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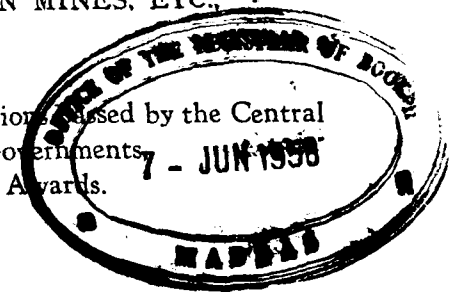
JUNE, 1958.

INDIAN FACTORIES JOURNAL

A FORTNIGHTLY JOURNAL OF THE LAW RELATING TO
FACTORIES, LABOUR, WORKMEN'S COMPENSATION,
INDUSTRIAL DISPUTES, EMPLOYEES' INSURANCE,
PAYMENT OF WAGES, PROVIDENT FUNDS,
LAW REGULATING WORK IN MINES, ETC.,

WITH

The Acts, Ordinances, Rules and Notifications issued by the Central
Government and the State Governments,
and Reports of Cases and Awards.



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Madras Industrial Employment (Standing Orders) Rules—Amendments.

(G. O. Ms. No. 1246, Industries, Labour and Co-operation, dated 31st March, 1958,)*

In exercise of the powers conferred by section 15, read with section 2(b) of the Industrial Employment (Standing Orders) Act, 1946 (Central Act XX of 1946), the Governor of Madras hereby makes the following amendment to the Madras Industrial Employment (Standing Orders) Rules, 1947, published in the late Development Department Notification No. 47, dated the 10th November, 1947, on pages 229-234 of the Rules Supplement to Part I of the *Fort St. George Gazette*, dated the 9th December, 1947, as subsequently amended, the same having been previously published as required by section 15(2) of the said Act:—

AMENDMENT.

In the said rules for sub-rule (2) of rule 6-A, the following sub-rules shall be substituted, namely:—

“ 6-A (2). On receipt of the draft modification to the certified Standing Orders from a workman or from his representative for certification under section 10 (2), the Commissioner of Labour, Madras, shall forward a copy thereof together with a notice in Form AAA to the employer as well as to the trade union, if any, of the workmen requiring them to submit their objections, if any, to the certification of the modification within fifteen days from the date of receipt of the notice. Where there is no trade union, the Commissioner of Labour shall require the employer to publish a copy of the draft modification to the Standing Orders and a notice in Form AAAA on the notice board of the establishment.

6-A (3). Where the procedure prescribed in sub-rules (1) and (2) is followed, a copy of the Standing Orders or the modification to the Standing Orders approved for the establishment shall be published on the notice board of industrial establishment within seven days of the certification of the Standing Orders.”

In the appendix after Form AA the following forms shall be inserted, namely:

FORM AAA.

[Rule 6-A (2).]

Notice.

To

The (name of the employer and name of the Trade Union).

Please take notice that , a workman of (name of industrial establishment) has submitted to me the enclosed draft modification to the certified Standing Orders proposed by him for adoption in the industrial establishment. Any objections which you desire to make to the draft Standing Orders should be submitted to me within fifteen days from the date of receipt of this notice*. If no objections are received within fifteen days from

*Fort St. Geo. Gaz., 23-4-58, Rules Suppl. to Part I, p. 125.

the date of receipt of this notice, it will be deemed that you have no objection to make.

Place.....

Date.....

Certifying Officer.

*NOTE.—The date of receipt of the notice is the date of the actual service of the notice if effected personally by an employee of the Labour Department and if sent by registered post the actual date of receipt of the notice by the addressee.

FORM AAAA.

[Rule 6-A (2).]

Notice.

....., a workman of the (name of the industrial establishment) has submitted to the Certifying Officer the appended modification to the Certified Standing Orders proposed by him for adoption in the industrial establishment. Any objections which any workman of the industrial establishment desire to make to the draft Standing Orders should be submitted to me within fifteen days from the date of publication of this notice. If no objections are received within fifteen days from the date of publication of this notice, it will be deemed that the workmen have no objections to make.

Place.....

Date.....

Certifying Officer.

Employees' Provident Fund Scheme for biscuit making industry.

*Notification No. G. S. R. 170, dated New Delhi, the 12th March, 1958.**

Whereas the Central Government is of opinion that a Provident Fund Scheme should be framed under the Employees' Provident Funds Act, 1952 (19 of 1952), in respect of the employees of the biscuit making industry including composite units making biscuits and products such as bread, confectionery and milk and milk powder;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the said Act, the Central Government hereby directs that with effect from the 30th April 1958 the said industry shall be added to Schedule I of the said Act.

*Gaz. of India, 22-3-58, Part II, Sec. 3(i), p. 131.

THE PUNJAB SHOPS AND COMMERCIAL ESTABLISHMENTS ACT, 1958.

PUNJAB ACT NO. 15 OF 1958*.

[Received the assent of the President on April 25, 1958]

An Act to provide for the regulation of conditions of work and employment in shops and commercial establishments.

Be it enacted by the Legislature of the State of Punjab in the Ninth Year of the Republic of India as follows :—

1. Short title, extent, commencement and application.—(1) This Act may be called the Punjab Shops and Commercial Establishments Act, 1958.

(2) It extends to the whole of the State of Punjab.

(3) It shall come into force on such date as Government may, by notification in the official Gazette, appoint in this behalf.

(4) It shall apply in the first instance to the areas specified in the Schedule, but Government may by notification direct that it shall also apply to such other area and on such date as may be specified in the notification.

2. Definitions.—(1) In this Act, unless the context otherwise requires,—

(i) “closed” means not open for the service of any customer or for any other purpose whatsoever relating to business ;

(ii) “close day” means the day of the week on which a shop or commercial establishment remains closed ;

(iii) “closing hour” means the hour at which a shop or commercial establishment closes ;

(iv) “commercial establishment” means any premises wherein any business, trade or profession is carried on for profit, and includes journalistic or printing establishments and premises in which business of banking, insurance, stocks and shares, brokerage or produce exchange is carried on or which is used as hotel, restaurant, boarding or eating house, theatre, cinema or other place of public entertainment or any other place which the Government may declare, by notification in the official Gazette, to be a commercial establishment for the purposes of this Act ;

(v) “day” means the period of twenty-four hours beginning at midnight ;

Provided that in the case of any employee whose hours of work extend beyond midnight, day means the period of twenty-four hours beginning from the time when such employment commences ;

(vi) “employee” means a person wholly or principally employed in, or in connection with, an establishment, whether working on permanent, periodical, contract or piece-rate wages or on commission basis even though he receives no reward for his labour, but does not include a member of the employer's family ;

(vii) “employer” means a person having charge of or owning or having ultimate control over the affairs of an establishment and includes members

*Punjab Govt. Gaz. (Extry.), 1-5-58, p. 909.

of the family of an employer, a manager, agent or other person acting in the general management or control of the establishment ;

(viii) "establishment" means a shop or a commercial establishment ;

(ix) "factory" has the meaning assigned to it in the Factories Act, 1948 ;

(x) "family" in relation to an employer, means—

(i) spouse ;

(ii) children and step-children ; and

(iii) parents, sisters and brothers if residing with and wholly dependent upon him ;

(xi) "festival" means any festival which Government may, by notification, declare to be a festival for the purposes of this Act ;

(xii) "Government" means the Punjab Government ;

(xiii) "hours of work" or "working hours" means the time during which the persons employed are at the disposal of the employer exclusive of any interval allowed for rest and meals ;

(xiv) "Inspector" means an Inspector appointed under this Act.

(xv) "leave" means leave provided for in section 14 ;

(xvi) "manager", in relation to an establishment where five or more persons are employed or an establishment whose owner does not ordinarily carry on the business personally, means a person declared as such by the employer in the prescribed manner ;

(xvii) "night" means a period of at least twelve consecutive hours which shall include the interval between 8 p.m. and 6 a.m. ;

(xviii) "opened" means opened for the service of any customer or for any business connected with the establishment ;

(xix) "opening hour" means the hour at which an establishment opens ;

(xx) "prescribed" means prescribed by rules made under this Act ;

(xxi) "prescribed authority" means the authority prescribed under the rules made under this Act ;

(xxii) "retail trade or business" includes the business of a barber or hair-dresser, the sale of refreshments or intoxicating liquors, and retail sales by auction ;

(xxiii) "register of establishments" means a register maintained for the registration of establishments under this Act ;

(xxiv) "registration certificate" means a certificate showing the registration of an establishment ;

(xxv) "shop" means any premises where any trade or business is carried on or where services are rendered to customers and includes offices, store-rooms, godowns or warehouses, whether in the same premises or otherwise, used in connection with such trade or business but does not include a commercial establishment or a shop attached to a factory where the persons employed in the shop are allowed the benefits provided for workers under the Factories Act, 1948 (LXIII of 1948) ;

(xxvi) "spreadover" means the period between the commencement and the termination of work of an employee on any day ;

(xxvii) "wages" shall have the meaning assigned to it in the Payment of Wages Act, 1936 (IV of 1936) ;

(xxviii) "wage period" means the period after which the wages of an employed person shall be paid ;

(xxix) "week" means the period between midnight on Saturday and midnight on the following Saturday ;

(xxx) "young person" means a person who has attained the age of fourteen but has not attained the age of eighteen years ; and

(xxxi) "year" means a year commencing on the first day of April.

(2) For the purposes of this Act, any employment in the service of the employer of an establishment upon any work, whether within the establishment or outside it, which relates to or is connected with or is ancillary to the business carried on at the establishment shall be deemed to be employment about the business of the establishment.

3. *Act not applicable to certain establishments and persons.*—Nothing in this Act shall apply to—

(a) offices of or under the Central or State Governments (except commercial undertakings), the Reserve Bank of India, any railway administration or any local authority ;

(b) any railway service, air service, water transport service, tramway, postal, telegraph or telephone service, any system of public conservancy or sanitation or any industry, business or undertaking which supplies power, light or water to the public ;

(c) railway dining cars ;

(d) offices of lawyers ;

(e) any person employed about the business of any establishment mentioned in paragraphs (a) to (d) aforesaid ;

(f) any person whose hours of employment are regulated by or under the Factories Act, 1948, except the provisions of sub-sections (3), (4) and (5) of section 7 of this Act in so far as they relate to employment in a factory ;

(g) any person whose work is inherently intermittent.

4. *Provisions of sections 9 and 10 not applicable to certain establishments.*—Nothing in sections 9 and 10 shall apply to—

(a) clubs, hotels, boarding houses, stalls and refreshment rooms at the railway stations ;

(b) shops of barbers and hair-dressers ;

(c) shops dealing mainly in meat, fish, poultry, eggs, dairy produce (except ghee), bread, confectionery, sweets, chocolates, ice, ice-cream, cooked food, fruit, flowers, vegetables or green fodder ;

(d) shops dealing mainly in medicines or medical or surgical requisites or appliances and establishments for the treatment or care of the sick, infirm, destitute or mentally unfit ;

(e) shops dealing in articles required for funerals, burials or cremations ;

(f) shops dealing in *pans* (betel leaves), biris or cigarettes, or liquid refreshments sold retail for consumption on the premises;

(g) shops dealing in newspapers or periodicals, editing and despatching sections of the newspaper offices and offices of the news agencies;

(h) cinemas, theatres and other places of public entertainment;

(i) establishments for the retail sale of petrol and petroleum products used for transport;

(j) shops in regimental institutes, garrison shops and troop canteens in cantonments;

(k) tanneries;

(l) retail trade carried on at an exhibition or show, if such retail trade is subsidiary or ancillary only to the main purpose of the exhibition or show;

(m) oil mills not registered under the Factories Act, 1948;

(n) brick and lime kilns;

(o) commercial establishments engaged in the manufacture of bronze and brass utensils so far as it is confined to the process of melting in furnaces; and

(p) saltpetre refineries.

5. *Power of Government to extend the provisions of Act.*—(1) Notwithstanding anything contained in section 3 or section 4, Government may by notification declare that any class of establishments or persons specified therein shall not be exempt from the operation of such provisions of this Act as may be specified in the notification and that the provisions of this Act specified in such notification shall apply to such class of establishments or persons as the case may be.

(2) Every notification made under sub-section (1) shall as soon as possible after it is made, be laid before both Houses of the State Legislature.

6. *Conditions of employment for young persons.*—(1) The total number of hours worked by a young person employed about the business of an establishment, exclusive of interval for meals and rest, shall not exceed thirty hours in any one week or five hours in any one day.

(2) A young person employed about the business of an establishment shall not be employed continuously for more than three hours without an interval of at least half an hour for a meal or rest.

(3) Government may prescribe further conditions in respect of the employment of young persons employed about the business of establishments or any class of them, including, if it thinks fit, conditions with respect to the daily period of employment of those persons, and no such person shall be employed otherwise than in accordance with those conditions.

(4) In the case of any contravention of, or failure to comply with, the provisions of this section, the employer shall be liable, on conviction, to a fine which shall not be less than fifty rupees but which may extend to two hundred rupees.

(5) Where, in proceedings for an offence under this section, the person in respect of whom the offence was committed was a young person, and he appears to the court to have been at the date of the commission of the

offence a young person, he shall, for the purposes of this Act, be presumed at that date to have been a young person unless the contrary is proved.

7. *Hours of employment.*—(1) Subject to the provisions of this Act, no person shall be employed about the business of an establishment for more than forty-eight hours in any one week and nine hours in any one day.

(2) On occasions of seasonal or exceptional pressure of work a person employed in an establishment may be employed about the business of the establishment in excess of the working hours specified in sub-section (1):

Provided that—

(a) the total number of overtime hours worked by an employee does not exceed fifty within a period of three months; and

(b) the person employed overtime shall be paid remuneration at twice the rate of his normal wages calculated by the hour.

Explanation.—“Normal Wages” for the purposes of proviso (b) means basic wages plus such allowances including the cash equivalent of the advantages accruing through the concessional sale to workers of foodgrains and other articles as the worker is for the time being entitled to, but does not include bonus.

(3) No employer shall, on any day or in any week, employ about the business of the establishment any person who has been previously employed on that day or in that week in another establishment or a factory for a longer period than shall, together with the time during which he has been previously employed on that day or in that week in such other establishment or factory, exceed the number of hours permitted by this Act.

(4) In any proceedings against the employer of the establishment for a contravention of the provisions of sub-section (3), it shall be a defence to prove that the employer did not know and could not with reasonable diligence ascertain that the person was previously employed by the employer of the other establishment or factory.

(5) No person shall work about the business of an establishment or two or more establishments or an establishment and a factory in excess of the period during which he may be lawfully employed under this Act.

8. *Intervals for rest or meals.*—(1) Subject to the provisions of section 6, no employee shall work in an establishment for more than five hours before he has had an interval for rest of at least half an hour.

(2) The period of work of an employee in an establishment shall be so fixed that, inclusive of his interval for rest, the spread over shall not be more than ten hours in a day.

9. *Opening and closing hours.*—No establishment shall, save as otherwise provided by this Act, open earlier than ten o'clock in the morning or close later than eight o'clock in the evening:

Provided that any customer who was in the establishment before the closing hour may be served during the period of fifteen minutes immediately following such hour:

Provided further that the State Government may, by order and for reasons to be recorded in writing, allow an establishment attached to a factory to open at eight o'clock in the morning and close at six o'clock in the evening.

10. Close day.—(1) Save as otherwise provided by this Act, every establishment shall remain closed on every Sunday :

Provided that, in the case of an establishment attached to a factory, the employer may substitute the close day of such establishment so as to correspond to the substituted close day of the factory in the same manner and subject to the same conditions as are laid down in this behalf in the Factories Act, 1948.

(2) (i) The employer of an establishment shall in the prescribed form intimate to the prescribed authority the working hours and the period of interval of the employed persons within fifteen days of the date of registration of the establishment.

(ii) The employer of an establishment may change the working hours and the period of interval once in a quarter of the year by giving intimation in the prescribed form to the prescribed authority at least fifteen days before the change is to take place.

