of Budhan Choudhary v. State of Bihar, (S) :

"It is now well established that while Article 14 forbids class legislation it does not forbid reasonable classification for the purposes of legislation. In order however, to pass the test of permissible classification, two, conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from other left out of the group, and (2) that that differentia must have a rational relation to the objects sought to be achieved by the statute in question. The classification may be founded on different basis; namely, geographical or according to ob-jects or occupatiom or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration."

36. Bearing in mind the principle laid down by the Supreme Court with regard to Article 14 of the Constitu-tion there cannot be much difficulty in discerning a nexus between the basis of classification and the object of the Act under consideration. It is quite possible that for

maintaining the efficiency of the employees in an air-conditioned house it may be necessary to have better equipment in the way of more or better clothing than employees working in other houses or employees working fn mofussil towns and other areas. Again it is possibla that the necessities of employees working in mofussil areas or In unhealthy localities for medical expenses may be greater than in towns like Calcutta or the cost of living in populous town Is greater than In mofussil areas or in less populous towns. So such factors and various other factors may have been taken into consideration in fixing the minimum wages which are challenged before us. But the respondents who have challenged the validity of the notification have not been able to show that the classification made is not permissible as it is not founded on an intelligible differentia which distinguishes the persons doing different kinds of work in different classes of employment. As I have already pointed out, the mere fact that there is classification and discrimination does not establish the fact that such classification or discrimination is unreasonable or has no rational basis. The grounds of challenge on the score of discrimination as set out in paragraph 20 of the petition are vague and, devoid of any particulars and it will not be proper to strike down the Notification on the basis of such vague assertions. The definition of "scheduled employment" and ' the provisions of Section 3 of the Act clearly permit fixation of different minimum rates of wages for different classes of workers in different parts of the cinema industry.

37. The other point which has been raised in attacking the validity of the notification is that as the hours of work and hours of rest have not been prescribed by the Government in issuing the notification dated the 16th-May 1960 and the rates of wages have no correlation to the work load or the hours of work, the notification is bad. It is pointed out that Section 13 of the Act conn templates that in fixing the rate of minimum wages, hours of work and the hours of rest should also be specified aid the rates of wages should be fixed in relation thereto. But in answer to this contention the learned Advocate for the appellant has drawn the attention of the Court to Chapter VI of the Factories Act which contains certain sections relating to the hours of work and the hours of rest of workers employed in a factory. It is argued that the employees of the Production Unit of a cinema industry will be governed by the hours of work and hours of rest prescribed by the provisions contained in this Chapter. Similarly, it is pointed out by the learned Advocate for the appellant that the provisions contained in Section 10 of the Bengal Shops and Establishments Act will also govern the hours of work of employees in the Exhibition Unit of the Cinema industry inasmuch as cinema is a place of public

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within the meaning of Section 2(5) of the said Act.

38. Now the Factories Act 1948 [Act LXIM of 1948) contains the definition, of adult, adolescent and child and young person in Section 2(a), (b), (c), (d) and (e) and in Section 2 clause (k) the expression "manufacturing process" is defined as follows:
"Manufacturing process means any process for making, altering, repairing, ornamenting, finishing, packing oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal .....

39. Section 2(m) defines a factory as meaning "any premises including the precincts thereof (i)

whereon- ten or more workers are working or were working on any day of the preceding twelve months, and in any part ot which a manufacturing process Is being carried on with the aid of power, or is ordinarily so carried on or (ii) whereon twenty or more workers are working, or were working on any day etc. ....."

40. The producer! unit of cinema industry which produces the film therefore clearly comes within the defini-tion of a factory as given in the Factories Act and Chapter VI of the Act which provides for the working hours and the hours of rest and for other allied matters applies to the case of a production unit of cinema industry and the provisions in this Chapter will therefore regulate the working hours and the hours of rest in case' of persons -employed in the production unit of the cinema industry.

41. With regard to Exhibition Unit of the Cinema industry reference may be made to Section 2 (5) of the Bengal Shops and Establishments Act, 1940 (Bengal Act XVI of 1940) which defines an establishment for oublic entertainment or amusement as follows:

> "2 (5) 'Establishment for public entertainment or amusement' means a restaurant, eat ing-house, cafe, cinema, theatre and such other establishment or class thereof ES the Provincial Government may, by notification, declare to be, for the purposes of this Act, as establishment for public entertainment or amusement, but does not include a shop or a commercial establishment."

This definition makes it clear that a cinema house comes within the definition of an establishment for public enter tainment or amusement. The preamble of this Act indi cates that the objeot of the Act is to regulate the holi days, payment of wages and leave1 of persons employed in shops, commercial establishments and establishments for public entertainment or amusement and the hours of work of persons employed in shops and establishments for public entertainment or amusement.

