MYSORE HIGH COURT

Chandrabhava Boarding

Vs

State of Mysore

Writ Petns Nos. 1417 to 1422

(M. Sadasivayya and D.M. Chandrashekhar, JJ.)

18.09.1967

JUDGMENT

D.M. Chandrashekhar, J.

1. The petitioners are owners of residential hotels and eating houses. In these petitions under Article 226 of the Constitution they have challenged the validity of the Notification dated 1-6-1967 (Published in Mysore Gazette dated 8-6-1967) issued by the Govt. of Mysore under the Minimum Wages Act, 1948, fixing minimum rates of wages for different classes of employees in residential hotels and eating houses.
2. At the outset, it is useful to narrate briefly the history of the minimum wage legislation and of fixation of minimum wages in hotel industry.

3. The Minimum Wages Fixing Machinery Convention was held at Geneva in the year (1928). The resolutions of that Convention are embodied in Articles 223 to 228 of the International Labour Code. The object of the resolutions. as stated in Article 224 was to fix minimum wages in industries "in which no arrangements exist for the effective regulations of wages by collective agreements or otherwise, and wages are exceptionally low". For giving effect to those resolutions in India, the Central Legislature passed the Minimum Wages Act, 1948.

4. The preamble to this Act states that "it is expedient to provide for fixing minimum rates of wages for certain employments" and those employments are specified in Part-I of the Schedule to the Act. From the List of industries enumerated in Part-I of the Schedule, it is seen that the Act aims at making provision for the statutory fixation of minimum rates of wages in a number of industries wherein labour is not organized and "sweated labour is most prevalent or where there is a big chance of exploitation of labour". The fixation of wages under this Act is not on the application of the employee nor is it dependent on the existing of any dispute. The Act casts on the Government the duty of fixing minimum rates of wages payable to employees in employments specified in Parts I and II of the Schedule to the Act.

5. Residential Hotels and eating houses were not included in the Schedule when the Minimum Wages Act was enacted. But Section 27 of the Act empowers the appropriate Government to add

to either part of the Schedule any employment in respect of which the Government is of opinion that the minimum wages should be fixed under this Act. Under the provisions of that section, residential hotels and eating houses were added to Part I of the Schedule, by the notification made by the State Government on 18-6-1959.

6. After following the procedure prescribed by Section 6(1)(b) of the Act, the Government issued Notification published on 16-6-1960 fixing minimum rates of wages payable to different categories of employees in residencial hotels and eating houses in the Municipal limits of Bangalore, Mysore Hubli, Mangalore and Belgaum, and in the area of the Kolar Gold Fields Sanitary Board. The Notification was challenged by the proprietors of residential hotels and eating houses in a batch of petitions under Article 226 of the Constitution. This court, by its order dated 10-11-1961, quashed that Notification on the around that it was not permissible for the State Government to fix minimum rates of wages in any employment for a part only of the State.

7. Thereafter the State Government issued under Section 5(1)(b) of the Act, on 9-12-1964 a fresh notification containing proposals for fixing certain rates of minimum wages for different categories of employees in residential hotels and eating houses.
But the Government did not take any further steps in pursuance of that Notification.

8. In the year 1966, the Government consulted the Mysore State Minimum Wages Advisory Board constituted under Section 7 of the Act, regarding the fixation of minimum rates of wages for employees in residential hotels and eating houses. At its meeting held on 8-7-1966, the Board made certain recommendations to the government. Inter alia, the Board suggested that having regard to the rise in cost of living since the fixation of rates of minimum wages in 1960 (which had been quashed) the rates of minimum wages might be fixed 75 per cent above those fixed in 1960, that the State might be divided into three zones-Zones 'A" 'B' and 'C': that the rates in Zone 'A' might be 5 per cent above of those in Zone 'B'. that the rates in Zone- C' might be 10 per cent below of those in Zone 'B' and that food supplied by the employers to the employees might be valued at a certain figure and permitted to be deducted from Minimum wages payable to workers.

9. After considering the recommendations of the Advisory Board, the Government issued the Notification dated 28-10-1967 (published in the Mysore Gazette dated 3-11-1966) proposing certain rates of minimum wages for different categories of employees in residential hotels and eating houses in three different zones. The rates proposed in this Notification were higher than those recommended by the Advisory Board. The Notification stated that the proposal for fixation of minimum rates of wages would be taken up for consideration on 10-1-1967 and that objections or suggestions received with respect to those proposals before that date would be considered by the Government.

10. The Mysore State Hotel Owners' Association, the Bangalore City Hotel Owners' Association the South Kanara District Hotel Owners' Association and several other Associations of such proprietors and individual proprietors, sent representations and objections to those proposals. Besides urging that there was no need for fixation of minimum wages in hotel industry, it was contended in those representations and objections that the proposed rates were excessive and beyond the capacity of the industry to pay. Some of them proposed lower rates of minimum wages. On the other hand, some of the Associations of employees in hotel industry urged in their

representations that the proposed rates were very low and inadequate, and higher rates of minimum wages should be fixed.

11. Such of the persons who had sent representations and objections were given notices that the Minister for Labour would meet them on 27-4-1967. On that day the Minister heard the views of such of them as were present and spoke. Thereafter the Government issued the impugned Notification published in the Mysore Gazette dated 8-6-1967.

12. The rates of minimum wages fixed, therein, with effect from 1-7-1967, were higher than those proposed in the draft notification, for each class of employment and in each of the three zones.

13. Zone 'A' comprises of Bangalore Corporation Area and Manealore City Municipal Areas: Zone 'B' comprises of District Head Quarters except those mentioned in Zone 'A' and Zone 'C' comprises of all places in the State not covered under Zones 'A' and 'B' Food provided to employees was valued at ₹ 40, ₹ 35 and ₹ 10 in Zones 'A' 'B' and 'C' respectively.

14. Feeling aggrieved by this Notification, the petitioners have presented these petitions. At the instance of the petitioners, this Court stayed the operation of the impugned Notification during the pendency of these petitions.

15. Elaborate arguments were addressed by learned counsel for petitioners and the learned Special Government Pleader appearing for the State. Several contentions advanced by different counsel for the petitioners may be formulated thus :

(i) Section 5(1) of the Act is violative of Article 14 of the Constitution, as it confers un-guided and uncontrolled discretion to the Government to follow either of the alternative procedures set out in Clauses (a) and (b) of that sub-section.
(ii) The provisions of the Minimum Wages Act are unconstitutional as they confer arbitrary powers without any guidance, on the Government to fix minimum rates of wages.
(iii) There was no justification for inclusion of hotel industry in Part-I of the Schedule to the Act.
(iv) As the Advisory Board was not properly constituted, fixation of minimum wages, is vitiated.
(v) The Government should have appointed a Committee to enquire into and advice in respect of fixation of such minimum wages.
(vi) Fixation of minimum wages is a quasi-judicial act and hence principles of natural justice should have been followed.
(vii) There was no consultation with the Advisory Board before fixing minimum rates of wages.
(viii) The rates fixed in the impugned notification are not minimum wages, but of fair wages or living wages.
(ix) The Government should have taken into account the capacity of the industry to pay

rates of wages fixed.

(x) The division of State into zones fixing different rates of minimum wages for different zones, is not permissible.

(xi) The division into zones has not been done on any rational basis.

(xii) There is no definition of 'residential hotels' and 'eating houses' and of different categories of employees for whom different rates of minimum wages are fixed.

(xiii) The different rates of minimum wages should have been fixed for adolescents, children and apprentices.

(xiv) The valuation of food provided to employees (for purposes of deduction from the rates of minimum wages') is unreasonable low and is done without the authority of law.

(xv) The value of other benefits like free lodging should have been taken into account in fixing minimum rates.

16. We shall proceed to examine these contentions seriatim.

17. I. The main provisions of the Act and the scheme of the Act, have been explained in several decisions of the Supreme Court and it is unnecessary to repeat them here Explaining Section 5 of the Act, B.K. Mukherjea, J. (as he then was) who spoke for the Court, stated thus in *Edward Mills Co. Ltd. v State of Ajmer*[1]*,*

> "Section 5 lays down the procedure for fixing minimum wages. The appropriate Government can appoint a Committee to hold enquiries to advise it in the matter of fixing minimum wages; in the alternative it can, by notification in the Official Gazette, publish its proposals for the information of the persons likely to be affected thereby. After considering the advise of the Committee or the representations on the proposals, as the case may be the 'appropriate Govt.' shall fix the minimum rates of wages in respect of any scheduled employment, by notification in the official gazette, and such rates would come into force on the expiry of three months from the date of issue unless the Notification directs otherwise."

18. Considering the procedure under Section 5 for the fixation of minimum wages, the same learned Judge said thus in *Bijay Cotton Mills Ltd. v. State of Ajmer*[2]*,*

> "As regards the procedure for the fixation of minimum wages, the 'appropriate Government' has undoubtedly been given very large powers. But it has to take into consideration, before fixing wages, the advice, of the Committee if one is appointed, or the representations on its proposals made by persons who are likely to be affected thereby ....."

[1] AIR 1955 SC 25 at P. 27

[2] AIR 1955 SC 33 at p 35

19. The learned counsel for the petitioners contended that the alternative procedures under Clauses (a) and (b) of Section 5 are substantially different, that the Act gives no guidance as to which of the two alternative procedures should be followed by the Government in a particular

case, and that in the absence of such guiding principle, the discretion given to the Government, was capable of being used in a discriminatory or arbitrary manner by the Government. It was further contended that from the point of the employers the procedure under Clause (a) is more advantageous than that under Clause (b), inasmuch as their representatives would be on the Committee appointed by the Government to hold enquire and advise the Government regarding fixation of minimum wages and that the employers will have opportunity of adducing evidence and placing materials before the committee, while no such opportunity will be available if the Government publishes its proposal and considers representations thereto. It was also urged that, the guaranty under Article 14 of equal protection applies to substantive as well as procedural laws and that conferment of unguided and uncontrolled power capable of being used in an arbitrarily or discriminatory manner is violative of Article 14.