(3) Notwithstanding anything contained in sub-section (1), the employer of an establishment may open his establishment on the close day if—

- (a) such day happens to coincide with a festival; and
- (b) employees required to work on that day are paid remuneration at double the rate of their normal wages calculated by the hour.

11. Employees' off day in a week.—No employee shall be allowed or required to work—

- (a) on a close day, in any establishment which is required to observe a close day; and
- (b) on one day in a week, in any other establishment :

Provided that a watchman may be allowed or required to work on an off day under this section if he is allowed another off day in the week.

12. Holidays.—Every employee in an establishment shall be allowed—

(a) a holiday with wages on the Independence Day and the Republic Day; and

(b) such other four holidays with wages in the year in connection with festivals as the employer may, having regard to the wishes of his employees, declare from time to time :

Provided that an employee required to work on any such holiday shall be paid remuneration at double the rate of his normal wages calculated by the hour.

13. Registration of establishments.—(1) Within the period specified in sub-section (3), the employer of every establishment shall send to the

prescribed authority concerned a statement in the prescribed form containing—

- (a) the name of the employer and the manager, if any;
- (b) postal address of the establishment;
- (c) the name, if any, of the establishment;
- (d) number of persons employed;
- (e) such other particulars as may be prescribed.

(2) (i) On receipt of the statement, the authority shall, on being satisfied about the correctness of the statement, register the establishment in the register of establishments in such a manner as may be prescribed and shall issue in a prescribed form a registration certificate to the employer. The registration certificate shall, on demand by the Inspector, be shown to him by the employer.

(ii) The registration certificate shall be renewable by the 31st March, every year. Thirty days grace time shall, however, be allowed for the renewal of the certificate.

(3) Within thirty days from the date mentioned in column 2 below in respect of the establishment in column 1, the statement shall be sent to the prescribed authority under sub-section (1).

<i>Establishment</i>	<i>Date from which the period of 30 days is to commence.</i>
(1)	(2)
(i) Establishments existing in areas to which this Act applies or where this Act is extended.	The date on which this Act comes into force or the date on which the Act is extended, as the case may be.
(ii) New establishments in such areas.	The date on which the establishment commences its work.

(4) It shall be the duty of the employer to notify to the prescribed authority in the prescribed form any change in respect of any information contained in his statement under this section within seven days after the change has taken place. The authority shall on receiving such notice and on being satisfied about its correctness, make the change in the register of establishments in accordance with such notice and shall amend the registration certificate, if necessary.

(5) The employer shall, within ten days of his closing the establishment, notify to the prescribed authority in writing accordingly. The authority shall, on receiving the information and being satisfied about the correctness, remove the name of such establishment from the register of establishments and cancel the registration certificate.

14. Leave.—(1) (a) Every employee who has been in employment for a period of 240 days or more in an establishment during a year shall be entitled to leave with wages for a number of days calculated at the rate of

one day for every twenty days of work performed by him during the year :

Provided that a young person shall be entitled to one day for every fifteen days of work performed by him during the year.

(b) If an employee is discharged or dismissed from or leaves service during the course of the year he shall be entitled to leave with wages or wage in lieu of unavailed leave at the rates laid down in clause (a) even if he has not worked for the entire period specified in the said clause entitling him to earned leave.

(c) In calculating leave under this section, fraction of half a day or more shall be treated as one day's leave, and fraction of less than half a day shall be ignored.

(d) If an employee does not in any one year take the whole of the leave allowed to him under clause (a), any leave not taken by him shall be added to the leave to be allowed to him in the succeeding year :

Provided that—

(i) subject to any specific agreement between the employer and the employee, the total number of days of leave that may be carried forward to a succeeding year shall not exceed forty in the case of a young person or thirty in any other case ;

(ii) the provisions of this section shall not operate to the prejudice of any rights to which an employee may be entitled under any other law or under the terms of any award, agreement or contract of service ;

(iii) where such award, agreement or contract of service provides for a longer leave with wages or weekly holidays than those provided under this section, the employee shall be entitled to only such longer leave or weekly holidays as the case may be.

(2) Leave provided in clause (a) of sub-section (1) shall, when applied for, be granted except for a valid reason to be communicated in writing by the employer to the employee within fifteen days of the application :

Provided that the leave so refused shall, if applied for again, be allowed during the year.

(3) (a) For the purpose of computing the period during which an employee has been in employment within the meaning of sub-section (1) (a), the period during which he was on leave under this section shall be included.

(b) The unavailed leave of an employee shall not be taken into consideration in computing the period of any notice required to be given before discharge, removal or dismissal.

(4) Notwithstanding anything contained in the foregoing sub-sections, every employee in an establishment shall be allowed seven day's casual leave in a year :

Provided that the provisions of this sub-section shall not operate to the prejudice of any rights to which an employee may be entitled under any other law or under the terms of any award, a agreement or contract of service.

15. Wages for close days and during leave period.—(1) Any person employed in or about an establishment for a period of fifteen or more consecutive working days shall receive for a close day wages at a rate not less than that to which he was entitled for the day immediately preceding each close day.

(2) For the leave allowed to him under section 14, an employee shall be paid at the rate equal to the daily average of his total full time earnings for the days on which he worked during the month immediately preceding his leave, exclusive of any overtime and bonus but inclusive of dearness allowance and the cash equivalent of the advantage accruing through the concessional sale to the employee of foodgrains and other articles.

(3) An employee who has been allowed leave for not less than five days in the case of a young person and four days in any other case shall, on demand, before his leave begins, be paid the wages due for the period of leave allowed.

16. Wage period.—(1) Every person responsible for the payment of wages to an employee shall fix a period in respect of which such wages shall be payable.

(2) No wage period shall exceed one month.

(3) The wages of every person employed shall be paid before the expiry of the seventh day from the date on which the wages became due.

(4) Where the employment of any person is terminated by or on behalf of the employer the wages earned by him and the remuneration in lieu of unavailed period of due leave shall be paid before the expiry of the second working day after such termination and where an employee quits his employment on or before the next pay day :

Provided that no claim under this section shall be entertained unless it is preferred within six months from the date of its accruing except under special circumstances at the discretion of the Chief Inspector of Shops and Commercial Establishments, Punjab.

17. Deduction from wages.—The wages of an employee shall be paid to him without deductions of any kind except those authorised by or under the Payment of Wages Act, 1936, in so far as such deductions are applicable to the employee and in such manner, to such extent and subject to such conditions as are specified in that Act.

18. Realisation of compensation.—(1) In case of contravention of the provisions of section 16, if a Magistrate is satisfied that the employee has not been paid his due wages, he shall direct the employer to pay the wages along with compensation not exceeding eight times the amount of wages withheld.

(2) The amount of wages withheld and compensation payable under this section shall for the purposes of its recovery, be deemed to be a fine imposed under this Act in addition to the penalty imposed under section 26 and shall be realised as such.

19. Enforcement and inspection.—(1) Government may, by notification, appoint such persons or such class of persons as it thinks fit to be inspecting

officers for the purposes of this Act within such local limits as it may assign to them respectively.

(2) Subject to any rules made by Government in this behalf, an inspecting officer may, within the local limits for which he is appointed—

(a) enter at all reasonable times and with such assistants, if any, being persons in the service of Government or of any local authority as he thinks fit, any place which is or which he has reason to believe to be an establishment ;

(b) make such examination of the permits and of any prescribed registers, records and notices and take on the spot or otherwise evidence of any persons as he may deem necessary for carrying out purposes of this Act ;

(c) exercise such other powers as may be necessary for carrying out the purposes of this Act :

Provided that no one shall be required under this section to answer any question or give any evidence tending to incriminate him.

(3) Every inspecting officer appointed under this section shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

20. Records.—The employer of every establishment shall, in the prescribed form and manner, keep exhibited in the establishment a notice setting forth the close day, the working hours and the period of interval of employed persons, if any, and such other particulars as may be prescribed.

(2) The employer of any establishment, about the business of which persons are employed, shall in the prescribed form and manner, keep a record of the working hours, rest intervals and the amount of leave taken by every person employed about the business of an establishment and particulars of all overtime employment shall be separately entered in the record. Such entries for the day shall be made while the employee is at the disposal of the employer.

(3) The employer of every establishment shall keep a photograph of each employee who has completed three months continuous service in the establishment :

Provided that where such employee fails to supply such photograph to the employer within fifteen days of the completion of such service, his failure so to do shall be recorded by the employer under the signatures of the employee.

(4) The employer of every establishment shall for the purposes of this Act maintain such other records and registers and display such other notices as may be prescribed.

(5) In the case of any contravention of the foregoing provisions of this section, the employer of an establishment shall be liable, on conviction, to a fine not exceeding five rupees for every day on which the contravention occurs or continues.

(6) If any person with intent to deceive makes, or causes or allows to be made, in any such record, register or notice as aforesaid an entry which

is to his knowledge false in any material particular, or wilfully omits or causes or allows to be omitted from any such record, register or notice an entry required to be made therein, he shall be liable, on conviction, to imprisonment for a term not exceeding three months or to a fine which shall not be less than twenty-five rupees and may extend to two hundred rupees or both.

21. Inspection of registers and calling for information.—(1) It shall be the duty of every employer of an establishment to make available for inspection of such officer, as may be prescribed, all accounts or records required to be kept for the purposes of this Act, and to give to such officer any other information in connection therewith as may be required.

(2) Whoever contravenes the provisions of sub-section (1) or wilfully obstructs the inspecting authority in the exercise of the powers under this Act or conceals or prevents any employee in an establishment from appearing before or being examined by the authority, shall be liable, on conviction, to a fine which shall not be less than twenty-five rupees and may extend to two hundred rupees.

22. Notice of removal.—(1) No employee shall be removed from service unless and until one month's previous notice or pay in lieu thereof has been given to him :

Provided that—

(a) no employee shall be entitled to the notice or pay in lieu thereof if he is removed on account of misconduct established on record ;

(b) no employee shall be entitled to one month's notice or notice pay unless and until he has been in the service of the employer continuously for a period of three months.

(2) In any case instituted for a contravention of the provisions of sub-section (1), if a Magistrate is satisfied that an employee has been removed without reasonable cause, the Magistrate shall, for reasons to be recorded in writing, award compensation to the employee equivalent to two months' salary :

Provided that no such claim shall be entertained unless it is preferred by the employee within six months from the date of his removal.

(3) The amount payable as compensation under this section shall be in addition to, or recoverable as, fine payable under section 26.

(4) No person who has been awarded compensation under this section shall be entitled to bring a civil suit in respect of the same claim.

23. Notice by employee.—(1) No employee, who has been in the service of the employer continuously for a period of three months, shall terminate his employment unless he has given to his employer seven days' previous notice or pay in lieu thereof.

(2) Where an employee contravenes the provisions of subsection (1), his employer may forfeit his unpaid wages for a period not exceeding seven days.

24. *Provisions as respects establishments where more than one business is carried on.*—Where several trades or businesses are carried on in the same establishment, and any of those trades or businesses is of a such nature that, if it were the only trade or business carried on in the establishment, the establishment would be exempt from all or any of the provisions of this Act, the exemption shall apply to the establishment so far as the carrying on of that trade or business is concerned, subject, however, to such conditions as may be prescribed.

25. *Provisions as to trading elsewhere than in establishments.*—Save as otherwise provided by any law for the time being in force, it shall not be lawful in any locality to carry on in any place not being an establishment, retail trade or business of any class at any time if it is unlawful in that locality to keep an establishment open for the purpose of such retail trade or business, and, if any person carries on any trade or business in contravention of this section, this Act shall apply as if he were the employer of the establishment which was being kept open in contravention of this Act.

26. *Penalties.*—Subject to the other provisions of this Act whoever contravenes any of the provisions of this Act, or the rules made thereunder and no penalty has been provided for such contravention in this Act, shall be liable, on conviction, to a fine not exceeding one hundred rupees for the first offence, and three hundred rupees for every subsequent offence:

Provided that the fine in respect of every subsequent offence within the same year shall not be less than one hundred rupees in any case.

27. *Protection of officers and their agents from personal liability.*—No suit, prosecution or other legal proceeding shall lie against any public servant or any other person in the service of the Central or State Government, acting under direction of any such public servant, for anything in good faith done or intended to be done in pursuance of the provisions of this Act or of any rule made thereunder.

28. *Power to grant exemptions.*—Government may, by notification in the official Gazette, exempt from the operation of all or any of the provisions of this Act for any period it considers desirable any establishment or any class thereof any employer or employee or class of employers or employees to whom this Act applies on such conditions as it may think fit.

29. *Prohibition of employment of children.*—No child who has not completed the age of fourteen years shall be employed in any establishment.

30. *Conditions of employment of women.*—(1) No woman shall be required or allowed to work whether as an employee or otherwise in any establishment during night.

(2) No employer of any establishment shall knowingly employ a woman and no woman shall engage in employment in any establishment during six weeks following the day of her confinement or miscarriage.

(3) Government may prescribe further conditions in respect of employment of woman employed about the business of establishments or any class of

them, including if it thinks fit, conditions with respect to the daily period of employment, leave, and other matters and no woman shall be employed otherwise than in accordance with these conditions.

31. *Maternity benefit.*—(1) Every woman employed in an establishment who has been continuously employed in that establishment or in establishments belonging to the employer of that establishment for a period of not less than six months preceding the date of her delivery shall be entitled to receive, and the employer shall be liable to make to her, a payment of a maternity benefit which shall be prescribed by the Government for every day during the six weeks immediately preceding and including the day of her delivery and for each day of the six weeks following her delivery:

Provided that no such payment shall be made for any day on which she attends work and receives payment therefor during the six weeks preceding her delivery.

(2) The manner in which the maternity benefit shall be payable may be prescribed by the Government.

32. *Bar of legal practitioners in certain proceedings.*—Notwithstanding anything contained in the law relating to legal practitioners for the time being in force, no legal practitioner shall be permitted to appear, plead or act for the employer or the employee in any proceedings, before a court between an employer and an employee, arising out of the contravention of any of the provisions of this Act.

33. *Saving of certain rights and privileges.*—Nothing in this Act shall affect any rights or privileges to which an employee in any establishment is entitled on the date this Act comes into force, under any other law, contract, custom or usage applicable to such establishment or any award, settlement or agreement binding on the employer and the employee in such establishment, if such rights or privileges are more favourable to him than those to which he would be entitled under this Act.

34. *Power to make rules.*—(1) Government may make rules for the purpose of giving effect to the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner and form in which the registers and notices shall be kept;

(b) the officers who may be empowered to inspect registers and call for information as required by this Act;

(c) the agency by which and the manner in which the prosecution shall be instituted;

(d) the form of submitting a statement, the particulars under sub-section (1) of section 13, the manner in which registration of establishments is to be made and the form of registration certificate under sub-section (2) and the form for notifying a change under sub-section (4) of section 13;

(e) the authority to and the manner in which any notice required by this Act shall be given ;

(f) the conditions subject to which any exemption under this Act may be granted ;

(g) the manner in which the employer of an establishment shall keep exhibited in the premises the close day, closing and opening hours and such other particulars as may be prescribed ; and

(h) to safeguard health, safety and welfare of the employees while on duty.

(3) All rules made under this section shall, as soon as possible after they are made, be laid before both Houses of the State Legislature.

35. Repeal.—The Punjab Trade Employees Act, 1940, is hereby repealed :

Provided that —

(a) every appointment, order, rule, bye-law, regulation, notification or notice made, issued or given under the provisions of the Act so repealed shall in so far as it is not inconsistent, with the provisions of this Act, be deemed to have been made, issued or given under the provisions of this Act, unless and until superseded by any other appointment, order, rule bye-law, regulation, notification or notice made, issued or given under this Act ;

(b) any proceeding relating to the trial of any offence punishable under the provisions of the Act so repealed, shall be continued and completed as if the said Act has not been repealed, but has continued in operation, and any penalty imposed in such proceeding shall be recovered under the Act so repealed.

SCHEDULE

[See section 1 (4)]

Areas to which the Act applies in the first instance.