42. Section 10 of the Act prescribes the hours of work beyond which an employee in an establishment for public entertainment or emusement cannot be required or permitted to work. In other words it prescribes the maximum hours of work for which an employee in such an establishment may be called upon to work. Section 9 of the Act prescribes the holidays which an employee in such an establishment is entitled to enjoy during the period of his employment. So in respect of Exhibition Side of the cinema industry the holidays and hours or work as prescribed by Sections 9 and 10 will regulate the employees in a cinema establishment. It has been argued, however, that neither the provisions contained in the Factories Act nor in the Bengal Shops and Establishments Act specify the actual hours of work for which a particular employee will be engaged or the hours of rest which a particular employee will Enjoy, but merely inscribes the 'maximum period of the hours of work and the holidays for such employees and so it cannot be said that the rates of minimum wages have been fixed in relation to specified hours of work or specified hours of rest. This contention is not without force. It is clear that the actual hours of work and the actual hours of rest in respect of employees in the cinema industry have not been specifically provided by the notification dated the 15th May 1960 fixing the rates of minimum wages, and the number of hours of work which shall constitute the normal working day as contemplated in Section 13 of the Minimum Wages Act has also not been fixed. But the question arises as to whether in the absence of any exercise of the special power under Section 13(1) after the fixing of the minimum rates of wages under Sections 3 and 5 of the Act the notification

fixing the minimum rates of wages can be regarded as invalid. It appears to me that the question should be answered In the negative. IWhat is contemplated in Section 13 is that it is open to (the appropriate Government to fix and provide for special [number of hours of work which shall constitute a normal working day, a day of rest in a period of 7 days, Day-ment of remuneration of such days of rest and payment for work on a day of rest at a rate not less than the overtime rate and if such an order is made by the appropriate Government under Section 13(1) the special order will govern the conditions of service in the said scheduled, employment; but if after the fixation of minimum rates of wages no such order is issued at all under Section 13(1) the notification fixing minimum wages may be open to challenge on the ground that there has been no proper fixation of minimum wages. It has been stated in the affidavit-injopposition [paragraph 9) of Ashutosh Roy filed on behalf of the Government that it is, because of the issue of an injunction order by this Court on or about 31st of May 1960 when an application under Article 226 was made by Surendra Ranjan Sarkar and two others challenging the notification dated 16th May 1960 that the Government had no opportunity to issue another notification fixing the hours of work of the different categories of Employees under Section 13 of the Minimum Wages Act. It appears that the injunction was issued by this Court on 31st May 1960 restraining the Government from giving effect to the notification and if the Government had taken any steps to supplement the notification by the issue of another notification fixing the hours of work as contemplated in Section 13, the Government might expose themselves to contempt proceeding being taken against them and so the Government were justified in staying its hands during the pendency, of the injunction. But it appears that this application under Art. 226 was allowed to be withdrawn on or about 9th June 1961 and after that on 11th July 1961 the Deputy Labour Commissioner, West Bengal wrote a letter to the proprietor of Nishat Cinema calling upon them to implement the notification fixing the minimum rates of wages immediately with effect from the date of enforcement of this notification if that had not already been done. But no steps appear to have been taken after the dissolution of the injunction to fix the hours of work as contemplated in Section 13. This letter suggests that the Government had either really no intention of fixing any hours of work or hours of rest as contemplated by Section 13 or that such omission had escaped their attention at that time. But it further ap-pears that shortly after this letter dated llth July 1961 was written there were certain steps taken for settlement of the disputes concerning the notification fixing the minimum rates of wages and a settlement was arrived at on 20th July 1951 and as in view of this memorandum of settlement a revision of minimum rates of wages as fixed , by the notification was contemplated, it is possible that no further steps in the direction of fixing the hours of work as contemplated in Section 13(1) were taken by the Government in the meantime. But when the secand application under Article 226 was made on the 3rd August 1961 and a Rule Nisi was issued on that date and an injunction was also issued at that time, the Government had no other alternative but to stay its hands. This being the actual state of affairs, I do not see why the notification fixing the minimum wages has to be struck down as an invalid one while it Is open to the Government by means of a supplementary notification to issue an order fixing the hours of work and the hours of rest as contemplated in Section 13(1) of the Act.

43. The further question that has been raised is that the application under Article 225 of the Constitution which was made on the 3rd August 1961 should be (thrown out on the ground of delay. I do not think that 'the circumstances of this case justify this Court in dismissing this application in limine on the ground of delay. As pointed out already the first application under Article 226 challenging the notification was made on the 31st May 1960 and on that date a Rule Nisi and an injunction were issued. This application was allowed to he withdrawn on 9th June

1961 and although thereafter notice was issued by the Government on 11th July 1961 insisting on' implementation of the notification steps for settlement of the disputes concerning the notification had been taken and as a result thereof a memorandum of agreement was entered into settling the dispute arising out of the said notification on 20th July 1961. But this was followed by the second application made on 3rd August 1961 out of which this appeal arises. In the circumstances it can be said that the delay has been reasonably explained and the application does not merit dismissal on the ground of alleged delay.

44. It may also be pointed out that although the validity of the memorandum of settlement dated the 20th July 1961 was challenged in the present petition under Article 226 it was conceded before the [earned trial Judge by thei parties concerned that the said memorandum was not valid in view of the provisions of Section 25 of the Minimum Wages Act and because of that concession the learned Judge was not called upon to make any specific order for cancellation of the said agreement dated the 20th July 1961. Before us this position with regard to the memorandum of settlement has been maintained and it is accepted by all the parties that the memorandum of settlement is not a valid agreement and cannot be given effect to.

45. The other question which arises is whether the parts of the notification fixing the minimum wages which are valid can be severed from the invalid portions and whether the valid portion separated from the invalid portions can exist and can be worked out or given effect to, it appears to me that the portions of clauses (6), (7) and (8) which we have declared as invalid can be severed from the valid portion and the valid portion so separated can be effectively worked out to carry out the intentions of the frame-rs of the notification.