20. Reliance was placed on the decision of the Supreme Court in *Surajmal Mohta and Co. v. Viswanatha Sastri*[3], There, the validity of Section 5 of the Taxation of Income (Investigation Commission) Act, 1947 was impugned. That Section empowered the Central Government to refer to the Commission for investigation and report any case of evasion of income-tax to substantial extent. The Supreme Court pointed out that persons dealt with by the impugned Act were deprived of substantial right of appeals and revision which were available to assessees whose cases were dealt with under the procedure of Section 34 of the Income-tax Act, and that while the investigation into escaped income or evaded income was limited to a maximum period of 8 years under Section 34 of the Income-tax Act 1922. the investigation under Section 5 of the impugned Act was not limited to any period. The Supreme Court held that the impugned Act dealt with the same class of persons who fell within the ambit of Section 34 of the Income-tax Act, and that the procedure prescribed by the impugned Act was substantially prejudicial to the assessee than that under the Income-tax Act, and hence was discriminatory. Section 5(4) of the impugned Act was struck down as offending Article 14.

21. The learned counsel for the petitioners also argued that the question whether Section 5 of the Minimum Wages Act is violative of Article 14 did not specifically arise for consideration before the Supreme Court either in Edward Mills Co.'s case, AIR 1955 SC 25 or in Bijay Cotton Mills' Case, AIR 1955 SC 33 and hence the decisions of the Supreme Court in those two cases upholding the constitutionality of the Act, cannot be understood as any pronouncement by the Supreme Court that Section 5 is not violative of Article 14.

22. It is true that neither in Section 5 nor in the rest of the Act has it been expressly stated when the Government should adopted the procedure either under Clause (a) or under Clause (b) of Section 5 (1). But as stated by the Supreme Court in *Jyoti Pershad v. Administrator, Union Territory of Delhi*[4], it is not essential for the

[3] AIR 1954 SC 545

[4] AIR 1961 SC 1602 at p. 1609

legislation to comply with the rule as to equal protection, that the rules for the guidance of the designated authority, which is to exercise the power or which is vested with the discretion should be laid down in express terms in the statutory provision itself. Such guidance may be obtained from or afforded by –

> (a) The preamble read in the light of surrounding circumstances which necessitated the legislation in conjunction with well known facts of which the Court might take Judicial

notice or of which it is appraised by evidence before it as for example in the form of affidavit's or

(b) Other operative provisions applicable to analogous or comparable situations or generally from the object sought to be achieved by the enactment

23. The following statement in the Report of the Committee on Fair Wages, was Quoted with approval by the Supreme Court in *Express Newspaper (P) Ltd. v. Union of India*[5],

> "Under the Act (Minimum Wages Act) the appropriate Government has either to appoint a Committee to hold enquiries and to advise it in regard to the fixation of minimum rates of wages or, 'if it thinks that it has enough material on hand' to publish its proposal for fixation of wages in the official gazette and to invite objections". (underlining (herein (' ') is ours).

24. Thus it is clear that the Government has to follow the procedure under Clause (b) of Section 5(a) of the Minimum Wages Act if it thinks that it has enough materials on hand to publish proposals for fixation of minimum rates of wages; but If the Government thinks that it has not though knowledge of Information about any scheduled employment to enable it to publish such proposals, the Government has to appoint Committees or Sub-Committees to hold enquiries and to advise it in the matter. Hence the discretion given to the Government to choose either of the two alternative procedures, cannot be said to be unguided and unfettered.

25. A similar question was considered by the Supreme Court in *Niemla Textile Finishing Mills Ltd. v Second Punjab Industrial Tribunal*[6] Section 10 of the Industrial Disputes Act, as it stood then, provided that where the appropriate Government was of opinion that any industrial dispute exists or is apprehended, it might refer.

(a) the dispute to a Board for promoting settlement thereof;

(b) any matter connected with or relevant to the dispute to a court of enquiry; or

(c) the dispute or any such matter to a Tribunal for adjudication.

26. It was contended before the Supreme Court that the procedures before these three forums were different and would leave to different results of varying degrees of onerousness to employers, that Section 10 of the Industrial Disputes Act gave no guidance to the Government as to how it should exercise its discretion in choosing one or the other of the alternative procedures and, that the Government had

[5] AIR 1958 SC 578 at pages 606 and 607

[6] AIR 1957 SC 329

unregulated and arbitrary power to discriminate between the parties similarly placed and circumstanced by referring in one case an industrial dispute to a Court of Enquiry and in another to an Industrial Tribunal.

27. Repelling that contention the Supreme Court stated thus at page 336 :

> "Such discretion is not an unfettered or an uncontrolled discretion nor an unguided one

> because the criteria for exercise of the discretion are to be found within the terms of the Act itself. The various authorities are to be found within the terms of the Act itself. The various authorities are set up with particular ends in view and it is the achievements of the particular ends that guide the discretion of the appropriate Government, in the matter of setting up one or the other of them. The purpose sought to be achieved by the Act has been well defined it the preamble to the Act.....

These and analogous provisions sufficiently indicate the purpose and scope of the Act as also the various industrial disputes which may arise between the employers and their workmen which may have to be referred for settlement to the various authorities under the Act. The achievement of one or the other of the objects in view of such references to the Boards of Conciliation or courts of Enquiry or Industrial Tribunals must guide and control the exercise of discretion. In that behalf by the appropriate Government and there is no scope therefore, for the argument that the appropriate Government would be hi a position to discriminate between one party and the other".

28. As stated by the Supreme Court in *Pannalal Binjraj v. Union of India*[7], at pages 408 and 409, the discretionary power is not necessarily discriminatory and the abuse of power cannot be easily assumed where discretion is vested in a high authority; there is moreover a presumption that the public officials will discharge their duties honestly and in accordance with the rules of law the mere possibility of discrimination does not necessarily invalidate the piece of legislation conferring such discretion; and where such power is abused the Court will strike down the exercise of such power; and what will be struck down in such cases will not be the provision which invested the authorities with such power but the abuse of the power itself.

29. In Section 5(1) of the Minimum Wages Act the discretion to follow either of the alternative procedures, has been conferred on the Government and not on any minor official. The Government can be expected to use that discretion reasonably having regard to the circumstances of each case But if in any particular case it is established that the Government has abused the discretion in following the procedure by Clause (b) of Section 5(1) where it ought to have followed the procedure prescribed under Clause (a) the Court will strike down the exercise of such power; but the conferment of discretion on the Government by Section 5 to adopt either of the procedure under Clause (a) or Clause (b) cannot be held to be violative of Article 14.

30. But Mr. V.L. Narasimha Murthy, learned counsel for some of the petitioners, contended that whatever might have been the earlier view of the Supreme Court on this question, the recent pronouncement of the Supreme Court would show that

[7] AIR 1957 SC 397

conferment of such discretion on any authority which is capable of being abused offends Article 14. Mr. Narasimha Murthy strongly relied on the unreported decision of the Supreme Court in Civil Appeal No. 1101 of 1965, *Northern India Caterers Private Ltd., v. State of Punjab, reported in*[8]*)*. There the constitutionality of Section 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959 was challenged. Section 4 of that Act provides that if the Collector is of opinion that any person is in unauthorized occupation of public premises and that he should be evicted, he shall issue a notice in writing calling upon such person to show cause why an order of eviction should not be passed. The notice shall specify the grounds on which the order of eviction is proposed to be made. Section 5 provides that if after considering

the cause and the evidence produced by such person and after giving him reasonable opportunity of being heard, the Collector is satisfied that the public premises are in unauthorised occupation, he may make an order of eviction. Shelat, J. who delivered the majority judgement, said thus :

> "There can be no doubt that Section 5 confers an additional remedy over and above the remedy by was of suit and that providing two alternative remedies to the Government and in leaving it to the unguided discretion of the Collector to resort to one or the other to pick and choose some of the occupation of public properties and premises for the application of the more drastic procedure under Section 5, that section has lent itself open to the charge of discrimination and is being violative of Article 14. In this view Section 5 must be declared to be void."

31. We do not see how the above decision lays down law differently from what had been laid down by the Supreme Court in earlier decisions. Their Lordships (constituting the majority) did not find any discernable principle either in Section 5 or the rest of the Punjab Act, to afford guidance to the Collector as to when resort should be had to the summary procedure under Section 5 and when the remedy under ordinary law should be resorted to. We are unable to read the majority judgement in that case as laying down a proposition that conferment of a decision which is capable of being abused or exercised in a discriminatory manner, is unconstitutional even if guidance for the exercise of that discretion is afforded by the legislative enactment (conferring such discretion) or from other circumstances.

32. Mr. Narasimha Murthy next referred to the decision of the Supreme Court in *Jalan Trading Co. (Pvt.) Ltd. v. Mills Mazdoor Sabha*[9] There, the Supreme Court considered the question of delegability of the power to remove difficulties in a legislative enactment. The majority of the Bench of the Supreme Court held that Section 37 of the Payment of Bonus Act, 1965 which authorizes the Central Government to provide by order for removal of difficulties in giving effect to the provisions of the Act delegates legislative power which is not permissible. But that decision has no bearing on the question whether conferment of discretion would be violative of Article 14, because of the mere possibility of being exercised in a discriminatory manner. We do not see how that decision helps Mr. Narasimha Murthy.

[8] AIR 1967 SC 1581

[9] AIR 1967 SC 691

33. II. The next contention of the petitioners was that the Act contains no guidance as to how the rates, of minimum wages should be determined and hence conferment of uncontrolled and unguided power on the Government to determine rates of minimum wages, is impermissible as such power is capable of being exercised arbitrarily by the Government.

34. Dealing with the same contention this is what the Supreme Court said in *Bhikusa Yamasa Kshatriva v. S. A. T. B. Kamgar Union*[10]*,*

> ".....By entrusting authority to the appropriate Government to determine the minimum wages for any industry in any locality or generally, the legislature has not divested itself of its authority, nor has it Conferred uncontrolled power of the State Government. The power conferred is subordinate and accessory, for carrying out the purpose and the policy

of the Act. By entrusting to the State Government power to fix minimum wages for any particular locality or localities the Legislature has not stripped itself of its essential legislative power but has entrusted what is an incidental function of making a distinction having regard to the special circumstances prevailing in different localities in the matter of fixation of rates of minimum wages....."