<i>District</i>	<i>Name of Local area</i>
1. Ambala	1. Ambala Cantt. 2. Ambala City. 3. Naraingarh. 4. Sadhaura. 5. Shahzadpur. 6. Yamunanagar. 7. Jagadhri. 8. Chhachrauli. 9. Rupar. 10. Kurali. 11. Kharar. 12. Morinda. 13. Kalka. 14. Chandigarh. 15. Mani Majra.

<i>District</i>	<i>Name of Local area</i>
2. Simla	1. Simla.
3. Karnal	1. Karnal. 2. Panipat. 3. Kaithal. 4. Thanesar. 5. Shahabad. 6. Ladwa. 7. Radaur. 8. Samalkha.
4. Hissar	1. Hissar. 2. Bhiwani. 3. Sirsa. 4. Hansi. 5. Mandi Dabwali.
5. Gurgaon	1. Gurgaon Cantonment. 2. Rewari. 3. Palwal. 4. Balabgarh. 5. Nuh. 6. Hodal. 7. Ferozepur-Jhirka. 8. Faridabad. 9. Sohna.
6. Rohtak.	1. Rohtak. 2. Sonapat. 3. Bahadur Garh. 4. Gohana. 5. Jhajjar. 6. Beri.
7. Jullunder	1. Jullundur Cantt. 2. Jullundur City. 3. Kartarpur. 4. Nakodar. 5. Nurmahal. 6. Phillaur. 7. Goraya. 8. Apra. 9. Nawanshehr Doaba. 10. Banga. 11. Rahon.
8. Hoshiarpur	1. Hoshiarpur. 2. Dasuya. 3. Tanda-Urmar.

<i>District</i>	<i>Name of Local area</i>
	4. Una.
	5. Garh Shankar.
	6. Nangal Township.
	7. Anandpur Sahib.
	8. Mukerian.
	9. Garhdiwala.
	10. Haryana.
9. Ludhiana	1. Ludhiana.
	2. Raikot.
	3. Khanna.
	4. Sahnewal.
	5. Samrala.
	6. Jagraon.
	7. Mullanpur and Adda Dakha.
10. Ferozepore	1. Ferozepore Cantt.
	2. Ferozepore City.
	3. Guru Harsahai.
	4. Muktsar.
	5. Malout.
	6. Gidderbaha.
	7. Abohar.
	8. Fazilka.
	9. Moga.
	10. Zira.
	11. Talwandi Bhai.
	12. Bagha Purana.
11. Gurdaspur	1. Gurdrapur.
	2. Batala.
	3. Dhariwal.
	4. Qadian.
	5. Fatehgarh Churian.
	6. Pathankot.
	7. Dalhousie.
	8. Dina Nagar.
	9. Sujanpur.
12. Amritsar	1. Amritsar.
	2. Tarn Taran.
	3. Patti.
	4. Khem Karan.
	5. Chheharta.
	6. Raja Sansi.
	7. Jandiala Guru.
	8. Majitha.
	9. Garhi Mandi.

<i>District</i>	<i>Name of Local area</i>
13. Kangra	1. Kangra.
	2. Nurpur.
	3. Dharamsala.
	4. Nagrota.
	5. Palampur.
	6. Yol.
	7. Mecleod Ganj.
	8. Maranda.
	9. Kulu.
14. Patiala	1. Patiala.
	2. Nabha.
	3. Samana.
	4. Bassi.
	5. Gobindgarh.
	6. Rajpura.
	7. Sirhind.
	8. Doraha.
	9. Kasauli.
	10. Dharampur.
	11. Sabathu.
	12. Dagshai.
	13. Nalagarh.
15. Bhatinda	1. Bhatinda.
	2. Jaitu.
	3. Mansa.
	4. Budhlada.
	5. Rampura Phul.
	6. Raman.
	7. Faridkot.
	8. Kot Kapura.
16. Sangrur	1. Sangrur.
	2. Sunam.
	3. Jind.
	4. Dhuri.
	5. Ahmed Garh.
	6. Maler Kotla.
	7. Barnala.
	8. Tapa.
17. Mohindergarh	1. Narnaul.
	2. Dadri.
18. Kapurthala	1. Kapurthala.
	2. Sultanpur Lodhi.
	3. Phagwara.

THE KERALA WORKMEN'S COMPENSATION RULES, 1958.

Notification No. D. Dis. 19880/57/L&LAD, dated Trivandrum 13th March, 1958.*

In exercise of the powers conferred by section 32 of the Workmen's Compensation Act, 1923 (Central Act VIII of 1923) the Government of Kerala hereby make the following Rules, the same having been previously published as required by section 34 of the said Act, namely :—

PRELIMINARY

1. *Short title.*—These rules may be called the Kerala Workmen's Compensation Rules, 1958.

2. *Definitions.*—In these rules unless there is anything repugnant in the subject or context,—

(a) "The Act" means the Workmen's Compensation Act, 1923, (Central Act VIII of 1923).

(b) "Form" means a form appended to these Rules.

(c) "Section" means a section of the Act.

PART I

3. *Review of half-monthly payments and commutation thereof.*—When application may be made without medical certificate.—Application for review of half-monthly payment under section 6 may be made without being accompanied by a medical certificate—

(a) by the employer, on the ground that since the right to compensation was determined the workmen's wages have increased ;

(b) by the workman on the ground that since the right to compensation was determined his wages have diminished ;

(c) by the workman on the ground that the employer, having commenced to pay compensation, has ceased to pay the same, notwithstanding the fact that there has been no change in the workman's condition such as to warrant such cessation ;

(d) either by the employer or by the workman, on the ground that the determination of the date of compensation for the time being in force was obtained by fraud or undue influence or other improper means ;

(e) either by the employer or by the workman on the ground that in the determination of compensation there is a mistake or error apparent on the face of the record.

4. *Procedure on application for review.*—If, on examining an application for review by an employer in which the reduction or discontinuance of half-monthly payments is sought, it appears to the Commissioner that there is reasonable ground for believing that the employer has a right to such reduction or discontinuance, he may at any time issue an order withholding the half-monthly payments in whole or in part pending his decision on the application.

*Kerala Gaz., 25-3-58, Pt. I, Sec. IV, p. 1

5. *Procedure on application for commutation.*—(1) Where application is made to the Commissioner under section 7 for the redemption of a right to receive half-monthly payments by the payment of a lump sum, the Commissioner shall form an estimate of the probable duration of the disablement, and award a sum equivalent to the total of the half-monthly payments which would be payable for the period during which he estimates that the disablement will continue, less one-half per cent. of the total for each month comprised in that period, provided that fractions of a rupee included in the sum so computed shall be disregarded.

(2) When, in any case to which sub-rule (1) applies, the Commissioner is unable to form an approximate estimate of the probable duration of the disablement, he may from time to time postpone a decision on the application for a period not exceeding two months at any one time.

PART II

DEPOSIT OF COMPENSATION

6. *Deposit under section 8 (1).*—An employer depositing compensation with the Commissioner under sub-section (1) of section 8 in respect of a workman whose injury has resulted in death shall furnish therewith a statement in Form A and shall be given a receipt in Form B. In other cases of deposits with the Commissioner under sub-section (1) of section 8, the employer shall furnish a statement in Form AA and shall be given a receipt in Form B.

(2) If when depositing compensation in respect of fatal accident, the employer indicates in the statement referred to in sub-rule (1) that he desires to be made a party to the distribution proceedings, the Commissioner shall, before allotting the sum deposited as compensation, afford to the employer an opportunity of establishing that the person to whom he proposes to allot such sum is not a dependant of the deceased workman or, as the case may be, that no one of such persons is a dependant.

(3) The statement of disbursements to be furnished on application by the employer under sub-section (4) of section 8 shall be in Form C.

7. *Publication of list of deposits.*—The Commissioner shall cause to be displayed in a prominent position outside his office an accurate list of deposits received by him under sub-section (1) of section 8, together with the names and addresses of the depositors and of the workmen in respect of whose death or injury the deposits have been made.

8. *Application by dependants for deposit of compensation.*—(1) A dependant of a deceased workman may apply to the Commissioner for the issue of an order to deposit compensation in respect of the death of the workman. Such application shall be made in Form G.

(2) If compensation has not been deposited, the Commissioner shall dispose of such application in accordance with the provisions of Part V of these rules : provided that—

(a) the Commissioner may at any time before issues are framed, cause notice to be given in such manner as he thinks fit to all or any of the dependants of the deceased workman who have not joined in the application,

requiring them, if they desire to join therein, to appear before him on a date specified in this behalf;

(b) any dependant to whom such notice has been given and who fails to appear and to join in the application on the date specified in the notice shall not be permitted thereafter to claim that the employer is liable to deposit compensation unless he satisfies the Commissioner that he was prevented by any sufficient cause from appearing when the case was called on for hearing.

(3) If after completing the enquiry into the application, the Commissioner issues an order requiring the employer to deposit compensation in accordance with sub-section (1) of section 8, nothing in sub-rule (2) shall be deemed to prohibit the allotment of any part of the sum deposited as compensation to a dependant of the deceased workman who failed to join the application.

9. *Deposit under section 8(2).*—An employer depositing compensation in accordance with sub-section (2) of section 8, shall furnish therewith a statement in Form D and shall be given a receipt in Form E.

10. *Investment of money.*—Money in the hands of the Commissioner may be invested for the benefit of the dependants of a deceased workman in Government Securities or Post Office Cash Certificates, or may be deposited in a Post Office Savings Bank.

PART III

REPORTS OF ACCIDENTS

11. *Report of fatal accidents.*—The report required by section 10B shall be in Form EE.

12. *Right of employer to present memorandum when information received.*—(1) Any employer who has received information of an accident may at any time notwithstanding the fact that no claim for compensation has been instituted in respect of such accidents, present to the Commissioner a memorandum, supported by an affidavit made by himself or any person subordinate to him having knowledge of the facts stated in the memorandum, embodying the result of any investigation or inquiry which has been made into the circumstances or cause of the accident.

(2) A memorandum presented under sub-rule (1) shall, subject to the payment of such fee as may be prescribed, be recorded by the Commissioner.

PART IV

MEDICAL EXAMINATION

13. *Workman not to be required to submit to medical examination save in accordance with rules.*—A workman who is required by sub-section (1) of section 11 to submit himself for medical examination shall be bound to do so in accordance with the rules contained in this Part and not otherwise.

14. *Examination when workman and medical practitioner both on premises.*—When such workman is present on the employer's premises, and

the employer offers to have him examined free of charge by a qualified medical practitioner who is so present, the workman shall submit himself for examination forthwith.

15. *Examination in other cases.*—In cases to which Rule 14 does not apply the employer may—

(a) send the medical practitioner to the place where the workman is residing for the time being in which case the workman shall submit himself for medical examination on being requested to do so by the medical practitioner, or

(b) send to the workman an offer in writing to have him examined free of charge by a qualified medical practitioner in which case the workman shall submit himself for medical examination at the employer's premises or at such other places in the vicinity as is specified in such offer and at such time as is so specified:

Provided that—

(i) the time so specified shall not save with the express consent of the workman be between the hours of 7 p.m. and 6 a. m. and

(ii) in cases where the workman's condition renders it impossible or inadvisable that he should leave the place where he is residing for the time being, he shall not be required to submit himself for medical examination save at such place.

16. *Restriction on number of examinations.*—A workman who is in receipt of a half monthly payment shall not be required to submit himself for medical examination elsewhere than at the place where he is residing for the time being more than twice in the first month following the accident, or more than once in any subsequent month.

17. *Examination after suspension of right to compensation.*—If a workman whose right to compensation has been suspended under sub-section (2) or sub-section (3) of Section 11 subsequently offers himself for medical examination, his examination shall take place on the employer's premises or at such other place in the vicinity as may be fixed by the employer, and at a time to be fixed by the employer not being, save with the express consent of the workman, more than 72 hours after the workman has so offered himself.

18. *Examination of women.*—(1) No woman shall without her consent be medically examined by a male practitioner, save in the presence of another woman.

(2) No woman shall be required to be medically examined by a male practitioner if she deposits a sum sufficient to cover the expenses of examination by a female practitioner.

PART V

PROCEDURE.

19. *Introductory.*—Save as otherwise provided in these rules, the procedure to be followed by Commissioners in the disposal of cases under the Act or these rules and by the parties in such cases shall be regulated in accordance with the rules contained in this Part.

20. Applications.—(1) Any application of the nature referred to in section 22 may be sent to the Commissioner by registered post or may be presented to him or to any of his subordinates authorised by him in this behalf and if so sent or presented shall unless the Commissioner otherwise directs, be made in duplicate in the appropriate Form, if any, and shall be signed by the applicant.

(2) There shall be appended to every such application a certificate, which shall be signed by the applicant, to the effect that the statement of facts contained in the application is to the best of his knowledge and belief accurate.

21. Production of documents.—(1) When the application for relief is based upon a document, the document shall be appended to the application.

(2) Any other document which any party desires to tender in evidence shall be produced at or before the first hearing.

(3) Any document which is not produced at or within the time specified in sub-rule (1) or (2) as the case may be shall not, without the sanction of the Commissioner, be admissible in evidence on behalf of the party who should have produced it.

(4) Nothing in this rule applies to any document which is produced for the purpose of cross-examining a witness or is handed to a witness to refresh his memory.

22. Application presented to wrong Commissioner.—(1) If it appears to the Commissioner on receiving the application that it should be presented to another Commissioner, he shall return it to the applicant after endorsing upon it the date of the presentation and return, the reason for returning it and the designation of the Commissioner to whom it should be presented.

(2) If it appears to the Commissioner at any subsequent stage that an application should have been presented to another Commissioner, he shall send the application to the Commissioner empowered to deal with it and shall inform the applicant and the opposite party, if he has received a copy of the application under Rule 26, accordingly.

(3) The Commissioner to whom an application is transferred under sub-rule (2) may continue the proceedings as if the previous proceedings or any part of them had been taken before him, if he is satisfied that the interests of the parties will not thereby be prejudiced.

23. Examination of the applicant.—(1) On receiving an application of the nature referred to in section 22, the Commissioner may examine the applicant on oath, or may send the application to any officer authorised by Government in this behalf and direct such officer to examine the applicant and his witnesses and forward the record thereof to the Commissioner.

(2) The substance of any examination made under sub-rule (1) shall be recorded in the manner provided for the recording of evidence in Section 25.

24. Summary disposal of application.—(1) The Commissioner may, after considering the application and the result of the examination of the applicant under Rule 23, summarily dismiss the application, if, for reasons

to be recorded he is of opinion that there are no sufficient grounds for proceeding thereon.

(2) The dismissal of the application under sub-rule (1) shall not of itself preclude the applicant from presenting a fresh application for the settlement of the same matter.

25. Preliminary enquiry into application.—If the application is not dismissed under rule 24, the Commissioner may for reasons to be recorded call upon the applicant to produce evidence in support of the application before calling upon any other party and, if upon considering such evidence the Commissioner thinks that there is no case for the relief claimed he may dismiss the application with a brief statement of his reasons for so doing.

26. Notice to opposite party.—If the Commissioner does not dismiss the application under rule 24 or 25, he shall send to the party from whom the applicant claims relief (hereinafter referred to as the opposite party) a copy of the application, together with a notice of the date on which he will dispose of the application and may call upon the parties to produce upon that date any evidence which they may wish to tender.

27. Appearance and examination of opposite party.—(1) The opposite party may, and if so required by the Commissioner, shall at or before the first hearing or within such time as the Commissioner may permit, file a written statement dealing with the claim raised in the application, and any such written statement shall form part of the record.

(2) If the opposite party contests the claim, the Commissioner may, and, if no written statement has been filed, shall proceed to examine him upon the claim and shall reduce the result of the examination to writing.

28. Framing of issues.—(1) After considering any written statement and the result of any examination of the parties, the Commissioner shall ascertain upon what material propositions of fact or of law the parties are at variance and shall thereupon proceed to frame and record the issues upon which the right decision of the case appears to him to depend.

(2) In recording the issues the Commissioner shall distinguish between those issues which in his opinion concerns points of fact and those which concerns points of law.