46. We, therefore, find that the notification dated 16th May, 1960 separated or severed from the portions we have declared as invalid is a valid notification and it must be upheld. But we hold further that unless and until the Government fixes the number of hours of work which shall constitute a normal working day and provide for days of rest and other matters as contemplated in Section 13 of the Act in relation to the notification dated the 16th May 1960, no effect is to be given to this notification dated the 16th May 1960. Subject to this condition the appeal is allowed and the judgment and order of the learned trial Judge are set asids.

47. There will be no order as to costs.

Muter, J.

48. This is an appeal from an order making absolute a Rule quashing a notification dated May 16, 1960 made by the Government of West Bengal in exercise of the power conferred by clause (a) of sub-section (!) of Section 3 read with sub-section (2) of Section 5 of the Minimum Wages Act, 1948 fixing the minimum rates of basic wages per month to the employees employed in the Cinema Industry in West Bengal which employment was added to Part I of the Schedule to the said Act by a notification of the said Government dated May 19, 1959 under Section 27 of the Act and published in the Calcutta Gazette of June 4, 1959. The Rule was obtained, by Kohinoor Pictures Private Limited, a company which carries on business as distributors of cinema films at 3, Chitta-ranjan Avenue, Calcutta. The respondents to the application were the State- of West Bengal, the Bengal Motion Picture Association - a company incorporated under the Indian Companies Act and having its registered office at 2, Madan Street, Calcutta, Bengal Motion

Picture Employees Union - a Trade Union registered under the Trade Unions Act with its head office at 126-A, Dharamtala Street, Calcutta, Bengal Provincial Trade Union Congress,' a Trade Union with its office at 249-D, Bowbazar Street, Calcutta and D. Chatterjee, Labour Commissioner, Government of West Bengal.

49. The notification, of May 16, 1960 contains a schedule divided into 9 paragraphs and an appendix thereto. The first paragraph of the schedule prescribes the minimum rates of basic wages per month payable to the employees employed in cinema houses (exhibition) of the cinema industry in the areas in West Bengal specified in the- paragraph. Broadly speaking the towns and cities of the State have been divided there into three categories: (1) Calcutta and Howrah, (2) other towns with population over one lakh according to 1951 census report and-(3) towns having a population be'low one lakh. Calcutta and Howrah have again been sub-divided for the purpose of the notification as containing two classes of cinema houses namely (a) those which are air conditioned and (bj others which did not have this amenity. The workers of the cinema houses have been categorised under eleven heads. The manual workers are divided into three heads namely unskilled, semi-skilled and skilled, Of the other categories clerks stand at one end with the minimum pay and managers at the other with the maximum pav. Broadly speaking, employees, be they manual workers or otherwise, working in air conditioned houses have been awarded the maximum wanes in their respective classes, the same class of people working in noni-air conditioned houses in Calcutta and Howrah come next: the same categories of workers in towns with population of one lakh and above have been awarded the same scales of pay as those in non-air conditioned houses in Calcutta and Howrari with the solitary exception in the case of unskilled manual labourers, while workers in towns with a population of less than one lakh have been awarded still smaller scales of pay. Paragraph 2 of the Schedule prescribes the scales of minimum rates of basic wages payable to employees in the distributing units of the cinema industry in West Bengal. The workers in these units have been classed under seven heads beginning with unskilled workers at one end and ending with managers on the other.In paragraph 3 of the schedule the minimum rates of basic wages per month payable to the employees of the production side of the industry have been prescribed. The production side has in its turn been sub-divided in three heads namely, studios, producing units and laboratories. The workers have been divided into seven classes beginning with unskilled persons at one end and assistant managers at the other.Paragraph 4 of the schedule fixes the minimum rates of dearness allowance in a sliding scale which applies to the industry in all its branches.Paragraph 5 of the schedule provides for the manner of calculation of clearness allowance. f Paragraph 6 relates to apprentices and probationers. With regard to apprentices it provides that they shall re-ceive 2/3rd of the basic pay and dearness allowance ap-plicable to workers in' the category in which they are appointed, the period of apprenticeship being limited to one year. Probationers are similarly to receive full pay and dearness allowance applicable to the occupation in which they are appointed, the period of probation being similarly limited to one year.Paragraph 7 provides that "employees, who are in receipt of higher wages, shall continue to enjoy the same."Paragraph 8 lays down that "existing privileges such as free uniform, snacks and meals, free housing etc. shall continue in addition to the minimum wages notified".Under paragraph 9 "classification of occupation under different categories mentioned in paragraphs 1, 2 and 3 siiall be as shown in the appendix".The appendix classifies the employees under four different categories so far as the entire cinema industry is concerned. As regards cinema houses the categories are (1) unskilled, (2) semi-skilled, (3) skilled and (4) clerical. Unskilled workers are such as traffic linesmen, chocolate boys, bearers, sweepers, watchmen and gatekeepers. The semi-skilled workers are again of different varieties such as ushers, doormen, assistant carpenters etc. Strangely 'gate keepers' also

find a place under this dead. The skilled and clerical workers are of different classes such as assistant engineers, drivers, bar managers booking and other clerks. So far as distributing units are concerned there is only one category of unskilled workers such as peons, malis etc. The producing units' [iave four classes of unskilled, semi-skilled, skilled workers and highly skilled workers. Under the respective heav of studios, producing units and laboratories are shown the classes of workers who belong to the different categories of unskilled, semi-skilled and skilled and highly skilled, persons.
50. The main complaints of the petitioners may be summarised as follows:-

(1) The Committee formed under cl. (a) of sub-ssc. (1) of Section 5 of the Act which tendered advice to the Government was not composed in terms of Section 9 of the Act hi that two of the members out of three nominated by the Government in- terms of Section 9 of the Act were not independent persons as contemplated in the said Act. As such the Committee was not properly constituted and the procedure adopted was contrary to law.