35. In AIR 1955 SC 33, after discussing the procedure for fixing minimum wages, the Supreme Court said; "These provisions, in our opinion, constitute adequate safeguard against any hasty or capricious decision by the 'Appropriate Government'." In view of these pronouncements of the Supreme Court, it is no longer open to the petitioners to contend that the Act confers arbitrary and unguided powers on the Government to fix minimum rates of wages. But if in any particular instance it is established that the minimum rates of wages fixed by the Government are arbitrary or such fixation is not in accordance with the provisions of the Act, the Court may strike down that fixation of minimum wages by the Government.

36. III. M. Narasimha Murthy contended that the State Government was not justified in adding to the list of employments in Part-I of the Schedule to the Act, the employment in residential hotels and eating houses. According to him the employees in hotel industry are well organised and there is no chance of exploitation of labour in that industry; nor is there any sweated labour in the industry Mr. Narasimha Murthy argued that the facts that the Hotel Workers' Union in Bangalore has raised an industrial dispute regarding the wages in that industry that the Government had referred that dispute for adjudication by Industrial Tribunal, and that the Industrial Tribunal had given an award, are sufficient to demonstrate that there was no need for inclusion of hotel industry in the Part-I of the Schedule to the Minimum Wages Act.

37. But such a contention has not been taken up in any of these petitions and the State had no opportunity of meeting it in its counter-affidavit. As stated earlier, the inclusion of hotel industry in the Schedule to the Act was one as early as in the year 1959. Yet the validity of such inclusion was not challenged earlier.

38. Moreover, it was not also disputed that the said award of the Industrial Tribunal

[10] AIR 1963 SC 806 at p. 810

covered only about 29 hotels and restaurants in Bangalore City and did not apply to a large number of other hotels and restaurants in Bangalore City, or to any of the hotels and eating houses outside Bangalore City. No satisfactory material has been placed by the petitioners to sustain the allegation that the workers in hotel industry are so well organized that there is no chance of exploitation of labour in that industry.

39. We have no hesitation in rejecting the belated contention that the hotel industry should not have been included in the Schedule to the Act.

40. IV. In order to appreciate the attack on the constitution of the Advisory Board, it is necessary to set out Section 9 of the Act which reads :

"9. Composition of Committees, etc :- Each of the 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".

41. The State Government has constituted the Advisory Board consisting of 12 members, four of whom purport to represent employers in scheduled employments, another four purport to represent employees and the remaining four purport to be independent persons. The person occupying the position of the President of the Mysore Chamber of Commerce, the person occupying the position of the President of Mysore Planters' Association and the Chief Engineer in Mysore Roads and Buildings, are among the four members representing employers. The Secretary to the Government of Mysore in the Department of Labour and Labour Commissioner in Mysore are among the four independent members and the former is the Chairman of the Board.

42. Mr. Narasimha Murthy contended that the President of the Mysore Chamber of Commerce or the President of the Mysore Planters' Association need not necessarily be an employer in a scheduled Industry. In the supplementary counter-affidavit on behalf of the State it has been explained that the Mysore Chamber of Commerce has amongst its members several employers in scheduled industries and that the Bangalore Hotels Owners' Association and several hotel proprietors including some of the present petitioners are also members of the Mysore Chamber of Commerce Likewise the Mysore Planters' Association is an association of employers in plantation industry which is one of the scheduled employments. What Section 9 requires is that there shall be persons representing employers; it is not necessary that such persons should themselves be employers. Hence there is no difficulty in holding that the Presidents of the Mysore Chamber of Commerce and the Mysore Planters Association are representatives off employers in scheduled employment.

43. Mr. Narasimha Murthy also argued that the Chief Engineer in Mysore could not represent employers in schedule industry,. Mr. Narasimha Murthy stems to have overlooked that construction and maintenance of roads, and building operations are scheduled employments and that in the work charged establishment of the Public Works Department a large number of workers are employed. The Chief Engineer who is in charge of these employments, is undoubtedly competent to be the representative of the employer, namely, the Government.

44. The more substantial question raised by Mr. Narasimha Murthy was whether the Secretary to the Government in the Labour Department and the Commissioner of Labour can be said to be independent persons within the meaning of Section 9. Mr. Narasimha Murthy argued that the Government is interested in enforcing the provision of the Minimum Wages Act, that the Government makes Notification proposing certain rates of minimum wages and hence officers of the Government in the Labour Department are interested persons and cannot be said to be independent persons.

45. On this question there is divergence of judicial opinion. In *Narottamdas v. P.B. Gowarikar*[11], a Bench of the Madhya Pradesh High Court did not accept the stand taken on behalf of the State that the expression "independent persons" as used in Section 9, means persons who are

independent of employers and employees in the scheduled employment. Their Lordships took the view that having regard to the directive principles contained in Articles 42 and 43 of the Constitution, the State is actively interested in wage earners and in the manner of fixation of the minimum wages in any scheduled employment and that if the State is thus an interested party, a government official cannot be said to be an independent person for the purpose of Section 9. Another reason given by their Lordships is that the Government itself often controls or runs some scheduled employment or the other and hence is clearly an employer within the definition given in Section 2(e)(ii).

46. In *Kohinoor Pictures (Private) Ltd. v. State of West Bengal*[12], the reasoning given by Sinha, J. for holding that Government officials cannot be regarded as 'independent persons' is that neither labour nor capital should have the remotest ground for thinking the Government can shape the advice which it seeks to get from the Advisory Board by exerting influence on official members of the Board.

47. In *Bansilal S. Patel v. State of Andhre Pradesh*[13], a Bench of Andhra Pradesh High Court followed the decisions of Madhya Pradesh and Calcutta High Courts.

48. A contrary view has been taken by the High Courts of Punjab, Kerala and Bombay (Vide : AIR 1958 Punjab 425, (1963) 1 Lab LJ 176 : AIR 1963 Kerala 115 and AIR 1964 Bombay 51). According to them, the fact that the government in a larger sense is interested in fixing minimum rates of wages by itself, will not mean that an official of the State Government cannot be said to be an independent person.

49. In *Unichoyi v. State of Kerala*[14], the Supreme Court noticed that the District Labour Officer was nominated as one of the independent members of the Advisory Board, but did not state anything as to whether he could not be appointed an
independent member.

[11](1961) 1 Lab LJ 442 : (AIR 1961 Mad Pra 182)
[12](1961) 2 Lab LJ 741 (Cal)
[13](19651) 1 Lab LJ 28 : (AIR 1965 And Pra 128)
[14] AIR 1962 SC 12

50. With all respect to the High Court of Calcutta, Madhya Pradesh and Andhra Pradesh we think the view taken by the High Courts of Punjab, Kerala and Bombay is preferable. We think the expression "independent person" which is not defined in the Act is used in contradistinction to persons representing employers and persons representing employees. It merely advises the Government which may or may not accept such advice. Even if Government officials may be said to have official bias or interest in enforcing the provisions of the Act, having regard to the purely advisory character of the Board, they cannot be said to have such interestedness as would prevent them from being in an advisory body as independent persons.

51. In AIR 1956 SC 25 the term for which the Advisory Board had been appointed had expired and the Government sought to extend its term after the term originally fixed had expired. It was contended that the term of the Advisory Board could not be so extended as it was already dead. Dealing with that contention the Supreme Court held that the Board appointed under Section 5 of the Act was only an advisory body, that the Government was not bound to accept its recommendations, and consequently procedural irregularities of this character could not vitiate the final report which fixed the minimum wage.

52. Following this decision, a Bench of the Bombay High Court held in *Ramkrishna Ramnath v. State of Maharashtra*[15], that even if an officer of the Government appointed to the advisory committee as an independent person, cannot be so considered, the irregularity in the constitution of the Advisory Board is of a minor character when there are other independent persons whose qualification is not in doubt and such irregularity cannot vitiate the fixation of minimum wages. We are in respectful agreement with the view taken by the Bombay High Court.

53. The petitioners' contention against the validity of the minimum wages fixed, on the ground of defect in the constitution of the Advisory Board must fail.

54. V. It was contended for the petitioners that the Government following the procedure under clause (b) and not that under the Clause (a) of Section 5, is an arbitrary exercise of its discretion, in the circumstances of the case. It was alleged in the petitioners' affidavits that "the ramifications of the hotel business were intricate and extensive with vast differences in every aspect and it was essential in the interest of fairness that necessary data be collected and thorough enquiry be held before the decision was taken."

55. As stated earlier, if the Government considers that it has enough knowledge or information about any scheduled employment to enable it to publish proposals for fixation of minimum rates, of wages, it can proceed under Clause (b) of Section 5(1) Hotel industry is drip of the oldest industries in the country, catering to the most elementary needs of men, namely, food and lodging. The various categories of employees in hotel industry, the nature of their work and the conditions under which they work as matters of common knowledge. As early as in the year 1960, the Government had fixed minimum wages for hotel industry in certain area; but such fixation was held to be invalid on the ground of its not being made applicable for the

[15] AIR 1964 Bom 51

entire industry in the State. If in those circumstances the Government considered that there was no need to appoint any committee and that it had enough materials to publish a proposal under Clause (b) of Section 5(1), it is difficult to say that there was any abuse or arbitrary exercise of the discretion under Section 5 of the Act.

56. VI. The postulate on which the petitioners have contended that the procedure adopted by the Government is violative of principles, of natural justice is that fixation of minimum wages under Section 5 is a quasi judicial act. But it is contended for the State that fixation of minimum wages is purely an administrative act.