29. Power to postpone trial of issues of fact where issues of law arise.—When issues both of law and of fact arise in the same case, and the Commissioner is of opinion that the case may be disposed of on the issues of law only, he may try those issues first and for that purpose may, if he thinks fit, postpone the settlement of the issues of facts until after the issues of law have been determined.

30. Diary.—The Commissioner shall maintain under his hand a brief diary of the proceedings of an application.

31. *Reasons for postponement to be recorded.*—If the Commissioner finds it impossible to dispose of an application at one hearing he shall record the reasons which necessitate a postponement.

32. *Judgment.*—The Commissioner in passing orders, shall record concisely in a judgment his finding on each of the issues framed and his reasons for such finding.

(2) The Commissioner, at the time of signing and dating his judgment shall pronounce his decision, and thereafter no addition or alteration shall be made to the judgment other than the correction of a clerical or arithmetical mistake arising from any accidental slip or omission.

33. *Summoning of witnesses.*—If an application is presented by any party to the proceedings for the citation of witnesses, the Commissioner shall on payment of the prescribed expenses and fees, issue summons for the appearance of such witnesses, unless he considers that their appearance is not necessary for the just decision of the case.

34. *Exemption from payment of costs.*—If the Commissioner is satisfied that the applicant is unable, by reason of poverty to pay the prescribed fees, he may remit any or all of such fees. If the case is decided in favour of the applicant, the prescribed fees which, had they not been remitted, would have been due to be paid, may be added to the costs of the case and recovered in such manner as the Commissioner in his order regarding costs may direct.

35. *Right of entry for local inspection.*—A Commissioner before whom any proceeding relating to an injury by accident is pending may at any time enter the place where the workman was injured, or where the workman ordinarily performed his work, for the purpose of making a local inspection or of examining persons likely to be able to give information relevant to the proceedings:

Provided that the Commissioner shall not enter any premises of any industrial establishment except during the ordinary working hours of that establishment, save with the permission of the employer or of some person directly responsible to him for the management of the establishment.

36. *Procedure in connection with local inspection.*—(1) If the Commissioner proposes to conduct a local inspection with a view to examining on the spot the circumstances in which an accident took place, he shall give the parties or their representatives notice of his intention to conduct such inspection, unless in his opinion the urgency of the case renders the giving of such notice impracticable.

(2) Such notice may be given orally or in writing and in the case of an employer, may be given to any person, upon whom notice of a claim can be served under sub-section (2) of section 10 or to the representative of any such person.

(3) Any party, or the representative of any party, may accompany the Commissioner at a local inspection.

(4) The Commissioner, after making a local inspection, shall note briefly in a memorandum any facts observed, and shall show the memorandum of any party who desires to see the same and on payment of the prescribed fee, shall supply any party with a copy thereof.

(5) The memorandum shall form part of the record.

37. *Power of summary examination.*—(1) The Commissioner during a local inspection or at any other time, save at a formal hearing of a case pending before him, may examine summarily any person likely to be able to give information relating to such case whether such person has been or is to be called a witness in the case or not, and whether any or all of the parties are present or not.

(2) No oath shall be administered to a person examined under sub-rule (1).

(3) Statements made by persons examined under sub-rule (1) if reduced to writing, shall not be signed by the person making the statement, nor, shall they, except as hereinafter provided, be incorporated in the record or utilised by the Commissioner for the purpose of arriving at a decision in the case.

(4) If a witness, who has been examined under sub-rule (1) makes in evidence any material statement contradicting any statement made by him in such examination and reduced to writing, the Commissioner may call his attention to such statement, and shall in that case direct that the parties be furnished with the relevant part of such statement for the purpose of examining or cross examining the witness.

(5) Any statement or part of a statement which is furnished to the parties under sub-rule (4) shall be incorporated in the record.

(6) Where a case is settled by agreement between the parties, the Commissioner may incorporate in the record any statement made under sub-rule (1) and may utilise such statement for the purpose of justifying his acceptance of, or refusing to accept, the agreement reached,

38. *Agreement to abide by the Commissioner's decision.*—(1) If a party states in writing his willingness to abide by the decision of the Commissioner, the Commissioner shall inquire whether the other party is willing to abide by his decision.

(2) If the other party agrees to abide by the Commissioner's decision, the fact of his agreement shall be recorded in writing and signed by him.

(3) If the other party does not agree to abide by the Commissioner's decision, the first party shall not remain under an obligation so to abide.

39. *Procedure where indemnity claimed under Section 12 (2).*—(1) Where the opposite party claims that if compensation is recovered against him he will be entitled under sub-section 2 of section 12 to be indemnified by a person not being a party to the case, he shall, when first called upon to answer the application present a notice of such claim to the Commissioner accompanied by the prescribed fee, and the Commissioner shall thereupon issue notice to such person in Form J.

(2) If any person served with a notice under sub-rule (1) desired to contest the applicant's claim for compensation or the opposite party's claim to be indemnified, he shall appear before the Commissioner on the date fixed for the hearing of the case or on any date to which the case may be adjourned and if he so appears, shall have all the rights of a party to the proceedings in default of so appearing he shall be deemed to admit the validity of any award made against the opposite party and to admit his own liability to indemnify the opposite party for any compensation recovered from him. Provided that, if any person so served appears subsequently and satisfies the Commissioner that he was prevented by any sufficient cause from appearing, the Commissioner shall, after giving notice to the aforesaid opposite party, hear such person and may set aside or vary any award made against such person under this rule upon such terms as may be just.

(3) If any person served with a notice under sub-rule (1) whether or not he desires to contest the applicant's claim for compensation or the opposite party's claim to be indemnified, claims that being a contractor he is himself a principal and is entitled to be indemnified by a person standing to him in the relation of a contractor from whom the workman could have recovered compensation he shall on or before the date fixed in the notice under sub-rule (1) present a notice of such claim to the Commissioner accompanied by the prescribed fee and the Commissioner shall thereupon issue notice to such person in Form JJ.

(4) If any person served with a notice under sub-rule (3) desires to contest the applicant's claim for compensation or the claim under sub-rule (3) to be indemnified he shall appear before the Commissioner on the date fixed in the notice in Form JJ or on any date to which the case may be adjourned and, if he so appears, shall have all the rights of a party to the proceedings, in default of so appearing he shall be deemed to admit the validity of any award, made against the original opposite party or the person served with a notice under sub-rule (1) and to admit his own liability to indemnify the party against whom such award is made for any compensation recovered from him; provided that, if any person so served appears subsequently and satisfies the Commissioner that he was prevented by any sufficient cause from appearing, the Commissioner shall, after giving notice to all parties on the record, hear such person and may set aside or vary any award made against such person under this rule upon such terms as may be just.

(5) In any proceeding in which a notice has been served on any person under sub-rule (1) or sub-rule (3), the Commissioner shall, if he awards compensation record in his judgment a finding, in respect of each of such persons whether he is or is not liable to indemnify any of the opposite parties, and shall specify the party, if any, whom he is liable to indemnify.

40. Procedure in connected cases.—(1) Where two or more cases pending before a Commissioner arise out of the same accident, and any issue involved is common to two or more such cases, such cases may, so far as the evidence bearing on such issue is concerned be heard simultaneously

(2) Where action is taken under sub-rule (1) the evidence bearing on the common issue or issues shall be recorded on the record of one case, and the Commissioner shall certify under his hand on the records of any such other case, the extent to which the evidence so recorded applies to such other case and the fact that the parties to such other case had the opportunity of being present and if they were present of cross-examining the witnesses.

41. Certain provisions of the Code of Civil Procedure 1908 to apply.—Save as otherwise expressly provided in the Act or these Rules the following provisions of the First Schedule to the Code of Civil Procedure, 1908 namely those contained in Order V, rules 9 to 13 and 15 to 30; Order IX; Order XIII rules 3 to 10; Order XVI rules 2 to 21; Order XVII; and Order XXIII rules 1 and 2; shall apply to proceedings before Commissioners, in so far as they may be applicable thereto:

Provided that—

(a) for the purpose of facilitating the application of the said provisions the Commissioner may construe them with such alterations not affecting the substance as may be necessary or proper to adapt them to the matter before him;

(b) the Commissioner may, for sufficient reason, proceed otherwise than in accordance with the said provisions, if he is satisfied that the interests of the parties will not thereby be prejudiced.

42. Provision regarding signature of forms.—Any form, other than a receipt for compensation, which is by these rules required to be signed by a Commissioner may be signed under his direction and on his behalf by any officer subordinate to him appointed by him in writing for this purpose.

43. Apportionment of compensation among dependants.—The provisions to this Part, except those contained in rules 26, 27 and 39 shall, as far as may be apply in the case of any proceedings relating to the apportionment of compensation among dependants of the deceased workman.

PART VI

TRANSFER

44. Transfer of report.—(1) A Commissioner transferring any matter to another Commissioner for report in accordance with sub-section (2) of section 21 shall along with the documents referred to in that sub-section, transmit to such other Commissioner concise statement, in the form of questions for answer, of the matter on which report is required.

(2) A Commissioner to whom a case is so transferred for report shall not be required to report on any question of law.

45. Transmission of money.—Money transmitted by one Commissioner to another in accordance with sub-section (2) of section 21 shall be transmitted either by remittance transfer receipt or by money order, or by messenger, as the Commissioner transmitting the money may direct.

PART VII

APPOINTMENT OF REPRESENTATIVES

46. *When representative must be appointed.*—Where any party to a proceeding is under the age of 15 years or is unable to make an appearance, the Commissioner shall appoint some suitable person who consents to the appointment, to represent such party for the purposes of the proceeding.

47. *When new representative to be appointed.*—If the Commissioner considers that the interests of any party for whom a representative has been appointed under rule 46 are not being adequately protected by that representative or if a person appointed to act as representative dies or becomes incapable of acting or otherwise ceases to act as such, the Commissioner shall appoint in his place another person who consents to the appointment.

PART VIII

RECORD OF MEMORANDA OF AGREEMENT

48. *Form of memorandum.*—Memoranda of agreement sent to the Commissioner under sub-section (1) of section 28 shall unless the Commissioner otherwise directs be in duplicate, and shall be in as close conformity as the circumstances of the case admit with Form K or Form L or Form M as the case may be.

49. *Procedure where Commissioner does not consider that he should refuse to record memorandum.*—(1) On receiving a memorandum of agreement the Commissioner shall, unless he considers that there are grounds for refusing to record the memorandum, fix a date for recording the same, and shall issue a notice in writing in Form N to the parties concerned that in default of objections he proposes to record the memorandum on the date so fixed:

Provided that the notice may be communicated orally to any parties who are present at the time when notice in writing would otherwise issue.

(2) On the date so fixed, the Commissioner shall record the memorandum unless, after hearing any of the parties who appear and desire to be heard, he considers that it ought not to be recorded:

Provided that the issue of a notice under sub-rule (1) shall not be deemed to prevent the Commissioner from refusing to record the memorandum on the date so fixed even if no objection be made by any party concerned.

(3) If on such date the Commissioner decides that the memorandum ought not to be recorded, he shall inform the parties present of his decision and of the reasons therefor, and if any party desiring the memorandum to be recorded is not present, he shall send information to that party in Form O.

50. *Procedure where Commissioner considers he should refuse to record memorandum.*—(1) If on receiving a memorandum of agreement, the

Commissioner considers that there are grounds for refusing to record the same he shall fix a date for hearing the party or parties desiring the memorandum to be recorded, and shall inform such party or parties and, if he thinks fit, any other party concerned of the date so fixed and of the grounds on which he considers that the memorandum should not be recorded.

(2) If the parties to be informed are not present, a written notice shall be sent to them in Form P or Form Q, as the case may be and the date fixed in such notice shall not be less than seven days after the date of the issue of the same.

(3) If on the date fixed under sub-rule (1) the party or parties desiring the memorandum to be recorded show adequate cause for proceeding to record the same, the Commissioner may, if information has already been given to all parties concerned, record the agreement. If information has not been given to all such parties, he shall proceed in accordance with rule 49.

(4) If on the date so fixed, the Commissioner refuses to record the memorandum, he shall send notice in Form O to any party who did not receive information under sub-rule (1).

51. *Procedure on refusal to record memorandum.*—(1) If in any case the Commissioner refused to record a memorandum of agreement, he shall briefly record his reasons for such refusal.

(2) If the Commissioner refuses to record a memorandum of agreement he shall not pass any order directing the payment of any sum or amount over and above the sum specified in the agreement unless opportunity has been given to the party liable to pay such sum to show cause why it should not be paid.

(3) Where the agreement is for the redemption of half-monthly payments by the payment of a lump sum, and the Commissioner considers that the memorandum of agreement should not be recorded by reason of the inadequacy of the amount of such sum as fixed in the agreement, he shall record his estimate of the probable duration of the disablement of the workman.

52. *Registration of memorandum accepted for record.*—In recording a memorandum of agreement, the Commissioner shall cause the same to be entered in a register in Form R, and shall cause an endorsement to be entered under his signature in a copy of the memorandum to be retained by him in the following terms, namely:

"This memorandum of agreement bearing Serial No..... of 19..... in the register has been recorded this..... day of....."

Signature of Commissioner.

PART IX

SCALE OF COSTS AND FEES PAYABLE IN RESPECT OF A PROCEEDING BEFORE THE COMMISSIONER

53. *Costs.*—(1) Where the Commissioner directs that any costs shall not follow the event, he shall state his reasons in writing.

- (2) The costs which may be awarded may include :—
 (a) the charges necessarily incurred on account of court-fees.
 (b) the charges necessarily incurred on subsistence money to witnesses; and
 (c) Pleader's fee on the scale prescribed in the following rule.
- (3) In any proceeding involving an application for compensation in the form of a lump sum, an application for commutation or an application for indemnification, the fee allowed shall be Rs. 10 subject to a special order of the Commissioner to diminution to a sum not less than Rs. 5 and to increase to a sum not more than Rs. 50 for each such proceeding. In all other applications, the fee allowed shall be Rs. 5 subject to increase by special order to a sum not exceeding Rs. 20.
- (4) When a party engages more pleaders than one to conduct or defend a case he shall be allowed one set of costs only.
- (5) When several dependants having substantially one defence to make employ several pleaders they shall be allowed one set of costs only. In such cases it will be for the applicant, at the time of hearing to ask for a direction of the court that separate costs be not allowed.
- (6) When two or more dependants having separate substantial defences have engaged the services of one pleader, they shall be allowed separate sets of costs. In this case it will be for the dependants interested to apply at the hearing for separate costs.
- (7) When several dependants having separate defences are represented by separate pleaders, they shall be entitled to separate costs.

54. Fees.—The fees specified in column 3 of the sub-joined schedule shall be payable in respect of the proceedings mentioned in the second column of the said schedule :

Provided that no fee shall be payable under this rule in respect of application presented on behalf of any of the departments of the Government.

SCHEDULE

Sl. No. (1)	Description of the proceedings (2)	Amount of fees (3)
I.	Application for compensation— (a) Where compensation is claimed in the form of recurring payments (b) Where compensation is claimed in the form of a lump sum	50 Naye Paise One rupee where the sum does not exceed Rs. 500 plus one rupee for each additional sum of Rs. 500 or fraction thereof.
II.	Application for commutation— (a) By agreement between the parties (b) In all other cases	50 Naye Paise Two rupees
III.	Application for deposit of compensation— (a) Under section 8 (1) of the Act (b) Under section 8 (2) of the Act (in respect of each person to whom compensation is payable)	Nil. 50 Naye Paise

Sl. No. (1)	Description of the proceedings (2)	Amount of fees. (3)
IV.	Application for distribution by dependants for each dependant	One rupee
V.	Application for review— (a) Where the review claimed is the continuance, increase, decrease or ending of half-monthly payments (b) Where half-monthly payments are sought to be converted into a lump sum (c) In all other cases	50 Naye Paise Two rupees One rupee
VI.	Applications for the registration of agreements— (a) Where the application of the memorandum of agreement is signed by both parties (b) In all other cases	Nil 50 Naye Paise
VII.	Applications to summon witnesses— (a) For the first witness mentioned in the application (b) For every subsequent witness	50 Naye Paise 25 Naye Paise
VIII.	Applications for indemnification	Three rupees
IX.	Application for recovery of compensation— (a) Under an order already passed by the Commissioner (b) In all other cases	50 Naye Paise The same fee as payable on a similar application for compensation.
X.	All applications not otherwise provided for	50 Naye Paise

N.B.—In the case of any application falling under the Head X the Commissioner may, if he thinks fit, permit the application to be made without fee.