(2) The fixation, of minimum rates of wages by the notification was discriminatory in that different minimum fates of wages had been fixed for the same class of worn En the same schedule of employment in the same locality.

(3) The notification was also bad inasmuch as localities had been specified with reference to population. Fixing of minimum rates of wages in terms of population of the places was arbitrary and illegal.

(4) The notification was bad because the basic wages had not been correlated to any work load or hours of work and was therefore discriminatory because the work toad and the hours of work were not the same for all employees engaged in the same localities and even in the came categories.

(5) Different rates of wages could not be prescribed for the different branches of the film industry when the scheduled employment which was added to schedule 1 of the Act by notification dated May, 19, 1959 was only or industry namely the film industry.

(6) There were serious irregularities and discrepancies in the classification of categories of employees in the notification, the same categories being included in ditto-rent persons.

(7) The notification was bad in that it purported to embrace persons who were not regular employees at all.

(8) The notification was also illegal inasmuch as It sought to regulate the terms and conditions of employment of some of the workers, namely, by fixing the period of probation and the apprenticeship in cases of probationers and apprentices as also by providing in clause (7) that employees who were in receipt of higher wages would continue to enjoy the same and under cl. (8) that those enjoying privileges such as free uniforms, snacks etc, would continue to have the benefit thereof in addition to the minimum wages.

51. In order to appreciate the grounds of attack It Is necessary to refer to several provisions of the Act and the scope of the, statute. Under Section 2(g) "scheduled employment" means an

employment specified in the schedule, or any process or branch of work forming part of such employment. Under Section 2(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 inter alia, the value of any house accommodation, supply of light, water medical attendance or any other amenity or any service excluded by general or special order of the appropriate Government Under Section 2(i) "employee" means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates or wages have been fixed. Under Section 3(1) the appropriate Government is empowered to fix the minimum rates of wages payable to employee in an employment specified in Part I or added thereto by notification under Section 27 in the manner provided in the Act. Under sub-Section (2) of Section 3 the appropriate Government may fix, inter alia, a minimum rate of wages for time work and a minimum rate of wages for piece work. Under sub-Section [3) of Section 3 different minimum ratea of wages may be fixed for;

(i) different scheduled employments;

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

(iii) adults, adolescents, children and apprentices;

(v) different localities;

Minimum rates of wages may also be fixed by one or mora of following wages periods, namely:-

(i) by the hour;

(ii) by the day;

(iii) by the month, or

(iv) by other larger wage period.

Under Section 4(1) any minimum rate of wages fixed In res-pect of scheduled employment under Section 3 may consist of-

(i) a basic rate of wages and a special allowance at a rate to be adjusted according to the variation in the cost of living index number applicable to such workers (known as cost of living allowance); or

(ii) a basic rate of wages with or without the cost of living allowance mentioned in ci. (ij and the cash value of the concession in respect of supply of essential came fluidities at concession rates, where so authorised; or

(iii) an all-inclusive rate allowance for the basic rate, the cost of living allowance and the cash value of the concessions; if any.

(2) The cost of living allowance and the cash value of the concessions are to be computed by the completed authority at intervals and in accordance with direction ol appropriate Government.

Under Section 5(1) " in fixing minimum rates of wages in respect of any scheduled employment for the first time under the Act the appropriate Government shall appoint at many committees and sub-committees as it consider necessary to hold enquiries and advise it in respect of such fixation or revision, as the case may be, or publish its proposal for the information of persons likely to be affected thereby by notification in the Official Gazette and specify a date not less than two months from the date of the notification on which the proposals are to be taken into consideration". Under Sub-Section (2) of Section 5 the appropriate Government must, after considering the advice of the sub-committee or the representations received ce-'foro the dates specified, fix the minimum rates of wages In respect of each scheduled employment which must come into force on the expiry of three months from the date of Its issire unless provided otherwise by the notification. 'Under Section 9 each of the Committees, sub-committees, etc.

shall consist of persons to be nominated by the appropriate Government representing employers fnd employees in the scheduled employments, who shall be equal in number, and independent persons not exceeding one-tfllrd of its total number of members; one of such independent persons shall be appointed the chairman by the appropriate Government. Section 10 empowers the appropriate Government to correct clerical or arithmetical mis-Jakes In any order fixing or revising minimum rates of wages or errors arising therein from any accidental slip or omission. Under Section 11(1) minimum wages payable under the Act are to be paid in cash. Under Section 13(1) the appropriate Government may fix the number of hours of work which shall constitute a normal working day. Penalties for certain offences and general provision for punishment of other offences are set out in Section 22A of the Act. Section 27 empowers the appropriate Government, after giving a notification in the official gazette iiot less than three months' notice of its intention so to do, add'to either part of the Schedule to the Act any employment in respect of which it is of opinion that minimum rates of wages should be fixed under the Act. Under Section 30 the appropriate Government may make rules for carrying out the purposes of the Act and a set of rules have been framed thereafter.