57. Before considering the rival contention on this question, we may briefly advert to the view of different High Courts on this point. In *South India Estate Labour Relations Organisation v. Madras State*[16], in considering the relative scope of the Minimum. Wages Act and the Industrial Disputes Act a Bench consisting of Rajamannar, C.J. and Venkatarama Aiyar, J. observed thus :

> "While the adjudication of disputes under Act 14 of 1947 (the Industrial Disputes Act) is to be by a Tribunal exercising judicial functions, the fixation of wages by the Government under Act 11 of 1948 (the Minimum Wages Act) is administrative in character. While an award under Act 14 of 1947 was subject to judicial review by the High Court prior to Act 48 of 1950 (Labour Appellate Tribunal Act) and is under that Act open to appeal to the

Appellate Tribunal, the fixation of wages under Act 11 of 194R is final."

58. The above view was followed by Bench of Travencore-Cochin High Court in *Punchiri Boat Service Ltd. v. State of Travencore-Cochin*[17], of that decision, their Lordships observed :

> "The fixation of minimum rates of wages in respect of any scheduled employment by the appropriate Government is, no doubt an administrative act which is final (See AIR 1955 Madras 45) and is not subject to judicial review on the question of the quantum of wages fixed. If, however, the fixation by the Government is 'ultra vires' their powers under the Act it admits of being so declared and corrected by the Court under Article 226 and/or Article 227 of the Constitution."

59. The above passage was quoted with approval by a Bench of Kerala High Court in *Vasudevan v. State of Kerala*[18],

60. In *N.K. Jain v. Labour Commissioner Rajasthan*[19], the question whether fixation of minimum wages is an executive function which can be delegated by the Central Government to the State Government under Article 258 of the Constitution or whether it is a judicial or quasi-judicial function which cannot be so delegated came up for consideration. Wanchoo, C.J. (as he then was) who spoke for the Bench, observed :

[16] AIR 1955 Mad 45
[17] AIR 1958 Trav. Co 97. At page 102
[18] AIR 1960 Ker 67
[19] AIR 1957 Raj 35

> "It is true that a certain procedure is prescribed for fixation of minimum
> wages. We are satisfied that fixation of minimum wages if an executive function, and delegation was made to the State of Rajasthan rightly under Article 258(1) of the Constitution."

61. As against these decisions, the petitioners' Counsel have not been able to point to any decision which has taken the contrary view namely that fixation of minimum wages is a quasi-judicial act. But the learned Counsel for petitioners contend none of the aforesaid decisions contain any reasoning for coming to the conclusion that fixation of minimum wage is an administrative act and not a quasi-judicial act, and hence this question should be considered by us independently of those decisions.

62. A large number of Indian and English decisions were cited at the Bar for determining whether an act is administrative or judicial or quasi-judicial We think it is unnecessary to refer to all of them in view of several decisions of the Supreme Court. The earliest case on this question is *Province of Bombay v. Khushaldas S. Advani*[20] This decision has been referred to and the law on this point is further elucidated in the later decision *Radheshyam v. State of M.P*[21].

63. After quoting with approval the celebrated definition of a quasi-judicial body given by Atkin, L.J. (as he then was) in *Rex v. Electricity Commissioner*[22] the Supreme Court laid down that the

three requisites should be fulfilled in order that the act of a body may be quasi-judicial act, namely, that the body of parsons

(i) must have legal authority.
(ii) to determine questions affecting rights of parties, and
(iii) must have the duty to act judicially.

64. Applying these tests of fixation of minimum wages, there is no difficulty in holding that the first test is satisfied because the Minimum Wages Act confers on the Government legal authority to fix minimum wages.

65. In regard to the second test there is no controversy that the determination of minimum wages, affects parties namely the employers and the employees. But there is controversy over the questions whether such determination affects only the parties of their legal rights. The learned counsel for the petitioners argued that fixation of minimum wages affects the right of the employer to pay to his employees whatever wages he likes or the right to enter into a contract as mutually agreed to between him (the employer) and the employees. But the learned special Government Pleader argued that fixation of minimum wages does not affect the right of the employer or the employee to enter into a contract of service because even after fixation of minimum wages they are free to enter into a contract, though the rate of wage agreed upon should not be less than the minimum rate fixed by the Government under the Act. Likewise it was argued by the learned Special Government Pleader that there is

[20] AIR 1950 SC 222 [22](1924) 1 KB 171
[21] AIR 1959 SC 107

no such thing as a right to pay whatever wages one wants and that the right to pay wages must be according to law and fixation of minimum wages merely regulates the quantum of wages and does not affect any right of the employer to employ workmen.

66. We think there is considerable force in the arguments of the learned Special Government Pleader. But we think it is not necessary to express any final opinion of this question in the view we take on the third test.

67. As stated by the Supreme Court in Radheshyam's case, AIR 1959 SC 107 the first two items of the definition of quasi-judicial act by Atkin, L.J. may be equally applicable to an administrative act. The real test which distinguishes a quasi-judicial act from an administrative act is the third item in Atkin, L.J.'s definition, namely the duty to act judicially. In the words of Hewart, C.J.,

> "in order that a body may satisfy the required test it is not enough it should have legal authority to determine questions affecting the rights of subjects there must be superadded to that characteristic the further characteristic that the body has the duty to act judicially."

68. It is not always easy to ascertain when an authority is required to act judicially. The following statement of law on the point by Parker, J. In *Rex v. Manchester Legal Aid Committee*[23], was quoted with approval of the Supreme Court in *Board of High School v. Ghanshyam*[24],

"Now it may be mentioned that the statute is not likely to provide in so many words that the authority passing the order it required to act judicially; that can only be inferred from the express provisions of the statute in the first instance in each case and no one circumstance alone will be determinative of the question whether the authority set up by the statute has the duty to net judicially or not. The inference whether the authority acting under a statute where it is silent has the duty to act judicially will depend on the express provisions of the statute read along with the nature of the right affected the manner of disposal provided, the effect of the decision on the person affected and other indicia afford the statute. A duty to act judicially may arise in widely different circumstances which it will be impossible and indeed inadvisable to attempt to definite exhaustively."

69. In *Nageshwara Rao v. Andhra Pradesh State Road Transport, Corporation*[25], Subba Rao, J. (as he then was) who delivered the majority judgement, laid down the following tests :

"Whether an authority has a duty to act judicially should be gathered from the provisions of the particular statute and the rules made thereunder. If an authority is called upon the decide respective rights of contesting parties, in other words if there is a its, ordinarily there will be a duty on the part of the laid authority to act judicially."

[23](1952) 2 QB 413 [25] AIR 1959 SC 308

[24] AIR 1962 SC 1110

70. We shall now examine the provisions of the Minimum Wages Act and Rules thereunder. Section 5 of the Act which deals with the procedure for fixing and revising minimum wages does not provide for any notice to the persons likely to be affected by such fixation or revision, or for giving a hearing to them, or for taking evidence that such person may desire to adduce. Clause (a) of Sub-Section (1) also does not requires the Committees or Sub-Committees to give such notice or to hear such persons or to taken such evidence.

71. Rule 19 of the Mysore Minimum Wages Rules 1958, made in exercise of the powers conferred by Section 30 of the Minimum Wages Act) provides that a Committee or Sub-Committee appointed under Clause (a) of Section 5(1) or the Advisory Board may summon any person to appear as a witness in the course of any enquiry or to produce any book, paper or documents. The provisions of the Code of Civil Procedure relating to summoning and enforcement of appearance of witnesses and production of documents are made applicable.

72. Learned Counsel for the petitioners argued that Rule 19 confers on the parties affected by the fixation of revision of minimum wages a right to adduce evidence. We are unable to accept this contention. Rule 19 it only an enabling provision which given power to the Committee or the Advisory Board to summon witnesses and documents and to take evidence. In the course of any enquiry if such Committee or Sub-Committee finds it necessary to gather any material, it may, in its discretion, summon any person to give evidence or produce documents. It does not make it obligatory for the Committee or the Board to take evidence which any such parties may like to adduce nor does it confer any right on such parties to adduce evidence. Even where witnesses are summoned there is no obligation on the Committee to take their evidence in the presence of such parties or to permit any such party to cross-examine those witnesses.

73. Further, the Committees or Sub-Committees appointed under Clause (a) of Section 5(1) are only investigatory or advisory and they do not themselves decide any matter. Sub-Section (2) of Section 5 does not provide that after receiving the advice of the Committees the Government should publish the report or the advice of the Committee or give notice to the parties, or hear them of even to give opportunity to such parties to make any representation with respect to such advice.

74. Even when the Government follows the procedure under Clause (b) of Section 5(1), all the Government is required to do is to publish in the Official Gazette its proposal and to consider representation of such parties received before a specified date. There is no duty cast on the Government to hear such parties or to take evidence.

75. But learned counsel for petitioners contended that the requirement in Section 6(1)(b) to specify the date on which the proposal would be taken up for consideration, would indicate that on such specified date the Government should hear the parties likely to be affected by the proposal We are unable to draw such an inference. The object of specifying the date on which the proposals and the representations will taken up for consideration is as can be seen in Sub-Section (2), to indicate the date before which representations have to be sent to the Government by persons who desire to make such representations. Section 5 does not expressly nor impliedly provide for Riving a hearing to persons who have sent representations or who may be affected by such proposals.

76. Thus it is seen that neither the provisions of the Act nor the rules thereunder clothe the Government with the procedural attributes or trappings of a Court.

77. Neither the Committee appointed under Section 5(1)(a) nor the Government which considers the advice of such committee or the representations to its proposals, can be said to adjudicate upon the rights of the contending parties. As stated earlier, the function of the Committee appointed under Section 5(1)(a) is investigatory of advisory and not to give any decision and much less to determine the rights of the parties. When the Government considers the advice of such Committee it does not purport to determine the respective rights of the employers and employee's. It merely determines on a consideration of the advice of the Committee what should be the rates of wages for different categories of employees in a scheduled employment, having regard to the concept of minimum wage. Even where the Government follows the procedure under Clause (b) of Section 5(1) and considers the representations with reference to its proposals, the Government merely informs itself for determining the minimum rates of wages so as to ensure certain minimum standard of life for employees. It does not purport to adjudicate the rival claims of employers and employees or to decide their respective rights and liabilities, even if fixation of minimum wages may result in incidentally affecting their rights and liabilities. As stated by Fazl Ali, J. in Kushaldas Advan's case, AIR 1950 SC 222 a good and valid administrative or executive act binds the subject and affects his rights or imposes liability on him lust as effectively as a quasi-judicial act does.