55. Applicant may be required to deposit excess fees.—If in any case the Commissioner considers that he ought to pass orders granting relief of a different kind or to a different extent from that claimed by the applicant and if the fee which would have been payable by the applicant on an application for the relief which the Commissioner considers to be due is greater than the fee which has actually been paid, the Commissioner may require the applicant to deposit fees to the extent of the difference.

PART X

MAINTENANCE OF REGISTERS, LANGUAGE OF THE COURT, RECORDS, CERTIFIED COPIES AND ALLOWANCE TO WITNESSES.

56. Register of Applications.—All applications presented to the Commissioner shall be registered in a register in Form S.

57. Register of fatal accidents.—Every Commissioner shall maintain a separate register in Form T of fatal accidents which come to his knowledge either on account of deposits made by or on behalf of employers, or because of applications made by dependants of a deceased workman for an order for deposit and payment of compensation.

58. Register of non-fatal accidents.—Every Commissioner shall maintain a separate register in Form U of non-fatal accidents which come to his knowledge in any of the following ways :—

- (1) On account of applications for registration of memoranda of agreements.
- (2) On account of applications for commutation of half-monthly payments.
- (3) On account of amount of compensation deposited with the Commissioner under section 8(2).
- (4) On account of applications for settlement of claim made by the injured workman.

59. *Language of the record.*—The record of the Commissioner shall be kept in the English Language.

60. *Supply of certified copies to parties.*—Certified copies of any papers in any proceedings before a Commissioner should be supplied to the parties in accordance with the rules in the Civil Rules of Practice for the time being in force.

[Part III, Chapter III (in so far as they are consistent with the Act) of the Civil Court Guide].

61. *Allowance to witnesses.*—In cases where a Commissioner has to issue summons to a witness either at the instance of a party to a proceeding before him, or on his own initiative the allowances to be paid to the witness, shall be on the same scale as obtained in the Civil Court.

PART XI

62. *Fees to assessors.*—Where in pursuance of the provisions of sub-section 3 of section 20, any person possessing special knowledge of any matter relevant to the case under inquiry is chosen by the Commissioner to assist him in holding the same, he shall be entitled to such fee as the Commissioner may fix subject to a maximum of Rs. 50 and a minimum of Rs. 20 :

Provided that he shall be entitled to an additional fee of rupees ten

- (a) for each extra case if he is required to sit in more than one case on the same day ; and
- (b) for each of the second and third days of any one case.

PART XII

NOTICE UNDER SUB-SECTION (1) OF SECTION 10-A AND THE STATEMENT BY THE EMPLOYER IN REPLY THERETO

63. The notice sent by a Commissioner under sub-section (1) of section 10A shall be in Form V and shall be accompanied by a copy of Form W.

64. The statement submitted by an employer under section 10A shall be in Form W.

65. The Travancore-Cochin Workmen's Compensation Rules 1952 and the Workmen's Compensation Rules in force in territories referred to as Malabar District in section 5 (2) of the States Reorganisation Act 1956 (Central Act 37 of 1956) are hereby repealed :

Provided that any order made or action taken under the rules so repealed shall be deemed to have been made or taken under the corresponding provisions of these rules.

FORM A.

(See Rule 6(1))

DEPOSIT OF COMPENSATION FOR FATAL ACCIDENT.

(Section 8(1) of the Workmen's Compensation Act, 1923)

(1) Compensation amounting to Rs.....is hereby presented for deposit in respect of injuries resulting in the death of the workman, whose particulars are given below, which occurred on.....

Name.....

Father's name.....

(Husband's name in case of married woman or widow)

Caste.....

Local address.....

Permanent address.....

His/her monthly wages are estimated at Rs.....he/she was over/ under the age of 15 years at the time of his/her death.

(2) The said workman had, prior to the date of his/her death received the following payments namely :—

Rs.....on.....Rs.....on.....

Rs.....on.....Rs.....on.....

Rs.....on.....Rs.....on.....

amounting in all to Rs.....

(3) An advance of Rs.....has been made on account of compensation to.....being his/her dependant.

*(4) I do not desire to be made a party to the proceedings for distribution of the aforesaid compensation.

Dated.....19 ..

Employer.

*An employer desiring to be made a party to the proceedings should strike out the word—"do not".

FORM AA.

[See Rule 6(1)]

DEPOSIT OF COMPENSATION FOR NON-FATAL ACCIDENT TO A WOMAN OR PERSON UNDER LEGAL DISABILITY.

[Section 8(1) of the Workmen's Compensation Act, 1923]

1. Compensation amounting to Rs.....is hereby presented for deposit in respect of injuries sustained by.....

residing at.....on 19...resulting in the loss of/temporary disablement.

His/her monthly wages are estimated at Rs.....he/she was over/under the age of 15 years at the time of the accident.

2. The said injured workman has prior to the date of the deposit, received the following half-monthly payments, namely :—

Rs.....on.....Rs.....on.....
Rs.....on.....Rs.....on.....
Rs.....on.....Rs.....on.....

Dated.....19.....Employer.

FORM B.

[See Rule 6 (1)]

RECEIPT FOR COMPENSATION

[Deposited under Section 8(1) of the Workmen's Compensation Act, 1923]

Book No.....Receipt No.....Register No.....

Depositor.....

Deceased or injured workman.....

Date of Deposit.....19.....

Sum deposited Rs.....

Commissioner.

FORM C.

[See Rule 6 (3)]

STATEMENT OF DISBURSEMENTS, SECTION 8 (4) OF THE WORKMEN'S COMPENSATION ACT, 1923.

Serial No.....

Depositor

Date.....Rs.....

Amount deposited.....

Amount deducted and repaid to employer under the proviso to Section 8 (1)

Funeral expenses paid ..

Compensation paid to the following dependants :—

Name.....Relationship.....Rs.....

Total

Dated.....19.....

Commissioner.

FORM D.

[See Rule 9]

DEPOSIT OF COMPENSATION FOR NON-FATAL ACCIDENTS OTHER THAN TO A WOMAN OR PERSON UNDER LEGAL DISABILITY

[Section 8 (2) of the Workmen's Compensation Act, 1923]

Compensation amounting to Rs.....is hereby presented for deposit in respect of permanent/temporary injuries sustained by.....residing at.....which occurred on.....19.....

Dated.....19.....Employer.

FORM E.

[See Rule 9]

RECEIPT FOR COMPENSATION.

[Deposited under Section 8 (2) of the Workmen's Compensation Act, 1923]

Book No.....Receipt No.....Register No.....

Depositor.....

In favour of.....

Date of deposit.....19.....

Sum deposited Rs.....

Commissioner.

FORM EE.

[See Rule 11]

REPORT OF FATAL ACCIDENTS

To

Sir,

I have the honour to submit the following report on an accident which occurred on.....at.....and which resulted in the death of the workman/workmen of whom particulars are given in the statement annexed.

2. The circumstances attending the death of the workman/workmen were as under :—

- (a) Time of the accident
- (b) Place where the accident occurred
- (c) Manner in which deceased was/were employed at the time
- (d) Cause of the accident
- (e) Any other relevant particulars.

I have etc.,
Signature and designation of the
person making the report.

STATEMENT

Name	Sex	Age	Nature of employment	Full Postal address

FORM F.

[See Rule 20]

APPLICATION FOR COMPENSATION BY WORKMAN

To the Commissioner for Workmen's Compensation.

.....
residing at.....
applicant.....
versus.....
residing at.....
 opposite party.

It is hereby submitted that —

(1) the applicant, a workman employed by (a contractor with) the opposite party on the.....day of.....19..... received personal injury by accident arising out of and in the course of his employment.

The cause of the injury was.....

(2) the applicant sustained the following injuries namely :

(3) the monthly wages of the applicant amount to Rs.....
the applicant is over/under the age of 15 years.

(4) * (a) Notice of the accident was served on the.....day of.....

(b) Notice was served as soon as practicable.

(c) Notice of the accident was not served (in due time) by reason of.....

(5) The applicant is accordingly entitled to receive—

(a) half-monthly payment of Rs.....
 from the.....day of.....
 19.....to.....

(b) a lump sum payment of Rs.....

(6) The applicant has taken the following steps to secure a settlement by agreement namely.....
but it has proved impossible to settle the question in dispute because.....

* You are therefore requested to determine the following questions in dispute, namely :—

(a) Whether the applicant is a workman within the meaning of the Act ;

(b) whether the accident arose out of or in the course of the applicant's employment ;

(c) whether the amount of compensation claimed is due or any part of that amount ;

(d) whether the opposite party is liable to pay such compensation as is due ;

(e) etc., (as required).

Dated the.....

 Applicant.

* Strike out the clauses which are not applicable.

FORM G.

[See Rule 20]

APPLICATION FOR ORDER TO DEPOSIT COMPENSATION.

To the Commissioner for Workmen's Compensation.

.....
residing at.....applicant versus.....
residing at.....
 opposite party.

It is hereby submitted that

(1)a workman employed by (a contractor with) the opposite party on the.....day of.....19.....received personal injury by accident arising out of and in the course of his employment resulting in his death on the.....day of.....19.....The cause of the injury was.....

(2) The applicant (s) is a/are dependent (s) of the deceased workman, being his.....

(3) The monthly wages of the deceased amount to Rs.....
 The deceased was over/under the age of fifteen years at the time of his death.

* (4) (a) Notice of the accident was served on the.....day of.....

(b) Notice was served as soon as practicable.

(c) Notice of the accident was not served (in due time) by reason of.....

(5) The deceased before his death received as compensation the total sum of Rs.....

(6) The applicant (s) is/are accordingly entitled to receive a lump sum payment of Rs.....

You are therefore requested to award to the applicant the said compensation or any other compensation to which he may be entitled.

Dated the..... *Applicant.*

*Strike out the clauses which are not applicable.

FORM H.

[See Rule 20.]

APPLICATION FOR COMMUTATION

(Under section 7 of the Workmen's Compensation Act, 1923)

To the Commissioner for Workmen's Compensation,

.....
residing at.....applicant.....
versus.....residing at.....
 opposite party.....

It is hereby submitted that—

(1) The applicant/opposite party has been in receipt of half monthly payments from.....to.....in respect of temporary disablement by accident arising out of and in the course of his employment.

(2) The applicant is desirous that the right to receive half monthly payments should be redeemed.

(3) (a) The opposite party is unwilling to agree to the redemption of the right to receive half-monthly payments.

(b) The parties have been unable to agree regarding the sum for which the right to receive half-monthly payments should be redeemed.

You are therefore requested to pass orders—

(a) directing that the right to receive half-monthly payments should be redeemed.

(b) fixing a sum for the redemption of the right to receive half-monthly payments.

Dated
Applicant.

FORM J.

[See Rule 39.]

NOTICE.

Whereas a claim for compensation has been made by.....applicant, against.....and the said.....has claimed that you are liable under section 12(2) of the Workmen's Compensation Act, to indemnify him against any compensation which he may be liable to pay in respect of the aforesaid claim you are hereby informed that you may appear before me on.....and contest the claim for compensation made by the said applicant or the claim for indemnity made by the opposite party. In default of your appearance you will be deemed to admit the validity of any award made against the opposite party and your liability to indemnify the opposite party for any compensation recovered from him.

Dated.....19

Commissioner.

FORM JJ.

[See Rule 39.]

NOTICE

Whereas a claim for compensation has been made by.....applicant, against.....and the said.....has claimed that.....is liable under Act, to indemnify him against any compensation which he may be liable to pay in respect of the aforesaid claim and whereas the said.....on notice served has claimed that you.....stand to him in the relation of a contractor from whom the applicant.....could have recovered compensation, you are hereby informed that you may appear before me onand contest the claim for compensation made by the said applicant or the claim for indemnity made by the opposite party.....In default of your appearance you will be deemed to admit the validity of any award made against the opposite party.....and your liability to indemnify the opposite party.....for any compensation recovered for him.

Date.....

Commissioner.

FORM K.

[See Rule 48.]

MEMORANDUM OF AGREEMENT

It is hereby submitted that on the.....day of.....19.....personal injury was caused to.....residing at.....by accident arising out of and in the course of employment in.....The said injury has resulted in temporary disablement to the said workman whereby it is estimated that he will be prevented from earning more than of his previous/any wages for a period of.....months. The said workman has been in receipt of half-monthly payments which have

continued from the.....day of.....19.....until the
.....day of.....19.....amounting to Rs.....
in all. The said workman's monthly wages are estimated at Rs.....
The workman is over the age of 15 years/will reach the age of 15 years on...

It is further submitted that.....the employer of the said workman has agreed to pay, and the said workman has agreed to accept the sum of Rs.....in full settlement of all and every claim under the Workmen's Compensation Act, 1923 (VIII of 1923) in respect of all disablement of a temporary nature arising out of the said accident whether now or hereafter to become manifest. It is therefore requested that this memorandum be duly recorded.

Dated.....

Signature of employer.....

Witness.....

Signature of workman.....

Witness.....

Note :—An application to register an agreement can be presented under the signature of one party, provided that the other party has agreed to the terms. But both signatures should be appended whenever possible.

(Receipt to be filled in when the money has actually been paid.)

In accordance with the above agreement I have this day received the sum of Rs.....



.....Workman.

Dated.....19.....

The money has been paid and this receipt signed in my presence.....

.....Witness.

Note :—This form may be varied to suit special cases, e.g., injury by occupational disease, agreement when workman is under legal disability, etc.

FORM L.

[See Rule 48]

MEMORANDUM OF AGREEMENT

It is hereby submitted that on the.....day of.....19.....personal injury was caused to.....residing at.....by accident arising out of and in the course of his employment in.....The said injury has resulted in permanent disablement to the said workman of the following nature namely.....The said workman's

monthly wages are estimated at Rs.....The workman is over the age of 15 years/will reach the age of 15 years on.....The said workman has prior to the date of this agreement, received the following payments, namely:

Rs.....on.....Rs.....on.....

Rs.....on.....Rs.....on.....

Rs.....on.....Rs.....on.....

It is further submitted thatthe employer of the said workman has agreed to pay, and the said workman has agreed to accept the sum of Rs.....in full settlement of all and every claim under the Workmen's Compensation Act, in respect of the disablement stated above and all disablement now manifest. It is therefore requested that this memorandum be duly recorded.

Dated.....

Signature of employer.....

Witness.....

Signature of workman.....

Witness.....

Note :—An application to register an agreement can be presented under the signature of one party provided that the other party has agreed to the terms. But both signatures should be appended whenever possible.

(Receipt to be filled in when the money has actually been paid)

In accordance with the above agreement, I have this day received the sum of Rupees.....



.....Workman.

Dated.....19.....

The money has been paid and this receipt signed in my presence.

.....Witness.

Note :—This form may be varied to suit special cases, e.g., injury by occupational disease, agreement when workman is under legal disability etc.

FORM M.

[See Rule 48]

MEMORANDUM OF AGREEMENT

It is hereby submitted that on the day of 19..... personal injury was caused to residing at by accident arising out of and in the course of employment in The said injury has resulted in temporary disablement to the said workman, who is at present in receipt of wages amounting to Rs.....per month/no wages. The said workman's monthly wages prior to the accident are estimated at Rs.....The workman is subject to a legal disability by reason of.....

It is further submitted that.....the employer of the workman has agreed to pay and.....on behalf of the said workman has agreed to accept half-monthly payments at the rate of Rs.....for the period of the said temporary disablement. The agreement is subject to the condition that the amount of the half-monthly payments may be varied in accordance with the provisions of the said Act on account of an alteration in the earning of the said workman during disablement. It is further stipulated that all rights of commutation under section 7 of the said Act are unaffected by this agreement. It is therefore requested that this memorandum be duly recorded.

Dated.

Signature of employer.

Witness

Signature of workman.