52. The concept of minimum wage and its difference from living wage and fair wage were examined by the Supreme Court in . The court pointed out that "In an under-developed country which faces the problem of unemployment on a very large scale it is not unlikely that labour may offer to work even on starvation wages. The policy of the Act is to prevent the employ-ment of siren sweated labour in the interest of the general public and so in prescribing the minimum wages rates the capacity of the employer need not be considered. What is being prescribed is minimum wage rates which a welfare State assumes every employer mirst pay before be employs labour."
The Court referred to the conclusion of the Com1 mittee on Fair Wages that "minimum wage must provids not merely for the bare subsistence of life but for the preservation of the efficiency of the worker, and so it must also provide for some measure of education, medical requirements and amenities" and said "the concept about the components of the minimum wage thus enunciated by the Committee has been generally accepted by industrial adjudication in this country. Sometimes the minimum wage is described as a bare minimum wage in order to distinguish it from the wage structure which is "subsistence plus" or fair wage, but too much emphasis on the-adjective 'bare' in relation to the minimum wage is apt to lead to the erroneois assumption that the maintenance wage is a wage which enables the worker to cover nis bare physical needs and keep himself just above starvation. That clearly is not intended by the concept of minimum wage". According to the Court minimum wage "must ensure for the employee not only his sustenance and that of his family but must also preserve his efficiency as a worker."

53. This decision of the Supreme Court puts it beyond controversy that the fixation of minimum wage is not in any way dependent on the capacity of the employer to pay. No matter where he works the worker must at least have a roof over his head, sufficient nourish-ment for himself and his family bearing in mind the nature of the work he does and the hours he puts in and some amount of cfothing required by him and his family. From this it will be clear that a worker will need something more for his housing accommodation in Calcutta and Howrah than any other place in the State of West Bengal. Again his requirements in this direction will cost him somewhat more in industrial areas than in areas where t'nsre are no industries. The same remarks will also apply to the case of ordinary articles of food. So far as the requirements as to clothing are concerned, a hill station like Darjeellng will be fairly expensive whereas the requirements on

the plains will be more or less the same everywhere except that there may be some difference between the needs of workers in airconditioned cinema houses and those working in cinema houses which are not air-conditioned.

54. In this case we have not before us the recommendations of the Advisory Committee, nor have the same been referred to by the parties to these proceedings. Our attention was drawn to various clauses in the notification of May 16, 1960 and we were asked to come to a conclusion by a mere examination of them that discrimination had been made in a large number of cases between worker with identical jobs without any basis.

55. The main target of the attack was the difference between the rates in the case of workers attaches to air-conditioned houses and those employed in house without this amenity. Our attention was drawn to sub-paragraphs (b) and (c) of paragraph 20 of the petition, and paragraphs 7 and 8 of the affidavit-in-opposition of Ashu-tosh Roy, Assistant Secretary, Labour Department on behalf of the State of West Bengal. In the said affidavit the discrimination in the 'wages for the same class of worn in the same schedule of employment in the same locality is denied and in paragraph 8 of the affidavit there is a denial that the determination of the locality with reference to population was illegal "as the sale proceeds of the industry particularly in its exhibition branch depends mainly upon the population of the locality". According to the petitioner respondent before us this showed that discrimination was made on the basis of the earning capacity of the units situated in towns with large population contrary to the- concept of minimum wage as propounds ty the Supreme Court in the case cited above. In this connection it is necessary to note that Ashutosh Roy did not state that'different rates had been fixed on the basis of the earning capacities of the1 different classes of units composing the industry based on the population, of the locality although his statement tends to show that discrimination on that basis would not be illegal. At the same time however it must be borne in mind that the value of the housing accommodation in towns with large population must be higher than in towns with small population and it is not improbable that there may be some difference in the cost of living between the two hinds of towns. This does not explain the discrimination in rates fixed for air-conditioned cinemas and those without such amenity in the'same locality. But even so far as these two classes of cinema houses are concerned a distinction obviously exists in that people working in air-conditioned cinema houses have to be more amply clothed than those in cinema houses of the other type. On behalf of the appellants a suggestion was put forward that workers in air conditioned cinema houses were more prone to fall-ill but in the absence of any averments in the affidavits to that effect this theory must be discounted. In my opinion in the absence of better particulars the objection on the score of discrimination between the two types of cinema houses in the same locality as well as the discrimination on the score of population of the towns must be overruled, in this connection it must also be noted that the wage rates of workers in non-air-conditioned cinema houses in Calcutta and Howrah are the same as those in other towns with population over one lakh except in the solitary Instance of 'unskilled labourers'. This discrimination which is limited to unskilled labourers has not been, explained but the whole of paragraph (1) of the Sche'dule to the Notification cannot be struck down merely because of this. It is also to be noted that the difference in the wage rates between unskilled and semi-skilled workers working in the two different types of cinema houses in Calcutta and Howrah has been maintained at Rs. 5/- while that in the rates of all other classes of workers excepting Managers has been kept at Rs. 10/-. So far as managers are concerned there is a difference of Rs. 30/- between the two classes of cinema houses in Calcutta and Howrah and a similar difference

between those working in cinema houses in towns with over one lakh of population and those working in less populous towns. All this suggests a system and does not tend to show as if the whole schedule was fixed arbitrarily.