78. It was contended for the petitioners that the existence of a proposition put forward by the Government and the opposition to it by the parties likely to be affected by it, will be sufficient to give rise to a lis and to impose a duty on the authority to decide judicially. We think learned counsel for the petitioners have stated the proposition too widely whether in such circumstances

there arise a lis and a duty to decide judicially, will depend on the nature of such proposal. The Act does not require the adjudication of rights of parties in the process of the determination of the rates of minimum wages and the proposal and the, representations are not in the context of any determination of rights of parties. As stated earlier fixation of rates of minimum wages does not amount to determination of rights of parties.

79. It was next contended that as the determination of minimum wages has to be done on objective data and not according to the subjective satisfaction of the Government, fixation of minimum wages is a quasi-judicial act. As stated by Fazl Ali, J. in Kushaldas Advani's case, AIR 1950 SC 222 a person entrusted to do an administrative act has often to determine questions of fact to enable him to exercise his power : he has to consider facts and circumstances and to weigh pros and cons in his mind before he makes up his mind to exercise his power just as a person exercising a judicial or quasi-judicial function has to do. Thus the mere circumstance that the Government has to act on objective data in fixing minimum wage is not sufficient to render such act quasi-judicial.

80. The process of fixation of minimum wages under the Act is similar to the procedure under the New Towns Act, 1946, for development of a new Town. Section 1(1) of that Act provides that if the Minister is satisfied, after consultation with concerned local authorities that it is expedient in the national interest that any area of land should be developed as a new town by a Corporation established under that Act, he may make an order designating that area as the site for the proposed new town. It is provided in the Schedule to that Act that where the Minister proposes to make an order under Section 1, he shall prepare a draft of the order giving certain particulars and publish it in certain manner, and specify the time within which objections to the proposed scheme may be filed. If any such objection is not withdrawn, the Minister shall, before making the order, cause a public local enquiry and shall consider the report of the person who holds such enquiry. Thereafter the Minister may make the order in terms of the draft or subject to modifications as he thinks fit.

81. In *Frankilin v. Minister of Town and Country Planning*[27], it was contended that the New Towns Act Imposes a judicial or quasi judicial duty on the Minister. Repelling that contention, Lord Thankerton, in the course of his speech in the House of Lords, said thus :

> ".....The Respondent's duties Section 1 of the Act and Schedule I thereto are, in my opinion purely administrative, but the Act prescribes certain methods of or steps in, the discharge of that duty ..... It would seem, accordingly, that the respondent was required to satisfy himself that it was a sound scheme before he took the serious step of issuing a draft order. It seems clear also, that the purpose of inviting objections, and where they are not withdrawn, of having a public inquiry, to be held by someone other than the respondent, to whom that person reports, was for the further information of the respondent, in order to the final consideration of the designation, and it is important to note that the development of the site, after the order is made, is primarily the duty of the development corporation established under Section 2 of the Act. I am of opinion that no judicial duty is laid on the respondent in discharge of these statutory duties, and that the only question is whether he has complied with the statutory directions to appoint a person to hold the public inquiry, and to consider that person's report."

82. Though the Government is expected to take into consideration the diverse aspects of a scheduled employment in reaching a conclusion as to what rates should be determined as minimum wages, it is not required, either expressly or impliedly, by the Act that the Government should act judicially in reaching such a conclusion if that is the true character of fixation of minimum wages, principles of natural justice do not come into play. So long as the procedure provided by the Act is followed, the decision of the Government cannot be assailed as being violative of principles of natural justice.

83. Hence the petitioners contention that the Government should have heard the persons likely to be affected by the fixation of minimum wages or at least the persons

[27] (1947) 2 All ER 289

who had made representations, is unsustainable. Though there was no obligation on the Government to hear persons who had sent representations, the Minister for Labour heard such of them as were present in response to notices sent to them.

84. An important criticism of the procedure adopted by the Government was that the Government fixed higher rates of minimum wages than proposed in the notification dated 28-10-1966. It was argued that if the Government intended to fix rates higher than those proposed in the notification dated 28-10-1966,. it (the Government) should have published a fresh notification proposing those higher rates and afforded opportunity to persons likely to be affected, to make representations with reference to those higher rates; and that unless such procedure was adopted such persons would be taken by surprise and would be deprived of a reasonable opportunity to make representation in respect of those rates.

85. If this argument is accepted it will mean that the Government can ultimately fix only the rates proposed and neither lower rates nor higher rates. But such an argument overlooks that the publication of the proposal is not only for the information of employers who may be affected thereby but also for the information of the workers for whose benefit those proposals are made, and that employees are as such entitled as the employers, to make representation. Just as it is open to the employers to represent that the proposed rates of wages are too high it is open to the employees to represent that the proposed rates are too low. The logic of the contention of the employers that if the Government intends to fix rates higher than those proposed, it must publish a fresh notification proposing those higher rates, necessarily leads to the result that if the Government intends to fix rates lower than those proposed, it must issue a fresh notification pronosing those lower rates, and there would be no end to this process.

86. A similar contention was advanced on behalf of employer in *Gulamaharned Tarasaheb a Bidi Factory v. State of Bombay*[28] Rejecting that contention this is what Gokhale, J. who spoke for the Bench said at page 101 :

> "But then it is contended on behalf of the petitioners that assuming that Government have got the power it revise the rates to the further detriment of the employers, the employers must have a fresh opportunity to make representations showing cause why Government should not so beyond their published proposals. This argument, also, in our opinion, is without any substance. The draft notification contains proposals of Government and they

> are liable to be further revised by reduction or increase in the proposed rates of minimum wages, and when representations are made either by the employers or the employees those representations would be on the basis that the proposals are liable to be so altered."

We are in respectful agreement with these observations.

87. VII. It was urged for the petitioners that fixation of minimum wage was invalid on the ground that the Advisory Board had not been consulted by the Government before so doing. To this the answer on behalf of the State was two fold that the Government
[28] AIR 1962 Bom 97
had consulted the Advisory Board and that such consultation is not compulsory.

88. In the counter-affidavit filed on behalf of the State it is stated, that the Advisory Board was consulted by the Government prior to publishing its proposal in the notification dated 28-10-1966 The proceedings of the Advisory Board dated 8-7-1966 have been produced as Enclosure-1 to the counter-affidavit.

89. Learned counsel for the petitioners contended that the Advisory Board should have been consulted after the publication of the proposal and receipt of representations made thereto. But Section 7 of the Act does not state at what stage the Advisory Board may be consulted by the Government Even the proviso to Section 5(2) which makes consulting the Advisory Board compulsory in case of revision of rates of minimum wages, does not state that such consultation should be only after the receipt of representations to the proposal for revision of rates.

90. We do not see any reason why the Government should consult the Advisory Board and have the benefit of advice of such a representative body of employers, employees and independent persons, before publishing its proposals for fixing minimum rates of wages.

91. It was also pleaded on behalf of the State that consulting the Advisory Board is not compulsory in the case of initial fixation unlike in the case of revision of minimum wages. The proviso to Section 5(2) of the Act reads :

> "Provided that where the appropriate Government proposes to revise the minimum rates of wages by the mode specified in clause (b) of Sub-Section (1) the appropriate Government shall consult the Advisory Board also.

92. From the proviso it is clear that in the case of revision of minimum rates of wages consulting the Advisory Board is compulsory. If the Legislature intended that such consultation should necessarily be done even for initial fixation of minimum wages, it is reasonable to expect that the Act would have expressly stated so as to it has done in the case of revision of minimum wages. In the absence of such an express provision, it is proper to construe that consulting the Advisory Board is not compulsory in the case of initial fixation of minimum rates of wages.

93. Learned counsel for the petitioners referred to Section 7 of the Act which reads;

> "7 For the purpose of coordinating the work of committees and sub-committees appointed

under Section 5 and advising the appropriate Government generally in the matter of fixing and revising minimum rates of wages, the appropriate Government shall appoint an advisory Board."

All that Section 7 states is that it is the function of the Advisory Board to advise the appropriate Government in the matter of fixing and revising minimum rates of wages. Section 7 does not state, either expressly or by necessary implication, that the Government is bound to consult the Advisory Board for initial fixation of minimum rates off wages.
94. The language of Section 8(1) which provides for appointing the Central Advisory Board, is similar to that of Section 7. If the contention that consulting the Advisory Board is compulsory for fixation of minimum rates of wages, should be accepted, then it would lead to the conclusion that consulting the Central Advisory Board would be equally compulsory before initial fixation of minimum rates of wages by the State Government. The learned counsel for the petitioners did not even suggest that the Central Advisory Board should necessarily be consulted by the State Government before initial fixation of minimum rates of wages. A construction which would lead to such inconvenient results does not comment itself to us. The contention of the State Government that it is not compulsory to consult the Advisory Board for initial fixation of minimum wages is well founded.

95. VIII. It was strenuously contended for the petitioners that the wages fixed by the impugned notification are not minimum wages but 'fair wages' or 'living wages' and that the Government was not competent to fix the impugned rates of wages.

96. The concepts of 'minimum wage' 'fail wage' and 'living wage' have been explained by the Committee on Fair Wages in its Report and have been accepted by the Supreme Court.

97. 'Living Wage represents a standard of living which provides not merely for a bare physical subsistence but for the maintenance of health and decency the measure of frugal comfort and some insurance against the more important misfortunes.

98. 'Minimum Wage' must provide not merely for the bare sustenance of life, but for the preservation of the efficiency of the worker providing for some measure of education medical requirements and amenities.

99. 'Fair Wage' lies in between, with 'minimum wage' as the lower limit and 'living Wage' as the upper limit and it dependi on factors like productivity of labour, prevailing rates of wages, level of national income and its distribution, and the place of the industry in the economy of the country.