Witness

Note : - An application to register an agreement, can be presented under the signature of one party, provided that the other party has agreed to the terms. But both signatures should be appended whenever possible.

(Receipt to be filled in when the money has actually been paid).

In accordance with the above agreement, I have this day received the sum of Rs.....

.....Workman.

Dated.....19.....

The money has been paid and this receipt signed in my presence.

.....Witness.

Note : This form may be varied to suit special cases, e.g., injury by occupational disease, etc.

FORM N.

(See Rule 49)

Whereas an agreement to pay compensation is said to have been reached between.....and.....and whereas..... has/have applied for registration of the agreement under section 28 of the Workmen's Compensation Act, 1923 (VIII of 1923) notice is hereby given that the said agreement will be taken into consideration on.....19..... and that any objections to the registration of the said agreement should be made on that date. In the absence of valid objections, it is my intention to proceed to the registration of the agreement.

Date.....19.....

Commissioner.

FORM O.

(See Rules 49 & 50)

Take notice that registration of the agreement to pay compensation said to have been reached between you.....and.....on the19.....has been refused for the following reasons, namely :—

Dated.....19.....

Commissioner.

FORM P.

(See Rule 50)

Whereas an agreement to pay compensation is said to have been reached between.....and.....and whereas..... has/have applied for registration of the agreement under section 28 of the Workmen's Compensation Act, 1923 (VIII of 1923) and whereas it appears to me that the said agreement ought not to be registered for the following reason namely :—

.....an opportunity will be afforded to you of showing cause on.....19..... why the said agreement should be registered. If no adequate cause is shown on that date, registration of the agreement will be refused.

Dated.....19.....

Commissioner.

FORM T.
(See Rule 57)
REGISTER OF FATAL ACCIDENTS FOR THE YEAR 19.....

Serial Number	1	2	3	4	5	6	7	8	9	10
Date of information										
Date of accident										
Name of the deceased workman										
Name of employer										
Dependants of the deceased workman										
Nature of accident and injury										
Amount of compensation and rate of monthly wages										
Date of distribution among the dependants										
Remarks										

Instead of 4% allowed by the formula the Industrial Tribunal fixed the return on reserves at 5% on the ground of its "being sufficient to guard the interests of the company" but the Labour Appellate Tribunal increased it to 6% to meet replacements and rehabilitation charges since the "usual method of calculating these charges is not possible in the present case" and "we are to see that the industry does not suffer for want of replacement and rehabilitation funds and must provide such funds in some other way, namely, by allowing a return on the working capital at higher rates". In the absence of any claim in the respondent's written statement for rehabilitation or any figures for determining this amount, this extra one per cent. is insupportable. It is not a case where a claim could not be made or figures could not have been given at the proper stage. The additional one per cent. cannot therefore be allowed. In our opinion the reasons given by the Industrial Tribunal sufficiently support the giving of 5% on the reserves as being fair considering the risks of the tea industry which is exposed to various adverse circumstances and elements. The Industrial Tribunal has not acted unreasonably nor in disregard of any accepted principles in calculating the return on reserves at 5% and we see no cogent reason for varying this rate.

The respondent has, since 1926, been paying bonus to its employees according to a scheme called the "unit scheme" which according to the Industrial Tribunal has the merit of being more rational and gives incentive to industrious habits and efficiency leading to more production. The Labour Appellate Tribunal did not go into the merits of the scheme but ordered payment according to it. Under this scheme units are credited to each workman, taking into consideration the importance of the job he holds, the wages he gets and the number of years he has been employed in that particular job. The value of units so awarded thus vary commensurate with considerations of efficiency and experience. The establishment is divided into twelve categories and the Medical Staff into three each based on the relative importance of the nature of work done by a workman. Thus, in the descending order of their importance, the jobs are classified as: 1. Head Mohori; 2. Head Clerk; 3. Divisional Mohori; 4. Land Mohori; Hazaria Mohori; 5. Kamjari Mohori; 6. Godown Mohori; 7. 2nd Tea House Mohori; 2nd Kerani; 2nd Hazaria Mohori; 8. 2nd Godown Mohori; 9. Gunti Mohori; 10. 3rd Tea House Mohori; 11. Mondal; 12. Apprentices:

Units would thus be awarded to workmen in the particular category they are in and the more qualified the worker the better his work and the higher his wage, the higher the number of units he would be entitled to. The amount available for distribution as bonus

is divided by the aggregate number of units of all the workmen participating in the scheme and each worker would be entitled to a multiple of the amount payable on one unit and the units to his credit. It appears to us that the estimate of the Industrial Tribunal as to the suitability of the scheme was fully justified and payment of bonus in accordance with this scheme will not only result in fair distribution of bonus but would also lead to improvement in the quality and quantity of work. This scheme is not to be confused with production bonus though it has the merit of combining the fair distribution of the surplus available and the maintenance of efficiency in the establishment.

Taking the figures on the basis of the award made by the Industrial Tribunal we find that Rs. 7,64,608, would be the surplus for the year 1950, Rs. 77,823 for 1951 and a deficit of Rs. 10 lacs for the year 1952. The total sum available for three years will be nil. On the basis of the claim which counsel for the appellant has made before us, i.e., two months' wages, we find that the amount of bonus required for the members of the staff for the year 1950 will be one-sixth of Rs. 4,63,095, and for the year 1951 one-sixth of Rs. 4,83,893, and for 1952 one-sixth of Rs. 5,31,202, which works out to Rs. 77,182 for 1950, Rs. 80,647 for 1951 and Rs. 88,533 for 1952. The amounts required for the artisans further increase these figures. No doubt on the calculations which have now been made the appellant may justify the claim of two months' bonus for the year 1950 but the same cannot be said in regard to the claim for the years 1951 and 1952 because of the available surplus which is only Rs. 77,823 for 1951 and there is a deficit of about 10 lacs of rupees for the year 1952. Taking all these figures into consideration, we are of the opinion that the amounts awarded by the Industrial Tribunal are fair and proper. As the Labour Appellate Tribunal allowed depreciation and rehabilitation on an erroneous basis, we would set aside the order of the Labour Appellate Tribunal and would restore that of the Industrial Tribunal with this modification that the respondent shall make available the additional amount required for payment of the proportional bonus to the artisans.

The appeal is, therefore, allowed to this extent, the order of the Labour Appellate Tribunal set aside, and the award of the Industrial Tribunal restored with this modification that the respondent shall also provide an additional amount for these three years for payment to the artisans of proportionate bonus on the basis of the "Unit System". As neither of the parties have succeeded in their main contentions, the fair order in regard to costs should be that the parties do bear their respective costs throughout.

[IN THE SUPREME COURT OF INDIA.]

NAGPUR ELECTRIC LIGHT & POWER CO., LTD., AND OTHERS
v.

K. SHREEPATHIRAO.

S. R. Das, C.J., T. L. Venkatarama Aiyar, S. K. Das,
P. B. Gajendragadkar and Vivian Bose, JJ.

April 11, 1958.

STANDING ORDERS—INTERPRETATION OF—PRINCIPLES—"EMPLOYEE" DEFINED AS MEANING PERSON WHOSE NAME AND TICKET NUMBER ARE INCLUDED IN DEPARTMENTAL MUSTERS—EMPLOYEE NOT HAVING TICKET—WHETHER FALLS WITHIN DEFINITION.

DISCHARGE—STANDING ORDERS PROVIDING FOR DISCHARGE ON NOTICE—EMPLOYEE CHARGE-SHEETED FOR MISCONDUCT—RIGHT OF MANAGEMENT TO DISCHARGE EMPLOYEE ON NOTICE IN ACCORDANCE WITH STANDING ORDERS.

Under the Industrial Employment Standing Orders Act, 1946 and under the C. P. and Berar Industrial Disputes Settlement Act, 1947, the appellant company framed Standing Orders which had been duly certified by the authorities under these Acts. The Standing Orders contained two definitions: (i) "employees", meaning all persons, male or female, employed in the office or mains department or stores or power house or receiving station of the company, either at Nagpur or at Wardha, whose names and ticket numbers are included in the departmental musters; and (ii) "workman", meaning such categories of employees as may from time to time be declared to be "workman" by the management. The respondent, who had been charge-sheeted for certain misconduct and whose services had been terminated on notice in accordance with the terms of the Standing Orders, was not issued with a ticket, and, therefore, no ticket number was included in the departmental musters in respect of this employee. It was, therefore, contended that as his ticket number was not entered in the departmental musters, he did not fall within the definition of "employee" in the Standing Orders and, therefore, the Standing Orders did not apply to him. Held, that, having regard to the subject and context of the Standing Orders and of the Act under which they were framed, the words "whose names and ticket numbers are included in the departmental musters" in the definition of "employee" did not lay down any essential characteristic of an "employee" and applied only in cases where tickets had been issued to an employee. Therefore, the respondent was governed by the Standing Orders even though no ticket was issued to him, and it was open to the management to terminate his services in accordance with the

Standing Orders by giving him notice of termination of service if the management did not think fit to proceed against him for the alleged misconduct.

Civil Appeal No. 5 of 1958.

M. C. Setalvad and B. Sen (D. B. Padhya and I. N. Shroff with them) for the management.

R. V. S. Mani for the respondent.

JUDGMENT.

The following Judgment of the Court was delivered by

S. K. DAS, J.—This is an appeal by special leave. The appellants before us are the Nagpur Electric Light and Power Co. Ltd. (hereinafter referred to as the Company), a public limited company having its registered office at Nagpur in Madhya Pradesh, its Manager, and Assistant Manager. The respondent, Shreepathi Rao, joined the service of the Company as a typist on a salary of Rs. 30 per month in July, 1936. He rose in rank from time to time and was appointed Deputy Head Clerk in 1947 in the grade of Rs. 120-10-225. Since 1952, he has been receiving a basic salary of Rs. 245 per month. On November 28, 1955, an explanation was called for from him with regard to the issue of certain bills to consumers of electricity called "high tension consumers", without having certain "notes for the information of consumers" printed at the back of the bills. The respondent submitted his explanation on the next day, marking a copy thereof to one of the directors of the Company. On December 2, 1955, he was again asked to explain why he marked a copy of his explanation to one of the directors. The respondent submitted an explanation in respect of this matter also. On the same date, he was again asked to explain as to how and why certain "double adjustments" had been made in the accounts of 1954, relating to the consumers' department of the Company, the allegation being that a sum of Rs. 1,05,894-7-7 which represented the amount of bills of the Central Railway had been deducted twice in the accounts. The respondent submitted an explanation on December 3, 1955, in which he said that the charge was vague and that, after 1949, he was not in any way concerned with the preparation of summaries and annual statements of accounts of the consumer's department. On December 5, 1955, an order of suspension was made against the respondent which stated that the order was to take immediate effect and to remain in force until further orders, pending some investigation against the respondent. Two days later, on December 7, 1955, a memorandum was served on the respondent terminating his services with effect from January 31, 1956. The memorandum, so far as it is relevant for our purpose, read—

"We hereby give you notice under Standing Order 16(1) that your services will stand terminated as from 31st January, 1956.

The Company's Managing Director is satisfied that it is not in the interests of the business of the Company to disclose reasons for terminating your services."

On December 19, 1955, a notice was served on the Company on behalf of the respondent wherein it was stated that the order of suspension dated December 5, 1955, and the order of termination dated December 7, 1955, were illegal and *ultra vires* and a request was made to withdraw the said orders and re-instate the respondent within 24 hours, failing which the respondent said that he would take legal action in the matter. On December 26, 1955, the Company sent a reply to the notice denying the allegations, and the Company further stated that it had no desire to enter into a discussion with the respondent as to the propriety of the orders passed.

On January 2, 1956, the respondent filed a petition under article 226 of the Constitution in the High Court at Nagpur in which he prayed for the issue of appropriate writs or directions quashing the orders of suspension and termination dated December 5, 1955, and December 7, 1955, respectively and asking for certain other reliefs. This petition was heard by a learned single Judge on certain preliminary objections raised by the present appellants, and, by an order dated April 14, 1956, he upheld the preliminary objections and dismissed the petition. The preliminary objections taken were these: it was urged that the service of the respondent was terminated in accordance with the Standing Orders of the Company, approved by the relevant authorities under the provisions of the Industrial Employment (Standing Orders) Act (XX of 1946), hereinafter referred to as the Central Act, and also under the provisions of the Central Provinces and Berar Industrial Disputes Settlement Act (C.P. and Berar Act XXIII of 1947), hereinafter called the Local Act; and if the respondent had any grievance against the said Standing Orders, his only remedy was to get the Standing Orders amended as provided for in the relevant Act, but he had no right to move the High Court under article 226 of the Constitution for quashing the orders passed against him or for re-instatement etc. Alternatively it was urged that if the Standing Orders did not apply in the case of the respondent as was the respondent's case, then the ordinary law of master and servant applied, and the only remedy of the respondent was to sue the Company in damages for wrongful dismissal. On these preliminary objections the learned Judge held: (1) that the respondent was not an employee within the meaning of the Standing Orders and, therefore

his case was not governed by the Standing Orders; (2) that the relationship between the appellants and the respondent was contractual and not statutory and the remedy of the respondent was to sue the Company in damages for wrongful dismissal; and (3) as for amendment of the Standing Orders so as to include the respondent and persons in his category, the only remedy open to the respondent was to take action under the relevant Act by approaching a recognised union to move in the matter.

On the dismissal of his petition, the respondent preferred an appeal under clause 10 of the Letters Patent. This appeal was heard and allowed by a Division Bench on 26th September, 1956, on the findings that (1) the Standing Orders did not apply to the respondent, though he was an employee within the meaning of that expression in section 2(1) of the Local Act; (2) the conditions of the respondent's service were governed by the provisions of the Local Act and on a breach thereof, the respondent had a right to move the High Court for appropriate orders under article 226 of the Constitution; and (3) as the termination of the service of the respondent was without statutory authority, it must be vacated. The Division Bench accordingly allowed the appeal, quashed the orders of suspension and termination of service and declared that the respondent continued to be an employee of the company on terms which were applicable to him on the date of his suspension, namely, 5th December, 1955. There was also a direction to the Company to pay back wages to the respondent.

The appellants herein then moved this Court and obtained special leave to appeal from the order of the Division Bench dated 26th September, 1956. The present appeal has been brought in pursuance of the order granting special leave to the appellants.

The first and foremost question which arises for decision in this appeal is whether the Standing Orders of the company apply to the respondent. We have already stated—and it is not in dispute—that the Standing Orders were approved by the Certifying Officer under the provisions of the Central Act and by the Labour Commissioner under section 30 of the Local Act. It is necessary to explain here the general scheme of the provisions of the two Acts under which the Standing Orders were approved. Under the Central Act, the expression "Standing Orders" means rules relating to matters set out in the Schedule and section 3 requires that within six months from the date on which the Central Act becomes applicable to an industrial establishment the employer shall submit to the Certifying Officer five copies of the draft Standing Orders proposed by him for adoption in his industrial establishment. Sub-section (2) of section 3 lays down that provision shall be

made in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment and where model Standing Orders have been prescribed, the draft shall be, so far as practicable, in conformity with such model. The Schedule refers to the matters which are to be provided by Standing Orders, and item 8 of the Schedule relates to "termination of employment, and the notice thereof to be given by employer and workman". We may state here that the Central Act contains a definition of "workman" which, at the material time in this case, meant any person employed in any industrial establishment to do any skilled or unskilled, manual or clerical labour for hire or reward, but did not include any member of the armed forces. Sections 4 to 10 of the Central Act deal with (a) conditions for certification of Standing Orders, (b) certification of Standing Orders, (c) appeals, (d) date of operation of Standing Orders, (e) register of Standing Orders, (f) posting of Standing Orders and (g) duration and modification of Standing Orders. There are similar provisions in the Local Act, Chapter IV of which deals with Standing Orders, Sub-section (1) of section 30 of the Local Act lays down—

"Every employer, in respect of any industry to which this Act has been made applicable under sub-section (3) of section 1, shall, within two months of the date of such notification, submit to the Labour Commissioner for approval, in such manner as may be prescribed, a copy of the Standing Orders concerning the relations between him and his employees with regard to all industrial matters mentioned in Schedule I."