56. The second ground of attack was that the Act did not justify the splitting up of the industry into three branches, viz., cinema houses (exhibition), distributing units and producing units. In this connection it is necessary to refer to the definition of 'scheduled employment' in Section 2(g) of the Act. 'Scheduled employment' means an employment specified in the schedule, or any process or branch of work forming part of such employment,' There-fore, if the scheduled employment has more than one branch as is the case in the cinema industry there is nothing wrong in prescribing minimum rates of wages for the different branches if the nature of the work and working conditions be not the same. It was not urged before us that these were so alike in the three different branche that it was unnecessary to prescribe for more than one scale of wage rates in respect of the same class of workers in the three different units. On a parity of reasoning one particular branch of the industry namely the 'production side may legitimately be sub-divided Into three branches i.e. producing units, laboratories and studios and fixation of different wage structures for the same class of workers in the three sub-branches may not be unjustified. Although workers of the three different sub-branches may be doing the same kind of work there may be difference in the conditions under which they work and other factors relating to the work which justifies-differentiation in the wage rates and as the challenge on the ground of such classification made in the petition It rather vague it is not possible to examine the position more closely.

57. Our attention was drawn pointedly to the appendix to the Notification which contains a classification of workers into three different categories of unskilled, semiskilled and skilled persons and it was urged that a gatekeeper could not fall under both categories of unskilled and semi-skilled workers. This inclusion in the two categories obviously is a mistake. Further it was urged that a sweeper was an unskilled worker in terms of the appendix, but according to the first paragraph of the schedule even in cinema houses his pay would be different In different cases. For instance, he would get Rs. 42/- in an air-conditioned house, Rs. 377- in other houses In Calcutta and Howrah, Rs. 35/- in towns with a population over one lakh and Rs. 32.50 NP in a town with a smaller population. As noted already so far as mofussil towns are concerned the discrimination may be justified on the basis of cost of living, but GO far as houses in Calcutta and Howrah are concerned it may be because of the difference in the clothing required. There cannot be much difference in the nature of the wark to be done by a sweeper In an air-conditioned house as distinct from the work in a house which is not air-conditioned. The same explanation may be applied to the case of 'malls'.

58. It was next argued that the fixation of the rate of payment to persons who are not regular employees at all of the different units but are employed as and when occasion arises for a particular job is not justified. The objection in this sweeping form cannot be upheld. Persons : who are described as free lancers in paragraph 9 of the schedule cannot be left to the mercy of the employer when Government was trying to secure minimum rates of wages for everybody employed in the industry. The objection is however tenable to the extent that the notification does not lay down that they are to be paid by that hour and does not fix the rate of wages on the basis of an hour of work because free lancers would seldom be employed by the month. The objection with regard to the hours of work will be dealt with in a later portion of the judgment.

59. Objection was taken to paragraph G of the notification on the ground that it had transgressed the limite of the power given by the Act in so far as it sought to regulate the terms of employment of apprentices and probationers. It was argued that although Government sound fix the rates of wages and clearness allowances payable to apprentices and probationers it had no right to fix either the period of apprenticeship or the period of probation. This objection seems to be valid and the fixing of the period of apprenticeship and/or probation must be struck down. In this connection reference may be made to the judgment of the Supreme Court in , where it was pointed out that "the significance of the definition contained in Section 2(h) of the Act lies in the fact that the rate of wages may be increased but no change can be made in the other terms of the contract. In other words the Act operated on the wages and does not operate on the other terms of the contract between, the employer and the employee."This case is also an authority for the proposition that of any part of the notification is ultra vires the powers of the Government under Section 5 of the Act and is sever-able from other parts thereof which are valid the invalidity of the severable parts does not render the whale notification invalid.

60. Again it was argued with regard to paragraphs 7 and 8 of the notification that Government had no right to lay down that employees who were in receipt of higher wages shall continue to enjoy the same or that persons enjoying privileges like free uniforms, snacks and meals and free housing would continue to have the benefit thereof in addition to the minimum wages notified. This objection appears to be a substantial one. It was not necessary for Government to provide that these privileges or the higher wages would not be affected by the notification. The Act does not lay down that the employer is not to pay more than the minimum wages but only provides that the employer is not to pay less than the minimum wages. There is nothing wrong or illegal in an employer paying his employees more than the minimum fixed, if the employer seeks to cut down the rates of wages or to deprive the workers of the existing privileges he may be faced with an industrial dispute which may seriously affect his business and I feel sure that no wise employer would ever take recourse to such a step in his own interest, in this connection our attention was drawn to a judgment of the Supreme Court in (S) . There the management of the Tea Estates in Assam represented by the Indian Tea Association, Calcutta, used to supply certain quantities of rice and other articles of food at concession rates to their adult male workers at 5 seers per week. From February 1950 the rice quota was reduced by half a seer per week and the employers agreed to pay cash compensation at the rate of 6 pies per working day. On account of a notification of the Government of India on November 18, 1950, there was a further cut of another seer of rice per week in the supply of the commodity at concession rates. The workmen claimed compensation in cash far this cut also. This led to a difference which was referred for adjudication by a notification of the Government of Assam. The Tribunal gave its award in December 1951 holding that the system of rice benefit at concession rates was a part of the workers' wages and the employers were under a legal obligation to pay cash compensation to the workmen for the said cut in supply of rice. The Tribunal further fixed the rates of compensation. On appeal to the Labour Appellate Tribunal the rate was reduced. In the meanwhile however the Government of Assam had issued a notification in exercise of the powers conferred by the Minimum Wages Act and fixed the minimum wages of workmen employed in the Tea Gardens at certain, cash rates which ware to come into effect from March 30, 1952 consisting of basic wages and dearness allowance at the rates specified. Paragraph 2 of the notification provided that the rates were to be exclusive of concessions enjoyed by the workers in respect of supplies of food stuffs and other essential commodities and other amenities which would continue unaffected