100. Learned Counsel for the petitioners argued that minimum wage which the Minimum Wages Act enable the Government to fix irrespective of the capacity of the employer to pay such wages, is the bare minimum or subsistence wage and any wage over and above such bare subsistence wage, which can only be fixed after taking into account the capacity of the entire industry and the individual employers, is outside the scope of Minimum Wages Act. Strong reliance was placed on the following observations of Bhagvati, J. in AIR 1958 SC 578 at p. 603 :

"It must however be remembered 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 the capacity of the industry to pay and no fixation of wages which ignores this essential factor of the capacity of the industry to pay could ever be supported."

101. The above observations which were relied on for the employers, were considered in a later decision of the Supreme Court. AIR 1962 SC 12 Gajendragadkar, J. (as he then was) who spoke for the Court explained these observations thus at page 19.

".....We do not think that the observations in question was intended to lay down the principles that whereas a minimum wage can be laid down by an industrial adjudication without reference to an employer's capacity to pay the same, it cannot be fixed by a statute without considering the employer's capacity to pay. Such a conclusion would be plaint illogical and unreasonable. The observations on which Mr. Nambiar relies do not support the assumption made by him and were not intended to lay down any such rule. Cases are not unknown where statutes prescribe a minimum and it is plain from the relevant statutory provisions themselves that the minimum thus, prescribed is not the economic or industrial minimum but contains several components which take the statutorily prescribed minimum near the level of the fair wage, and when that is the effect of the statutory provision capacity to nay may no doubt have to be considered. It was a statutory wage structure of this kind with which the Court was dealing in 1959 SCR 12 : AIR 1958 SC 578 because Section 9 authorised the imposition of a wage structure very much above the levy of the minimum wage and it is obvious that the observations made in the judgement cannot and should not, be divorced from the context of the provisions with respect to which it was pronounced. Therefore we feel no hesitation in rejecting argument that because the Act prescribe minimum wage rates it is necessary that the capacity of the employer to bear the burden of the said wage structure must be considered."

102. After quoting with approval the definition of 'Minimum Wages', in the Report of the Fair Wages Committee, his Lordship stated that the Minimum Wages Act contemplating that minimum wage rates should to fixed with dual object of providing sustenance and maintenance of the worker and his family and preserving efficiency as a worker.

103. In view of the pronouncement of the Supreme Court, it is clear that the statutory minimum wage cannot be equated to bear minimum wage or subsistence wage.

104. Mr. V.G. Rao, learned Counsel for the Bangalore Hotel and Canteen Workers' Union (which has been impleaded as respondent on its application in Writ Petition No. 1422 of 1967), contended that the onus of establishing that the rates of wages fixed by the Government, are in excess of rates of minimum wages, is on the petitioners who have challenged those rates, and that the petitioners have not placed any material to discharge that onus.

105. The learned counsel for the petitioners argued that the impugned rates are considerably higher than the rates of minimum wages fixed in the same employment in the States of Maharashtra and Andhra Pradesh and that the impugned rates are higher than the rates of minimum wages fixed by the State Government in other scheduled employments like Tile industry, Rice Mills and oil crushing industries.
106. A mere comparison with the rates if minimum wages fixed in hotel industry by other States and the existence of some difference between such rates, are not sufficient to assume that the rates fixed by the Mysore Government are much above the minimum rates. During the course of these arguments, the notifications issued by the States of Andhra Pradesh and Maharashtra fixing minimum wages in hotel industry, were read to us. Even apart from local differences in living conditions, it is seen that these notifications were issued a few years ago, while the impugned notification has been issued in June 1967. It is a matter of common knowledge that prices of essential commodities have increased steeply during the last 4 or 5 years. The notifications (fixing the rates of minimum wages) issued in different years naturally reflect the level of prices of essential commodities and the cost of living at the respective dates of issuing them. Hence no useful inference can be drawn from a comparison of the rates in these notifications.

107. The notification issued by the State Government on 21-8-1967 fixing minimum wages in Tile industry has been produced by the petitioners. Learned counsel for the petitioners pointed out that in that notification the rate of minimum wage fixed for the category of employees, namely Clerks, Typists, Cashiers and Storekeepers, is only ₹ 111.25 per month, whereas for the same category of employees in hotel industry the rates of minimum wages are ₹ 130, ₹ 110 and ₹ 100 in Zones 'A' 'B and 'C' respectively. It is seen that it is only in Zone 'A' that for this category of workers In hotel industry the rate of minimum wage is higher : while in Zone 'B' it is slightly lower and in Zone 'C' it is considerably lower than that fixed in Tile industry. Thus it is not correct to say that the rates of minimum wages fixed in hotel industry for this category of employees are higher than those in Tile industry, by comparing the rate fixed for the topmost Zone (Zone 'A') in hotel industry with the uniform rate fixed in Tile industry without differentiation of rates of different localities.

108. Mr. Narasimha Murthy argued that the rate of minimum wage must be the same in all scheduled employments and for all categories of workers in the same employment as the minimum needs of workers would be the same irrespective of the employment in which they are engaged and irrespective of the nature of the work done by them. This argument of Mr. Narasimha Murthy overlooks Section 3(3) of the Act which expressly empowers fixing different rates of minimum wages in different scheduled employments and for different classes of workmen in the same scheduled employment. The Supreme Court observed in AIR 1963 SC 806 at P. 809 :

> "Having regard to the diversity of conditions prevailing and the number of industries covered by the Act, the Legislature could obviously not fix uniform minimum rates of wages for all scheduled industries, or for all localities in respect of individual industry."

109. The concept of minimum wage does not imply that there should be an absolute uniform rate of wage for all workmen. There can be variation in the rate of minimum wage according to

diverse factors like the nature of work, the degree of education, training and skill required for the job, the degree of responsibility and one-rousness of the job the conditions under which the workman works and the hazards of the occupation, which, in addition to being relevant facts, have also a bearing on the efficiency of the workman. What may be an appropriate rate of minimum wage for an unskilled worker may not be one appropriate for a skilled worker; what may be an appropriate rate of minimum wage for a manual labourer may not be appropriate for the category of employees like Clerks, Typists, Cashiers and Store-keepers.

110. Mr. V.G. Rao drew our attention to the fact that the Committee appointed by Kerala Government to enquire into the question of minimum wages in Tile industry opined in the year 1958 that a minimum rate of wage of ₹ 2.84 per day would be necessary for the subsistence of worker and his family and for maintenance of his efficiency. Mr. Rao submitted that that rate was held by the Supreme Court in Unichoyi's case to represent the daily minimum to maintain a subsistence plus standard. Mr. Rao argued that if ₹ 2.84 per day represented the daily minimum to maintain a subsistence plus standard in Kerala in the year 1958, the impugned rates of wages fixed in June 1967 in Mysore State, cannot be said to be in excess of rates of minimum wages, having regard to the steep rise in prices of essential commodities and the cost of living since 1958. Mr. Rao added that the cost of living cannot be very much different in Mysore State than in Kerala State. We think there is considerable force in this contention.

111. Mr. Rao is right in contending that the petitioners have not placed any materials to show that the impugned rates of wages are in excess of appropriate rates of minimum wages or that they (impugned rates) amount to rates of fair wages. When the petitioners have challenged the rates fixed by the impugned notification, it is for them to establish that these rates are above minimum wages and beyond the scope of the Minimum Wages Act.

112. IX. The contention of the petitioners that the Government should have taken into account the capacity of the industry to pay the rates of wages fixed by the impugned notification, proceeds on the premise that the wages fixed by the impugned notification are fair wages and not minimum wages. But we have already held that it is not established that the impugned rates are in excess of the rates of minimum wages. It is well settled that the capacity of the industry or of an individual employer to pay the rates of minimum wages, is immaterial and irrelevant. As stated by Gajendragadkar, J. (as he then was) in *Crown Alluminium Works v. Their Workers*[29]. if an employer cannot maintain his enterprise without cutting down the wages of his employees below even minimum wage he would have no right to continue his enterprise on those terms.

113. X The division of the State into three Zones, 'A' 'B' and 'C' and fixing different rates of minimum wages for different zones, were challenged ' by the petitioners. This contention has no substance, as Section 3(3)(a)(iv) of the Act clearly empowers the Government to fix different rates of minimum wages for different localities.

114. XL. It was next contended by learned counsel for the petitioners that the classification of different areas into three zones had been done arbitrarily and not on

[29] AIR 1958 SC 30 at p. 34

any rational basis. The basis for classification of the State into three zones has been explained in the recommendations of the Advisory Board. Factors like the basic rates of wages, general

economic conditions, industrial development of the area and the cost of living, have been taken into account for classification of zones. As stated earlier, Zone 'A' consists of Cities of Bangalore and Mangalore; while Zone 'B' consists of District Headquarters and a few important industrial towns outside those District Headquarters, while Zone 'C' consists of rest of the area in the State. It is a matter of common knowledge that on account of large population and vast industrial and economic and other activities the cost of living and the level of wages in the metropolice of Bangalore are generally higher than those in the rest of the State. Likewise, it is a matter of common knowledge that the cost of living and the level of wages in District Headquarters and other industrial towns included in Zone 'B' are generally higher than those in other towns and rural area.

115. However, inclusion of Mangalpre in Zone 'A' was challenged by the proprietors of hotels and eating houses in Mangalore City. It has been averred by those petitioners that population of Mangalore was only 1,60,000 while that of Bangalore was 13,00,000 that Bangalore is a metropolie having a Corporation while Mangalore is only a municipality, that Mangalore is not comparable to Bangalore in industrialization and that in fact the cost of living index figure of Mangalore is lower than those of Bellary, Bhadravathi and Davanagere. It was contended by them that Mangalore should be included in Zone 'B'.