Item 8 of Schedule I of the Local Act is again "termination of employment, notice to be given by employer and employee". The other sub-sections of section 30 lay down the procedure to be followed for the approval of Standing Orders by the Labour Commissioner, appeal by an aggrieved person, etc. Sections 31 and 32 lay down the procedure for an amendment of the Standing Orders either at the instance of the employer or at the instance of a representative of employees. It is worthy of note that sub-section (1) of section 30 requires every employer to submit to the Labour Commissioner a copy of the Standing Orders concerning the relations between him and his employees with regard to all industrial matters mentioned in Schedule I. The Local Act defines the expression "employee" and, at the relevant time, it meant any person employed by an employer to do any skilled or unskilled, manual or clerical work for contract or hire or reward in any industry. It is worthy of note that the definition of "employee" in the local Act corresponds more or less to the definition of "workman" under the Central Act. There are some minor differences in the definition of the two expressions in the two Acts but with those differences we are not concerned in the present case.

The Standing Orders with which we are concerned in the present case came into force on 14th November, 1951, and it is convenient at this stage to refer to the relevant Standing Orders. Standing Order No. 2 defines certain expressions used in the Standing Orders. It states :

"In these Orders, unless there is anything repugnant in the subject or context:—

(a) "employees" means all persons, male or female, employed in the Office or Mains Department or Stores or Power House or Receiving Station of the Company, either at Nagpur at Wardha, whose names and ticket numbers are included in the departmental musters.

(b) "The Manager" means the person appointed as such and includes the Assistant Manager and in relation to Wardha establishment "the Resident Engineer".

(c) "Ticket" includes a card, pass or token.

(d) "Workman" means such categories of employees as may from time to time be declared to be "Workman" by the Management".

Standing Order No. 3 classifies employees into certain categories and Standing Order No. 4 deals with tickets. In substance, it says that every workman, permanent or temporary, shall have a ticket or card, and an apprentice shall have an apprentice card; the tickets or cards issued shall be surrendered when the workman is discharged or ceases to belong to the class of employment for which the card or ticket is issued. It is to be noticed that under the definition clause "workman" means such categories of employees as may from time to time be declared to be workman by the management and Standing Order No. 4 makes it clear that every workman, permanent or temporary, will have a ticket. Standing Order No. 16 deals with termination of employment, and clause (1) thereof, relevant for our purpose, must be quoted in full —

"For terminating the employment of a permanent employee, a notice in writing shall be given either by the employer or the employee, giving one calendar month's notice. The reasons for the termination of the services will be communicated to the employee in writing, if he so desires at the time of discharge, unless such a communication, in the opinion of the Management, may directly or indirectly lay the Company and the Management or the person signing the communication open to criminal or civil proceedings at the instance of the employee or the Company's Managing Director is satisfied that it is not in the interests of the business of the Company to disclose the reasons and so orders in writing."

Now, it is not in dispute that the respondent is a 'workman' within the meaning of the Central Act and an 'employee' as defined in the Local Act. The controversy before us is as to whether he is an 'employee' within the meaning of the Standing Orders. Admittedly, no ticket has been issued to the respondent by the Company; his ticket number cannot, therefore, be included in the departmental muster. The learned Judges of the High Court held that the inclusion of the name and ticket number in the departmental muster was an essential characteristic of an 'employee' as defined for the purpose of the Standing Orders, and the mere fact of employment in the Office, Mains Department, Stores, Power House or Receiving Station of the Company was not enough to make a person so employed an 'employee' within the meaning of the Standing Orders, and, as the respondent did not fulfil the necessary condition of having his name and ticket number included in the departmental muster, he was not an 'employee' as defined for the Standing Orders, which did not therefore apply to him. On behalf of the appellants, it is contended that regard being had to the context and the entire body of the Standing Orders, the aforesaid view of the High Court is not correct, and on a proper construction, inclusion of the name and ticket number in the departmental muster is not an essential characteristic of an 'employee' as defined for the Standing Orders. It is rightly pointed out that if the possession of a ticket and a ticket number is taken as an essential characteristic of an 'employee', then there is hardly any difference between an 'employee' and a 'workman' as defined in the Standing Orders; because a 'workman' means such categories of employees as may from time to time be declared to be workmen, and under Standing Order No. 4 all workmen must have tickets. If a person employed by the Company must have a ticket before he can be an employee, and if workmen are such categories of employees as have tickets, the distinction between the two disappears and it is difficult to understand why two definitions were necessary.

On a consideration, however, of the subject or context of the Standing Orders, read in their entirety and in harmony with one another, it becomes at once clear why two definitions are necessary and what is the distinction between the two classes—'employees' and 'workmen'—in the Standing Orders. The expression 'employee' denotes a larger group—namely, all persons, male or female, who are employed in the Office, Mains Department, Stores, Power House or Receiving Station of the Company, either at Nagpur or Wardha. 'Workmen' denotes a smaller group, viz., such categories of employees as have been declared to be workmen, and who must have a ticket. Such a distinction is clearly

intelligible in an industrial establishment, where for security and other reasons a system of tickets or passes is necessary for those who work in the Power House or Mains Department or other places where essential machinery is installed while others, such as the clerical staff, may work in an office building where security demands are either non-existent or much less insistent. This distinction means that all 'workmen' are 'employees', but all 'employees' are not 'workmen' for the purpose of the Standing Orders, and the inclusion of ticket numbers in the departmental musters will be applicable to those employees only to whom tickets have been issued; but such inclusion is not an essential characteristic of an employee.

Let us now see if such a distinction is consistent with the Standing Orders as a whole. Standing Order No. 3 which classifies employees, defines a probationer in clause (c) and says that a probationer means an employee who is appointed in a clear vacancy on probation for a period not exceeding twelve months etc. Standing Order No. 4 does not require the issue of a ticket to a probationer; yet a probationer is an employee. It is thus obvious that the Standing Orders do make a distinction between 'employees' and 'workmen', and there may also be employees who have no tickets. Some of the Standing Orders apply to workmen only, e.g., Standing Orders 12, 13, 14 and 15. Other Standing Orders apply to all employees, whether they are workmen or not. Standing Order no. 16 falls in the latter category; it applies to all employees.

Standing Order No. 8 (b), we think, makes the position still more clear. It says—

"Any employee, who after marking his attendance or presenting his ticket, card, or token, as the case may be, is found absent from his proper place of work during working hours without permission or without any sufficient reason, shall be liable to be treated as absent for the period of his absence."

If every employee has to have a ticket, it is difficult to understand why this Standing Order should make a distinction between an employee *who marks his attendance and another who presents his ticket, card or token*. Such a distinction is easily understandable when some employees do not possess a ticket, card or token, so that they merely mark their attendance; while those who possess a ticket, card or token present it.

It has been suggested that Standing Order No. 4 is not exhaustive in the matter of issue of tickets; it talks of an issue of a ticket to every permanent workman, a card to every *badli* workman, a temporary ticket to every temporary workman, and an apprentice card to every apprentice. It does not prescribe the issue of a pass or token, though the definition

of a 'ticket' includes a pass or token. The suggestion further is that Standing Order No. 2(a) itself authorises the issue of tickets to other employees, so that there may be one kind of tickets issued to workmen under Standing Order No. 4 and another kind of tickets to other employees under Standing Order No. 2(a). On this view, it is suggested that the alternatives mentioned in Standing Order No. 8(b) really amount to an option given to an employee either to mark his attendance or present his ticket. It is, however, difficult to understand the necessity of an option of this kind when every employee must have a ticket particularly when the exercise of such an option is likely to defeat the very purpose for which tickets are issued in an industrial establishment. We do not however think that the case of the respondent is in any way strengthened by holding that Standing Order No. 2(a) itself authorises the issue of tickets to employees other than workmen. Even on that construction, the failure of the Company to issue tickets under Standing Order No. 2(a) will not deprive the employees of their real status as employees and of the benefit of the Standing Orders. The direction for the issue of tickets will, in that view of the Standing Order, be an enabling provision only and not an essential characteristic of an employee. Further, Standing Order No. 4 provides for the surrender of tickets issued thereunder but Standing Order No. 2(a) if it is construed as enabling the Company to issue tickets makes no provision for the surrender of tickets when the employee ceases to be an employee. This absence of any provision for surrender applicable to such tickets clearly implies that issue of tickets is not contemplated by the Standing Order No. 2(a) itself.

On behalf of the respondent, however, the main argument has been of a different character. It has been argued that there need not be one set of Standing Orders for all employees, and the Standing Orders in question being confined to those employees to whom tickets had been issued, the respondent who had no ticket was outside their purview, and the result was that the Company had committed a breach of the statutory provision in section 30 of the Local Act in the sense that no Standing Orders had been made in respect of the respondent and employees like him to whom tickets had not been issued. It has been argued that, therefore, no action could be taken against the respondent either under the Standing Orders or even under the ordinary law of master and servant. We are unable to accept this argument as correct. We have pointed out that the Standing Orders themselves make a distinction between 'employees' and 'workmen', and there may also be employees who have no tickets. To hold that the Standing Orders apply to those employees only to whom tickets have been issued

will make employees synonymous with workmen—a result negated by two separate definitions given in Standing Order No. 2. The Central Act as well as the Local Act contemplate the making of Standing Orders for all employees in respect of matters which are required to be dealt with by Standing Orders. The Standing Orders in question were not objected to as being defective or incomplete by workmen, and they have been approved by the appropriate authority and they must be construed with reference to their subject or context. In the absence of compelling reasons to the contrary, it should be held that they apply to all employees for whose benefit they have been made. We see no compelling reasons for holding that the Standing Orders do not apply to the respondent. In our view, and having regard to the subject or context of the Standing Orders, the words “whose names and ticket numbers are included in the departmental musters” in Standing Order No. 2(a) do not lay down any essential characteristic of an employee and are applicable only in cases where tickets have been issued to an employee. The essential content of the definition of an employee is employment in the Office, Mains Department, etc., of the Company, either at Nagpur or Wardha, and that of a workman the necessary declaration by the Company which would entitle him to a ticket under Standing Order No. 4.

There is also another relevant consideration which must be borne in mind in construing the Standing Orders in question. Section 30 of the Local Act imposes a statutory obligation on the employer to make Standing Orders in respect of all his employees and a breach of the statutory obligation involves a criminal liability. That being so, the Court would be justified, if it can reasonably do so, to construe the Standing Orders so as to make them consistent with the compliance of the said statutory obligation.

We are not unmindful of the principle that in construing a statutory provision or rule, every word occurring therein must be given its proper meaning and weight. The necessity of such an interpretation is all the more important in a definition clause. But even a definition clause must derive its meaning from the context or subject. In *Cortis v. The Kent Water-works Company*, (1827) 7 B. & C. 314; 108 English Reports, K.B., 741, the question for consideration was the interpretation of the appeal clause in an Act for Paving, Cleansing, Lighting etc., of the Town, and Parish of Woolwich (47 Geo. III, Sess. 2, cap. CXI). By the 16th section of the statute, “the commissioners are to make rates upon all and every person or persons who do or shall hold, occupy, possess, etc., any land within the parish”. The statute also gave a right of appeal to any person or persons aggrieved by any rate, but the appeal clause

required the person or persons appealing against a rate to enter into a recognisance; the question was if this requirement was intended to exclude corporations from the purview of the appeal clause, as corporations, it was urged, cannot enter into a recognisance. In interpreting the appeal clause, Bayley, J., observed—

“But assuming that they cannot enter into a recognizance, yet if they are persons capable of being aggrieved by and appealing against a rate, I should say that that part of the clause which gives the appeal applies to all persons capable of appealing, and that the other part of the clause which requires a recognizance to be entered into applies only to those persons who are capable of entering into a recognizance, but is inapplicable to those who are not.”

The same principle of interpretation was applied in *Perumal Goundan v. Thirumalarayapuram Jananukoola Dhanesekara Sangha Nidhi* (1917) I.L.R. 41 Mad. 624 in construing the Explanation to Order XXXIII, rule 1 of the Code of Civil Procedure, which says *inter alia* that “a person is a pauper.....when he is not entitled to property worth one hundred rupees other than his necessary wearing apparel and the subject matter of the suit”. The question was if the aforesaid provision applied to companies. It was held that it would be wrong to construe the provision to mean that only persons who possess wearing apparel can sue as paupers. We are of the view that the same rule of construction should apply in the present case, and the words “whose names and ticket numbers are included in the departmental musters” occurring in Standing Order No. 2(a) should be read as “whose names and ticket numbers, if any, are included in the departmental muster” and should apply in the case of those employees only who possess tickets and whose ticket numbers are capable of being entered in departmental muster; they are not intended to exclude employees who do not possess tickets or to whom tickets have not been issued and consequently whose names only are so entered.

The learned Judges of the High Court were influenced by the circumstance that in an earlier case *D. C. Dungore v. S. S. Dandige* (Miscellaneous Petition No. 134 of 1954 decided by the same High Court on September 23, 1955) the Company took up the stand that the Standing Orders applied to employees to whom tickets had been issued—a stand different from and inconsistent with that taken in the present case. It may be pointed out, however, that D. C. Dungore of the earlier case was not an employee within the meaning of the relevant Act, and there could be no Standing Orders in respect of his conditions of service. Moreover, in the matter of construction of a statutory provision no question of estoppel arises, and the learned Judges had pointed out that

the respondent himself thought that the Standing Orders applied to all employees. We have rested our decision as to applicability of the Standing Orders not on what the appellants or the respondent thought at one time or another, but on a true construction of the Standing Orders themselves, including the definition clause in Standing Order No. 2(a).

We take the view that the Standing Orders apply to the respondent. This is really decisive of the appeal; because if the Standing Orders apply to the respondent and his service has been terminated in accordance with Standing Order No. 16(1), the writ application which the respondent made to the High Court must fail.

The learned Attorney-General appearing for the appellants addressed us on the scope and ambit of article 226 of the Constitution and he contended that even if the respondent had been wrongfully dismissed by his private employer, the proper remedy was by means of a suit and not by invoking the special writ jurisdiction of the High Court. These contentions raise important questions, but we do not think that we are called upon to decide them in this case.

Lastly, it has been urged on behalf of the respondent that even if we hold that the Standing Orders apply to the respondent, we should remand the case to the High Court for a decision on merits of other points raised by the respondent, because the question whether the Standing Orders apply or not was treated as a preliminary issue by the High Court and no decision was given on other points. We asked learned advocate for the respondent what other points remain for decision on his writ application, once it is held that the Standing Orders apply to the respondent and his service has been terminated in accordance with Standing Order No. 16(1). Learned advocate then referred us to Standing Order No. 18, which provides for penalties for misconduct, and submitted that the provisions thereof have not been complied with by the appellants. He particularly referred to clause (c) of Standing Order No. 18 and submitted that the order of suspension passed against the respondent was in violation of the safeguards mentioned therein. The short answer to this argument is that no penalty for misconduct has been imposed on the respondent under Standing Order No. 18. The Company paid his salary to the respondent from the date of suspension to 31st January, 1956, which also showed that no order was passed by way of punishment for misconduct. The Company chose to terminate the service of the respondent in accordance with Standing Order No. 16, and did not think fit to proceed against the respondent for any alleged misconduct, and it was open to the Company to do so. So far as Standing Order No. 16 is concerned, all the requirements thereof have

been complied with. That being the position, no other point remains for decision in the present case.

The result, therefore, is that the appeal succeeds and is allowed. The judgment and order of the High Court dated 26th September, 1956 are set aside and the writ petition of the respondent is dismissed. In view of the stand which the appellants had taken in the earlier case, with regard to the Standing Orders, we think it proper to say in this case that the parties must bear their own costs throughout.

[IN THE SUPREME COURT OF INDIA.]

EXPRESS NEWSPAPERS (PRIVATE) LTD., AND ANOTHER

v.

UNION OF INDIA AND OTHERS

(AND OTHER PETITIONS).

N. H. Bhagwati, B. P. Sinha, Syed Jafer Imam, J. L. Kapur and P. B. Gajendragadkar, JJ.

March 19, 1958.