and that the existing tasks and hours of work might continue until further orders. The result was that the minimum wages so fixed exceeded the total of the cash wages which the employers were paying to their workmen and the value of the concession at which rice was being supplied as also the amount of compensation for the cut which they were directed to pay by the award made in the reference of 1950. -The employers, contended that the minimum wage notification had the effect of absorbing their cash compensation in th3 cash-minimum wage that had been determined absolving them from liability to pay compensation for the rice cut over and above the minimum wage fixed. This dispute was again referred to an industrial tribunal for adjudication. The Tribunal upheld the contention of the employers that the compensation for the rice cut had merged in the minimum wage fixed by Government. The Labour Appellate Tribunal held that the compensation for the rice cut had become an amenity and that Government had not only fixed basic wages and dearness allowance but by para-graph 2 of the notification preserved all the amenities which the workmen were enjoying or to which they were entitled. It was from this adjudication that an appeal-was preferred to the Supreme Court by the employers. The Supreme Court held that before March 11, 1952 when the minimum wages wore fixed by the Government of Assam the employers were under a legal obligation to pay cash compensation to the workmen for the reduction in rice quota and that the cash compensation had not merged in the minimum wage fixed by Government. The Supreme Court also said that Government was not bounds to adept the report of the Minimum Wages Committee and that it could modify the same as it thought best, According to the Supreme Court paragraph 2 of the notification-made it abundantly clear that whatever might have been' at the back of the Committee's mind in fixing the minimum wage Government thought it proper that the employer should make available to the workmen, in addition to the wage fixed, all concessions enjoyed by them In respect of the supply of foodstuffs and other essential commodities and the other amenities which they used to enjoy. The situation before the Supreme Court was different from that-before us. In the case of the Assam Tea Gardens compensation for the rice cut was payable to each and every workman and as such Government might legitimately determine that the minimum wage to be fixed under the At should not only be what was determined by the Committee but that cash compensation for the cut in rice should also-be included therein. So far as the present case is con-cerned the notification seeks to preserve the privileges in the case probably of some only of the units of the film industry and the higher wages paid by some of them. This cannot be justified. If the amenity was something common to every unit of the industry Government might well have laid down that the minimum wage should in-elude the amenity. Paragraphs 7 and 8 of the notification must be struck down.

61. The objection that basic wages fixed by notification had not been correlated to any work load or hours of work appears to be a substantial one. The peti-tion shows that the workers even in cinema houses do not have the same work load in that some of the cinema houses have only two shows a day while others have three, it is also common knowledge that so far at least as some of the Calcutta cinema houses are concerned there is an additional morning show on every Sunday. If the rates of wages are fixed only in terms of the month the result will be that a worker getting his wage lor working In a cinema house with two daily shows will get the same wage as a worker working in a house with three snows every day. As against this it was argued by the learned advocate for the appellant that all the units of the cinema industry would be governed either by the Factories Act, 1948 or the Bengal Shops and Establishments Act, 1940 and that as working hours have been prescribed Under the said Acts there would be no difficulty in calculating the monthly wage in terms of the work done. This to my mind is not a sufficient answer to the

objection. The Bengal Shops and Establishments Act or the Factories Act only prescribes the maximum hours of work the worker can be called upon to put in during a week. 1 see no valid reason why the rates fixed by the Minimum Wages Act should be correlated to the maximum hours of work which the worker can be called upon to put in under the said Acts.

61a. It is to be noted in this connection that Ashutosh Roy, the Assistant Secretary of the Labour Department of the Government of West Bengal stated in paragraph 9 of his affidavit that Government of West Bengal had no opportunity of fixing the hours of work, etc., for different categories of employees under Section 13 of the Minimum Wages Act as the notification had been challenged immediately after its publication in the Calcutta Gazette. I see no reason to doubt the bona fides of the intention of the Government so expressed and 1 think that in the interest of all concerned we should direct that the notification should not be given effect to so long as hours of work for different categories of employees are not fixed by Government under Section 13 of the Act.

62. The only other attack levelled against the notification is that the Committee composed under Section 9 did not consist of independent members as therein provided. As already noted the charge was that two of the members viz., the Labour Commissioner and the Deputy labour Commissioner being Government servants could not ,foe considered to be independent: Reference may be made to the meaning of the word 'independent', in the Shorter english Oxford Dictionary as "not depending on authority of another; not in position of subordination; not subject to external control or rule; not influenced or biased by the information of others; etc.,". It was argued that as the two Government Officers, however high their rank were in the subordination of Government, they could not be independent within the meaning of Section 9 of the Act. Government is no doubt interested in fixing fair and equitable rates under the Act. But I find myself unable to hold that Government Officers would act at the bidding of Government and form their opinion in accordance with She dictates of the Government merely because they are (Government servants. At the stage when the matter was before the Committee the Government had no aim or objective in helping either the employers or the employees and was not interested in influencing the Labour Commissioner or the Deputy Labour Commissioner in any way. In my opinion, there is no ground for suggesting that because they were familiar with the labour conditions their minds would be prejudiced in favour of one side or the other. Counsel for the respondents admitted that if other Government servants such as professors of economics were appointed on the Committee there would be no valid ground for objection because their opinions would be unbiased and free from control of Government. 1 can see no reason why the Labour Commissioner or the Deputy Labour Commissioner should be treated differently. They too would be expected to act independently of any control unless there were circumstances to show that Government had already given them directions to act in a particular manner or that the situation was such that they could not be expected to form their opinions unbiased by any direction from higher quarters.