116. But in the representation made by the South Kanara District Hotel proprietors' Association (marked as Exhibit D in W. P. No 1621 of 1967) it has been stated that raw materials are atleast 5 per cent costlier in Mangalore than in Bangalore and that vegetables are cheaper in Bangalore than in Mangalore by 10 to 20 per cent. This statement amounts to an admission that prices of many essential commodities which go to make up the cost of living, are higher in Mangalore than in Bangalore. Moreover we can also take judicial notice of the fact that Mangalore is the only major port in Mysore State and has a large volume of foreign trade in addition to considerable volume of industrial and commercial activities. In the counter affidavit filed on behalf of the State, it has been explained that the cost of living in Mangalore
was almost equal to that in Bangalore and hence Mangalore was included in Zone 'A'.

117. Mr. B.P. Holla learned counsel for the petitioners who are proprietors of hotels in Mangalore, referred to cost of Living Index figures of Mangalore, Bangalore and several towns placed in Zone 'B' and submitted that the cost of Living Index figures of Mangalore are lower than those of other places From this, he wanted to establish that cost of living in Mangalore was not higher but lower than that in many towns included in Zone 'B'.

118. Mr. Holla does not appear to have noticed the distinction between the cost of living and the Cost of living Index. The former denotes the amount of money required for purchasing certain units of commodities and services required for a given standard of living of a person or his family. The cost of Living Index represents merely the percentage of rise or fall in the cost of living at different points of time compared to that at a particular starting point, called the base year or date. Taking the cost of living at a particular place, in the base year at 100, increase or decrease of the cost of living at that place at subsequent points of time, is shown. Hence the Cost of Living Index merely shows the percentage of rise or fall in the cost of living in a given place as compared to that in the base year. A comparison of Cost of Living Index figures of different places will only show the extent (percentage) of rise or fall in the cost of living in different places. But these figure do not furnish any comparison as to the cost of living in terms of money

as between different places, at any point of time.

119. Moreover, in the figures of Cost of Living Index, for different places, published by the authorities, the base year is not the same for all the places. This is presumably because compilation of the Cost of Living Index commenced in different places in different years. For Bangalore the base year is 1936 and while for Bangalore the base year is the period between 1-7-1958 to 30-6-1959. Hence the cost of living index of Bangalore in July 1967 will show by what percentage the cost of living hat increased in Bangalore since the year 1936 while the Cost of Living Index of Mangalore in July 1967 will show by what percentage the cost of living has increased in Mangalore since the year 1958-59. Hence any comparison of the figures of Cost of Living Index of these two cities in July 1967 will not afford any useful basis to ascertain whether the cost of living in terms of money, in one place is higher or lower than that in the other place in July 1967.

120. Thus none of the petitioners had placed any materials to persuade us to disbelieve the statement made on behalf of the Government that the cost of living in Mangalore is almost the same as in Bangalore.

121. It was next contended for the petitioners that all hotels and eating houses within each zone cannot be treated as being similarly situate, that within each zone there are big hotels and eating houses having large business and small hotels and eating houses having moderate or even small turnover, that in Bangalore City restaurants in busy localities like Chickpet, Avenue Road and Kempegowda Road, cannot be compared to restaurants in the farthest extension and outskirts of the city and that its irrational and unreasonable to put into the same class such diverse establishments merely because they are located in the same city or town This argument proceeds on the postulate that the rates of minimum wages should vary according to the capacity of the employer to pay. But as stated earlier, the capacity of the employer is not a relevant factor for fixing rates of minimum wages. What are relevant are the cost of living and the general level of wages, in a locality. These factors remain the same In each city or town whether the establishment of any individual employer is big or small whether he has large business or small turnover, whether he is prosperous or not.

122. Mr. Narasimha Murthy argued that the areas comprised in Zone 'C' are diverse, that there are cities with a population of over a lakh, big towns with a population of 40 to 50 thousand, small towns with a population of only 8 to 10 thousand, big villages and small hamlets and that such diverse places cannot reasonably form a class.

123. Any classification of localities can only be done broadly. It is too much to expect that all localities put under any class will be absolutely uniform. It may be, that cost of living and the level of wages are not uniform in all the localities comprised in Zone 'C'. But that by itself will not invalidate the classification of the State into three broad categories. If the contention that all localities comprised in a zone should be uniform. In regard to population cost of living and level of wages should be accepted there should be infinite number of zones, according to every small variation of population, the cost of living and the level of wages. Any classification cannot be mathematically precise; but, only be approximate and so long as the difference between localities in different zones is real the classification should be upheld even though there may be some difference between localities within each zone, and there is no absolute uniformity.

124. XII. Mr. R.M. Seshadri, Learned counsel for some of the petitioners complained that neither the Act nor the impugned notification contains any definition of 'residential hotels' and 'eating houses' and that in the absence of such definition it cannot be ascertained what exactly is sought to be included within the ambit of the impugned notification.

125. It is not necessary that a statute should define every word or term which it uses or which conies within its ambit. In the absence of such definition in the statute, words and terms till have their ordinary or dictionary meaning unless the context requires otherwise. The meaning of the terms 'residential hotels' and 'eating houses' are well known. The mere fact that in border line cases there may be some doubt or difficulty in ascertaining whether a particular establishment falls within or the other of these two expressions, does not render the meaning of these expressions vague, or ambiguous in the absence of definition in the statute. Such difficulty in border line cases cannot be eliminated however precisely a term is defined in a statute.

126. Likewise there is no merit in the contention that the impugned notification does not define various, categories of employees like 'Cooks' 'assistant Cooks', 'servers' and 'cleaner'. The categories of these employees and the nature of their functions and duties are well known even in the absence of any definition. Should any controversy arise in any particular ease whether an employee falls within one or other of these categories, it will be, for the Authority appointed under Section 20 of the Act to adjudicate claims under the Act to decide such question after taking evidence about the functions and duties performed by such employee.

127. XIII. More substantial is the contention of the petitioners that in the impugned notification the Government should have fixed different rates of minimum wages for children adolescents and apprentices. The impugned notification makes no distinction between adults, adolescents and children nor between apprentices and full-fledged workmen.

128. Section 3(a)(iii) provides that in fixing or revising minimum rates of wages under this section different minimum rates of wages may be fixed for adults, adolescents children and apprentices.
129. Section 2(a) of the Act states that unless there is anything repugnant in the subject or context the terms 'adult', 'adolescent' and 'child' shall have meanings respectively assigned to them in Section 2 of the Factories Act, 1948.

130. Section 2 of the Factories Act defines these terms as follows :

> (a) "adult" means a person who has completed eighteenth year of age.
> (b) "adolescent" means a person who has completed his fifteenth year of age but has not completed his eighteenth year.
> (c) "child" means a person who has not completed his fifteenth year of age.

131. Section 30(2)(g) provides that the appropriate Government may make rules prescribing the number of hours of work which shall constitute a normal working day. The relevant parts of Rule 25 of the Mysore Wages Rules, 1958 read :

25. Number of hours of work which shall constitute a normal working day :

(1) The number of hours which shall be constitute a normal working day shall be -
(a) in the case of an adult, nine hours;
(b) in the case of a child, four and a half hours;
** ** **
(4) The number of hours of work in the case of an adolescent shall be the same as that of an adult or a child according as he is certified to work as an adult or a child by a competent medical practitioner approved by the Government.

132. Thus it is seen that the normal working day of a child and of an adolescent certificate to work as a child, consists of only half the number of hours of the normal working day of an adult and of an adolescent certified to work as an adult.

133. Learned Counsel for the petitioners urged that as a child and an adolescent certified to work as a child work for shorter number of hours that adults, it is not reasonable to provide that the former should be paid the same rates of minimum wages as the latter. It was argued that the impugned notification should have fixed substantially lower rates for children and adolescents certified to work as children, than those for adult workers. At one stage the learned Special Government pleader contended that minimum rates of wages have no relation to the quantum of work done by workmen and that such minimum rates must be related to the minimum needs of a workman irrespective of the quantum of work done by him. It was also argued that a child or an adolescent who is still in the stage of growth, needs more food and better nourishment than an adult and hence the Government was justified in fixing uniform rates of minimum wages for adults, adolescents and children.

134. But learned counsel for the petitioners argued that minimum wages are intended to provide for the subsistence and certain other needs of not only the workman but also his family consisting of himself, his spouse and two children, that while an adult worker has the responsibility of maintaining not only himself but also his family, an adolescent or a child has no such responsibility and hence even looking at the rates of minimum wages from the point of view of the needs of the workman, fixation of lower rates, for adolescents and children than for adults, would be justified. On the other hand the learned Special Govt. Pleader argued that children and adolescents in employment, generally support their parents, brothers and sisters.

135. We think the question of appropriate rates of minimum wages for children and adolescents must be viewed from the point of work done by them. Even minimum wage like any wage, is a return for the work done by the workmen. It is not a gratuitous payment to the workman irrespective of any work being done or not done or irrespective of the quantum of work done by him. If that is the true nature of the minimum wage, it is only reasonable that a child worker who is statutorily prohibited from working for more than four and half hours a day should be said less than an adult worker who can be made to work for nine hours a day. It is in recognition of this position that Section 3(a)(iii) enables the Government to fix different rates of minimum wages for adults, adolescents, children and apprentices. In AIR 1963 SC 806 the Supreme Court emphasized the legal position thus at page 810 :

"Again of necessity, different rates have to be fixed in respect of the work performed by adults, children and apprentices."

136. Though at one stage the learned Special Government pleader tried to justify non-differentiation between adults, adolescents and children in the impugned notification he later submitted that the rates of minimum wages fixed in the impugned notification might be treated as being applicable only to adult workmen and such adolescents certified to work as adults, and not for children and adolescents certified to work as children, leaving it open to the Government to fix separate rates for the latter after following the procedure according to law.

137. But learned counsel for petitioners argued that the impugned rates of minimum wages should be held as not being applicable to any adolescent irrespective of his being certified to work as a child or adult. It was argued that even an adolescent certified to work as an adult is not as useful as an adult worker both from the point of quantity and quality of work done by him. But the petitioners have not placed any materials in support of this assertion. In the absence of any such material, we do not see why an adolescent who is certified to work as an adult, and who works for the same number of hours as an adult, should not be paid the same rate of minimum wage as an adult.

138. Hence we hold that the rates of minimum wages fixed in the impugned notification do not apply to children and adolescents certified to work as children. However, it is open to the Government to fix different rates of minimum wages for children and adolescents certified to work as children, after following the procedure under the Act.

139. An apprentice according to the dictionary meaning is a learner of a craft or trade. It is obvious that when he is still learning his work will not be as valuable to the employer as that of a trained worker. The contention of the petitioners that the rate of minimum wages fixed for an apprentice should be lower than that for a trained worker appears to us to be reasonable. It is in recognition of this position that Section 3(a)(iii) of the Act enables the Government to fix for apprentices' rates of wages different from those for ordinary workers.

140. At first the learned Special Government Pleader sought to justify the absence of differentiation in the impugned notification between apprentices and other workmen on the ground that if lower rates of minimum wages are fixed for apprentices, the employers will misuse such differential rates by classifying even a trained worker as an apprentice and will pay him lower rates of wages. We do not see any force in this argument. If any dispute arises whether a workman is an apprentice or a trained workman, it will be for the Authority appointed under Section 20 of the Act, to decide that question after taking evidence as to whether he is still learning the job. If any employer tries to take unfair advantage by calling a trained workman as an apprentice the aggrieved workman will not be without a remedy. The mere possibility of abuse of a structure of minimum wages providing for lower rates to apprentices, is no argument against such structure if it is otherwise rational and justifiable.

141. Later, the learned Special Government Pleader submitted that the rates of minimum wages fixed in the impugned notification may be treated as not being applicable to apprentices leaving it open to the Government to fix separate rates of minimum wages for apprentices. We hold that the

rates of minimum wages in the impugned notification shall not apply to apprentices. We make it clear that it will be open to the Government to fix separate rates of minimum wages for apprentices after following the procedure under the Act.

142. XIV. The note at the foot of the impugned notification reads that where food is provided. ₹ 40, ₹ 35 and ₹ 30 per month may be set off in Zones 'A', 'B' and 'C' respectively against the minimum wages payable to workers in the respective zones.
143. It is common ground that in most of the hotels and eating houses employers provide food to their employees without charges. The impugned notification does not make it compulsory for the employers in hotel industry to provide food for their employees. All that the notification provides is that if employers choose to provide food to their employees, deduction for such food from the minimum wages shall not exceed the rates set out in the note in the respective zones.

144. The attack against this note is two fold that this valuation of food (provided to workers) is very low and that the Government had no authority to fix the valuation of such food.

145. Petitioners have alleged in their affidavits that the value fixed for food supplied to employees, is very low and has no relation to the market price and hence is arbitrary and whimsical. In W. P. No. 1431 of 1967 the petitioner has set out in Exhibit 'C' his calculation of the value of food supplied to his employees. According to him the market value of food supplied to an employee is ₹ 2.99 per day or ₹ 89.70 per month.

146. In the counter-affidavit filed on behalf of the State, the note to the impugned notification has been sought to be justified thus :

> "Absence of fixation of value of the amenities would result in exploitation of labour by claiming more than what is ascribable to the cost of such amenities. Further while fixing that sum it is not possible to take individual hotel into account as conditions vary from hotel to hotel. The Notification being general in nature, Government considered the sum attributable to the cost of food and other amenities should be fixed at the figures mentioned in the notification. It is however common experience that the food and other amenities given to workmen is not same thing which a customer is offered. The petitioner however has failed to establish that the deduction allowed is invalid by substantiating his contention by producing necessary material."

147. We think the State is right in contending that the quantity, quality and value of food supplied by the employers to employees, are not uniform and vary from establishment to establishment and that it not possible to value separately food supplied to employees in each individual establishment. Government can only fix uniform rates for the value of food supplied in different zones, for the purpose of deduction from minimum wages. Hence the question is whether the value fixed by the Government is unreasonably low. In the representation sent by the all Mysore Hotels Association to the proposal to fix minimum rates of wages, the employers had suggested that the value of food should be fixed at ₹ 45 per month for Zone 'A' and ₹ 40 per month for

Zone 'C'. Thus it is seen that the rates fixed towards the value of food in the note for three Zones are not very much different from those suggested by a representative body of the proprietors of hotels and eating houses in the State. There is considerable force in the contention of the State that generally the quality of food that is supplied to employees is not the same as that supplied to customers in hotels and eating houses. In the circumstances we are unable to hold that the value fixed in the note for food supplied to employees in different zones, is unreasonably low or arbitrary or whimsical.

148. The more important contention regarding the fixation of value of food in the note, is that the Government had no power to fix such value. To appreciate this contention, it is necessary to set out certain provisions of the Act and the Rules thereunder.

149. Relevant parts of Section 2(h) of the Act which defines 'Wages' read :

2. In this Act, unless there is anything repugnant in the subject or context.-

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

The relevant parts of Section 11 of the Act reads :

11. (1) Minimum wages payable under this Act shall be paid in cash.

> (2) Where it has been the custom to pay wages wholly or partly in kind, the appropriate Government being of the opinion that it is necessary in the circumstances of the case may by notification in the Official Gazette, authorize the payment of min i-mum wages either wholly or partly in kind.
> (3) If the appropriate Government is of the opinion that provision should be made for the supply of essential commodities at concession rates, the appropriate Government may, by notification in the Official Gazette, authorize the provision of such supplies at concession rates.
> *** ***

150. Clause (o) of Section 30(1) of the Act empowers the appropriate Government in make rules to prescribe the mode of computation of the cash value of wages in kind and of concessions in respect of supplies of essential commodities at concession rates. Clause (d) of Section 30(1) empowers rules being made to prescribe the time and conditions of payment of, deductions

permissible from, wages. Rule 21(1) of the Mysore Minimum Wages Rules, 1958 reads :

21. Mode of computation of the cash value of wages in kind and of concessions :

> (1) the retail prices at the nearest market shall be taken into account in computing the cash value of wages paid in kind and of essential commodities supplied at concession rates. This computation shall be made in accordance with such directions as may be issued by the Government from time to time.

Relevant parts of Rule 22(2) reads :

22. Time and conditions of payment of wages and the deductions permissible from wages :-

> (1) * * * * * *
> (2) Deductions from the wages of a person employed in a scheduled employment shall be on one or more of the following kinds :-
> (i) * * * * * *
> (ii) *****
> (iii) ******
> (iv) ******
> (v) Deductions for such amenities and services supplied by the employer as the Government may by general or special order authorize.

151. The contention of learned counsel for the petitioners was that food customarily supplied by the employers in hotel industry to their employees, constitutes payment of wage partly in kind, that under Section 11(4) of the Act the cash value of such wage in kind shall be estimated in the prescribed manner, and that under the Rule 21(1) of the Mysore Minimum Wages Rules, the cash value of such wage in kind has to be computed taking into account the nearest market value and in accordance with such directions as may be issued by the Government from time to time. It was urged that the power of the Government under Rule 21(1) is merely to give directions as to the manner of computing the cash value of wages paid in kind and that the Government itself has no competence to compute the cash value of such wages in kind. It was also argued that the cash value of food supplied to employees, had to be computed with reference to the retail price in the nearest market, namely the place in which each hotel of the eating house is situate.

152. The rival contention of Mr. V.G. Rao was that food provided by employers to employees in hotel industry, must be regarded as an amenity, that under Rule 22(2)(iv) the Government may by general or special order, authorize deductions for such amenity supplied by the employer from the wages, and that the note in the impugned notification may be regarded as a general or a special order authorizing such deduction.

153. Even if supply of food to employees can be regarded as wage in kind, in order that the employer may pay his employees partly or wholly in kind, it is necessary under Section 11(2) of the Act that the appropriate Government is of opinion that it is necessary in the circumstances of the case that wages should be paid in kind and that the Government should, by means of a

notification, authorize payment of minimum wages wholly or partly in kind. But it is not shown that there is a notification issued by the Government authorizing employers in hotel industry to pay part of the wages to their employees in the form of food. Learned counsel for petitioners argued that the note in the impugned notification can be read as the notification making such authorization. But we think that it is more reasonable to read that note as providing for deduction of the value of an amenity, namely, food than as authorizing payment of minimum wages partly in the form of food.

154. However, learned counsel for petitioners argued that it would not be reasonable to regard food supplied by employers to the employees in hotel industry, as an amenity, they referred to the meaning of the term 'amenity' in Shorter Oxford Dictionary as "the quality of being pleasant or agreeable: pleasant places, pleasant ways or manners."
155. Mr. Holla invited our attention to the decision of the Court of Appeal in In Re, Ellis and Ruislip-Northwood Urban District Council (1920) 1 KB 343. Referring to the term 'amenity' occurring in the Housing, Town Planning Act, 1909. Scrutton, L.J said : "The Word, 'amenity' is obviously used very loosely; it is I think, novel in an Act of Parliament, and it appears to mean "pleasant circumstances or feature, advantage." We see no reason why food provided by the employers to their employees in hotel industry, cannot be regarded as an advantage and why that advantage should not be regarded as an 'amenity' within the meaning of the Minimum Wages Act.

156. Thus we are unable to accept the contention that the Government had no power to fix the value of food supplied to employees, for the purpose of deduction from the minimum wages payable to those employees.

157. XV. Finally it was contended for the petitioners that the impugned notification should have provided for deduction from minimum wages the value of their amenities like lodging, water and light provided by employers to their employees in hotel industry. This argument overlooks the definition of "Wages" in Clause (h) of Section 2 of the Act. Sub-clause (i) of that clause expressly states that wages shall not include any house accommodation, supply of light, water or medical attendance. Hence no deduction is permissible from wages towards the value of amenities like lodging, water and light.

158. In the result, the only limited extent to which these petitions succeed is that the rates of minimum wages fixed by the impugned notification, are declared as not being applicable to children, adolescents certified to work as children, and apprentices.

159. All other contentions fail. Subject to what has been stated above, we dismiss these petitions. In the circumstances we direct parties to bear their own costs.
Order accordingly.