63. Section 9 came up for consideration in other High Courts. These have been noticed by the learned trial Judge. In , Bishan Naram, J., said that "an independent person in this contaxt 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 ex ploited. In such circumstances the appointment of a labour Commissioner who is conversent with the employ ment conditions cannot be objected to on any valid or convincing ground."A different view was however taken in . There a division bench of the High Court was of the view that although in the fixation of minimum wages) the contesting parties were the employers and the employees, Government was not absolutely disinterested in the matter. The Punjab High Court's view was approved by a single Judge of the Kerala High Court in AIR 1953 Kerala 115.

54. The learned trial Judge found himself in agreement with the decision of the Madhya Pradesh High Court. According to him Government in such cases had the position of an impartial arbitrator and could not therefore appoint officials amenable to its control in the Advisory Committee. Me noted that the advice tendered to Government by the Advisory Committee might not be accepted but the personal knowledge of the Labour Commissioner and the Deputy Labour Commissioner of the conditions of labour and the rates of wages was not a compelling reason for their appointment on the Committee and that there were other considerations which out weighed the advantages to be guided by their presence. In my opinion, any person would be independent within the meaning of the expression used in Section 9 of the Act, who would hold the scales even between the employer and the employee and would have no personal interest in deciding in favour of any one of the parties. Government certainly is interested in maintaining industrial peace and harmony. It is interested in furthering the industrial expansion of the country and at the same time it is its duty to see that labour Is not exploited by the employers. The Labour Commissioner and the Deputy Labour Commissioner being charged with the duty of maintaining proper relations between the employers and the employees can be expected to deal fairly with both and to discharge their duties as members of the Committee to the satisfaction of all concerned. Mr. Pey, learned counsel for the respondents argued that as tfie determination of the Advisory Committee has so be scrutinised by Government in arriving at its own conclusion it would not be unnatural to think that the Labour Commissioner and the Deputy Labour Commissioner would advise, tfie Minister for Labour who would be the person exercising the powers of the Government in the matter of fixation of the minimum wages. This objection cannot be brushed aside off hand and if it had been taken in the petition and not sufficiently met in the affidavit In opposition I might have come to a. different conclusion. But we cannot enter the region of speculation and hold that the Labour Commissioner and the Deputy Labour Commissioner would influence the Labour Minister and that he alone would exercise tbe powers of the Government under the Act.

65. This disposes of the main contentions urged against the validity of the notification but it remains to consider points as to the maintainability of the petition. It was argued that the petition ought to be thrown out en the ground of delay inasmuch as the notification was made on May 16, 1960 and the application was not moved before this Court till August 2, 1961. Normally delay of over a year would be a stumbling block in the way of the petitioner but we cannot ignore the happenings before the launching of the present petition. Another ap-plication under Article 226 of the Constitution had been filed on May 31, 1960 by one Surendra Chandra Sarkar and others and a rule was issued on the State of West Bengal calling upon it to show cause why it should not recall, annul or cancel the notification of may 16, 1980. When that application was taken up for hearing in June 1961 the learned trial Judge gave permission to the petitioners in that case to withdraw the application with liberty to take other proceedings as they might be advised. The present petitioners say that it was quite unnecessary to file another application challenging the notification as one such application was already on the file of this Court. Jn my opinion, this

sufficiently explains the delay and it is not necessary to refer to the negotiations mentioned in paragraphs 12, 16 and 17 of the petition alleged to have taken place in July 1961.
66. It was further urged that the petitioner before this Court being a distributor could not question the validity of the notification in so far as it related to the fixation of wages of workers in the exhibition side or the production side of the industry as the petitioner was not 3 person, aggrieved by the notification in relation to the said two sides of this industry. As against this, it was contended that the well being of the distribution side depended on the prosperity of the production side and the exhibition side and if those branches of the industry were affected by an improper fixation of wages the distribution, side was also bound to be affected. In my view, the fates of the three different branches of the industry are so inter-liked that they may be considered to be different limbs of the same body and if one limb was affected the others were bound to suffer. In that view of the matter I hold the petitioner was justified In making the application even if the other branches did not take any initiative.

67. The question remains whether the portions of notification which were beyond the competence of the Government of West Bengal can be deleted or severed therefrom without affecting its main fabric. In this connection reference may be made to the pronouncement of the Federal Court in Shyamakant Lal v. Rambhajan Singh "it is a well established principle that if the invalid part of an Act is really separate in its operation-from the other parts, and the rest are not inseverably connected with it, then oniy such part is invalid, unless, of course the whole object of the Act would be frustrated by the partial exclusion. If the subject which is beyond the legislative power is perfectly distinct from that which is witlhin such power, the Act can be ultra vires in the former, while intra vires in the latter.********** A law which is ultra vires in part only may thereby become ultra vires in whole if the object of the Act cannot at all be attained by excluding the bad part. If the offending provisions are so interwoven into the scheme of The Act that they are not severable, then the whole Act is invalid."In the light of the above I see no difficulty in holding that the exclusion of the offending portions af clause (6) as well as clauses (7) and (8) will not prevent the definite object which Government had in mind in issuing the notification of May 16, i960. The offending portions cannot be considered to be inseparable part of the whole.
68. l therefore concur In the order made by my' Lord the Chief Justice.