WAGES—FIXATION OF—PRINCIPLES—LIVING WAGE, MINIMUM WAGE AND FAIR WAGE—PROPER MACHINERY FOR FIXATION OF WAGES—WAGE BOARDS—PRACTICE AND PROCEDURE—DECISION WITHOUT REASONS—WHETHER VALID—GROUPING OF ESTABLISHMENTS ACCORDING TO GROSS REVENUE—FIXATION OF WAGES WITHOUT CONSIDERING CAPACITY OF INDUSTRY TO PAY—WHETHER VALID.

WAGE BOARD—PRACTICE AND PROCEDURE—POWERS OF—RETROSPECTIVE EFFECT TO DECISION—VALIDITY—RULES MADE UNDER ACT—LEGAL EFFECT OF—WORKING JOURNALISTS (CONDITIONS OF SERVICE AND MISCELLANEOUS PROVISIONS) ACT, 1955, SECTION 8.

WORKING JOURNALISTS (CONDITIONS OF SERVICE AND MISCELLANEOUS PROVISIONS) ACT, 1955—VALIDITY OF—WHETHER CONTRAVENES CONSTITUTION OF INDIA, ARTICLES 14, 19 AND 32—WHETHER UNREASONABLE RESTRICTION ON TRADE—WHETHER DISCRIMINATES BETWEEN WORKING JOURNALISTS AND OTHER EMPLOYEES.

GRATUITY—AWARD OF GRATUITY ON RESIGNATION AFTER THREE YEARS' SERVICE—VALIDITY OF AWARD—WHETHER UNREASONABLE RESTRICTION ON TRADE.

The decision of the Wage Board appointed by the Government of India under the Working Journalists (Conditions of Service and Miscellaneous Provisions) Act, 1955, was published by the Government in the Gazette of India in May, 1957. Thereafter, the petitioners filed several petitions in the

Supreme Court challenging the vires of the Act on the ground that the provisions thereof were violative of the fundamental rights guaranteed by the Constitution under articles 19(1)(a), 19(1)(g), 14 and 32. The decision of the Wage Board was also challenged on various grounds.

Held, after reviewing the concepts of 'living wage', 'minimum wage' and 'fair wage', that the following principles should govern wage fixation in any industry:

(i) that the fixation of the 'rates of wages' includes the fixation of the 'scale of wages';

(ii) that in the fixation of wages, the capacity of the industry to pay is one of the essential circumstances to be taken into consideration except in cases of bare subsistence or minimum wage where the employer is bound to pay the same irrespective of such capacity;

(iii) that the capacity of the industry to pay is to be considered on an industry cum region basis after taking a fair cross-section of the industry; and

(iv) that the proper measure for gauging the capacity of an industry to pay should take into account the elasticity of demand for the product, the possibility of tightening up the organisation so that the industry could pay higher wages without difficulty and the possibility of increase in the efficiency of the lowest paid workers resulting in increase in production considered in conjunction with the elasticity of demand for the product, against the ultimate background that the burden of the increased rate should not be such as to drive the employer out of business.

Held also, that the formation of a wage board relating to a particular trade or industry, constituted of equal number of representatives of employers and employees with an independent member or members, one of whom is appointed the Chairman, is best calculated to arrive at the proper fixation of wages in that industry; the principles for their guidance and their procedure being laid down by the appointing authority.

QUAERE: Whether a wage board can be said to exercise functions of a judicial or quasi-judicial nature.

Held further: (i) That the Act does not infringe the fundamental right of the petitioners to the freedom of speech and expression laid down in article 19(1)(a) of the Constitution.

(ii) That the Act does not infringe the fundamental right of the petitioners to carry on any occupation, trade or business laid down in article 19(1)(g) of the Constitution, except section 5(1)(a)(iii) of the Act which provides for gratuity for an employee who resigns from service after only three years of service. This provision being severable from the other provisions of the Act, only section 5(1)(a)(iii) of the Act is invalid.

(iii) That the Act did not contravene the provisions of article 14 of the Constitution as the classification of working journalists for special treatment under the Act was based on an intelligible differentia which distinguishes the working journalists from the other employees of newspaper establishments and that differentia has a rational relation to the object sought to be achieved, viz., amelioration of the conditions of service of working journalists.

(iv) That, as there was no provision in the Act preventing the Wage Board from giving the reasons for its decision, which would have affected the fundamental right of the petitioner to appeal to the Supreme Court under article 32, the Act cannot be said to be violative of article 32 of the Constitution;

On the question whether the decision of the Wage Board was ultra vires the Act itself; Held.

(i) that rules framed by the Central Government under the Act become, after publication, a part of the Act itself, and cannot be impeached on the ground that the rules went beyond the provisions of the Act; Therefore the fact that the Wage Board arrived at a majority decision in accordance with the Rules framed under the Act cannot vitiate the decision;

(ii) that the fact that the Wage Board did not give any reasons for its decision did not vitiate the decision;

(iii) that the Wage Board could adopt the gross revenue of the newspaper establishments as a basis for classification of the establishments and that there was nothing radically wrong in adopting that basis;

(iv) that there was nothing in the Act which militated against grouping the establishments into 'chains' or 'multiple units' or against the treatment of different establishments belonging to the same employer and publishing one or more newspapers in different parts of the country as one establishment;

(v) that the Wage Board had jurisdiction to give a decision which could be retrospective in effect from the date of its appointment; and

(vi) that as it is essential that the Wage Board should have taken into consideration the capacity of the industry in arriving at the rates of wages and as it was evident from the proceedings of the Board that this aspect of the matter had not been duly considered by the Board, the decision of the Board is ultra vires the Act.

Petitions Nos. 91, 99, 100, 101, 103 and 116 to 118 of 1957 and Civil Appeals Nos. 699 to 703 of 1957.

M. K. Nambiyar, K. M. Munshi, S. P. Sinha and S. S. Shukla for the petitioners.

M. C. Setalvad, A. V. Viswanatha Sastri, N. C. Chatterjee and A. S. R. Chari for the respondents.

JUDGMENT.

The following Judgment of the Court was delivered by

BHAGWATI, J.—These petitions under article 32 of the Constitution raise the question as to the *vires* of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955), hereinafter referred to as “the Act” and the decision of the Wage Board constituted thereunder. As they raise common questions of law and fact they can be dealt with under one common judgment.

In order to appreciate the rival contentions of the parties it will be helpful to trace the history of the events which led to the enactment of the impugned Act.

The newspaper industry in India did not originally start as an industry, but started as individual newspapers founded by leaders in the national, political, social and economic fields. During the last half a century, however, it developed characteristics of a profit making industry in which big industrialists invested money and combines controlling several newspapers all over the country also became the special feature of this development. The working journalists, except for the comparatively large number that were found concentrated in the big metropolitan cities, were scattered all over the country and for the last ten years and more agitated that some means should be found by which those working in the newspaper industry were enabled to have their wages and salaries, their dearness allowance and other allowances, their retirement benefits, their rules of leave and conditions of service, enquired into by some impartial agency or authority, who would be empowered to fix just and reasonable terms and conditions of service for working journalists as a whole.

Isolated attempts were made by the Uttar Pradesh and Madhya Pradesh Governments in this behalf. On 18th June, 1947, the Government of Uttar Pradesh appointed a committee to enquire into the conditions of work of the employees of the newspaper industry in the Uttar Pradesh.

On 27th March, 1948, the Government of Central Provinces & Berar also appointed an inquiry committee to examine and report on certain questions relating to the general working of the newspaper industry in the Province, including the general conditions of work affecting the editorial and other staff of newspapers, their emoluments including dearness allowance, leave, provident fund, pensionary benefits, etc.

The committees aforesaid made their reports on the respective dates 31st March, 1949 and 27th March, 1948, making certain recommendations. The All-India problem, however, remained to be tackled

and during the debate in Parliament on the Constitution (First Amendment) Bill, 1951, the Prime Minister said that he was prepared to appoint a committee or a commission, including representatives of the Press, to examine the state of the Press and its content. He elaborated the idea further on 1st June, 1951, when he indicated that an enquiry covering the larger issue of the Press, such as had been carried out in the United Kingdom by the Royal Commission, might be productive of good for the Press and the development of this very important aspect of public affairs. The idea was further discussed during the debate in Parliament on the Press (Incitement to Crimes) Bill, later named the Press (Objectionable Matter) Act, 1952. At its session held in April 1952 at Calcutta, the Indian Federation of Working Journalists adopted a resolution for the appointment of a commission to enquire into the conditions of the Press in India with a view to improving its place, status and functioning in the new democratic set up. The appointment of the Press Commission was thereafter announced in a communique issued by the Govt. of India, Ministry of Information and Broadcasting, on 23rd September, 1952, under the chairmanship of Shri Justice G. S. Rajadhyaksha.

The terms of reference *inter alia* were :

“2. The Press Commission shall enquire into the state of the Press in India, its present and future lines of development and shall in particular examine :

.....
(iv) the method of recruitment, training, scales of remuneration, benefits and other conditions of employment of working journalists settlement of disputes affecting them and factors which influence the establishment and maintenance of high professional standards.....”.

The Commission completed its enquiry and submitted its report on 14th July, 1954. Amongst other things it found that out of 137 concerns about whom information was available only 59 were returning profits and 68 showed losses. The industry taken as a whole had returned a profit of about 6 lakhs of rupees on a capital investment of about 7 crores, or less than one per cent. per annum. It found that proof-readers as a class could not be regarded as working journalists, for there were proof-readers even in presses doing job work. It came to the conclusion that if a person had been employed as a proof-reader only for the purpose of making him a more efficient sub-editor, then it was obvious that even while he was a proof-reader, he should be regarded as a working journalist but in all other instances, he would not be counted as a journalist but as a member of the press staff coming within the purview of the Factories Act.

The question of the emoluments payable to working journalists was discussed by it in paragraphs 538 and 539 of its report :

538:—“*Scales to be settled by collective bargaining or adjudication*:—It has not been possible for us to examine in detail the adequacy of the scales of pay and the emoluments received by the working journalist having regard to the cost of living in the various centres where these papers are published and to the capacity of the paper to make adequate payment.....In this connection it may be stated that the Federation of Working Journalists also agreed, when it was put to them, that apart from suggesting a minimum wage it would not be possible for the Commission to undertake standardisation of designations or to fix scales of pay or other conditions of service for the different categories of employees for different papers in different regions. They have stated that these details must be left to be settled by collective bargaining or where an agreement is not possible the dispute could be settled by reference to an industrial court or an adjudicator with the assistance of a Wage Board, if necessary. The All-India Newspaper Editors' Conference and Indian Language Newspapers' Association have also stated that it would not be possible to standardise designations and that any uniformity of salaries as between one newspaper and another would be impossible. The resources of different newspapers vary and the conditions of service are not the same. We agree in principle that there should be uniformity, as far as possible, in the conditions of service in respect of working journalists serving in the same area or locality. But this can be achieved only by a settlement or an adjudication to which the employers and the employees collectively are parties.”

539. *Dearness Allowance*:—“.....This again, is a matter which would require very detailed study of the rise in the index numbers of the cost of living for various places where the newspapers are published. We do not know of any case where a uniform rate has been prescribed for dearness allowance applicable all over the country irrespective of the economic conditions at different centres and the paying capacity of the various units. This must be a matter for mutual adjustment between the employers and employees and if there is no agreement, some machinery must be provided by which disputes between the parties could be resolved.”

The position of a journalist was thus characterised by the Commission :

“A journalist occupies a responsible position in life and has powers which he can wield for good or evil. It is he who reflects and moulds public opinion. He has to possess a certain amount of intellectual

equipment and should have attained a certain educational standard without which it would be impossible for him to perform his duties efficiently. His wage and his conditions of service should, therefore, be such as to attract talent. - He has to keep himself abreast of the development in different fields of human activity—even in such technical subjects as law and medicine. This must involve constant study, contact with personalities and a general acquaintance with world's problems.”

It considered therefore that there should be a certain minimum wage paid to a journalist. The possible impact of such a minimum wage was also considered by it and it was considered not unlikely that the fixation of such a minimum wage may make it impossible for small papers to continue to exist as such but it thought that if a newspaper could not afford to pay the minimum wage to the employee which would enable him to live decently and with dignity, that newspaper had no business to exist. It recommended division of localities for taking into account the differential cost of living in different parts of India, and determining what should be the reasonable minimum wage in respect of each area. It endorsed the concept of a minimum wage which has been adopted by the Bank Award:—

“Though the living wage is the target, it has to be tempered, even in advanced countries, by other considerations, particularly the general level of wages in other industries and the capacity of the industry to pay.....In India, however, the level of the national income is so low at present that it is generally accepted that the country cannot afford to prescribe a minimum wage corresponding to the concept of a living wage. However, a minimum wage even here must provide not merely for the bare subsistence of living, but for the efficiency of the worker. For this purpose, it must also provide for some measure of education, medical requirements and amenities” and suggested that the basic minimum wage all over India for a working journalist should be Rs. 125 with Rs. 25 as dearness allowance making a total of Rs. 150. It also suggested certain dearness allowance and City allowance in accordance with the location of the areas in which the working journalists were employed. It compared the minimum wage recommended by it with the recommendations of the Uttar Pradesh and Madhya Pradesh Committees and stated that its recommendations were fairly in line with the recommendations of those Committees particularly having regard to the rise in the cost of living which had taken place since those reports were made.

It then considered the applicability of the Industrial Disputes Act to the working journalists and after referring to the award of the

Industrial Tribunal at Bombay in connection with the dispute between "Jam-e-Jamshed" and their workmen and the decision of the Patna High Court in the case of *Vinay Narayan Sinha v. Bihar Journals Limited*, it came to the conclusion that the working journalists did not come within the definition of workman as it stood at that time in the Industrial Disputes Act nor could a question with regard to them be raised by others who were admittedly governed by the Act. It thereafter considered the questions as to the tenure of appointment and the minimum period of notice for termination of the employment of the working journalists, hours of work, provision for leave, retirement benefits and gratuity, made certain recommendations and suggested legislation for the regulation of the newspaper industry which should embody its recommendations with regard to (i) notice period; (ii) bonus; (iii) minimum wages; (iv) Sunday rest; (v) leave, and (vi) provident fund and gratuity.

Almost immediately after the Report of the Press Commission, Parliament passed the Working Journalists (Industrial Disputes) Act (I of 1955) which received the assent of the President on 12th March, 1955. It was an Act to apply the Industrial Disputes Act, 1947, to Working Journalists. "Working Journalist" was defined in section 2(b) of the Act to mean "a person whose principal avocation is that of a journalist and who is employed as such in, or in relation to, any establishment for the production or publication of a newspaper or in, or in relation to, any news agency or syndicate supplying material for publication in any newspaper, and includes an editor, a leader-writer, news-editor, sub-editor, feature writer, copy-taster, reporter, correspondent, cartoonist, news-photographer and proof reader but does not include any such person who:

(i) is employed mainly in a managerial or administrative capacity, or

(ii) being employed in a supervisory capacity, exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature. Section 3 of the Act provided that the provisions of the Industrial Disputes Act, 1947, shall apply to, or in relation to, working journalists as they apply to or in relation to workmen within the meaning of that Act.

The application of the Industrial Disputes Act, 1947 to the Working Journalists was not, however, deemed sufficient to meet the requirements of the situation. There was considerable agitation in Parliament for the implementation of the recommendations of the Press Commission, and on 30th November, 1955, the Union Government introduced a Bill in the Rajya Sabha being Bill No. 13 of 1955. It was a Bill to regulate

conditions of service of working journalists and other persons employed in newspaper establishments. The recommendations of the Press Commission in regard to minimum period of notice, bonus, Sunday rest, leave, and provident fund and gratuity etc., were all incorporated in the Bill; the fixation of the minimum rates of wages, however, was left to a Minimum Wage Board to be constituted for the purpose by the Central Government. The provisions of the Industrial Employment (Standing Orders) Act (XX of 1946) and the Employees' Provident Funds Act (XIX of 1952) were also sought to be applied in respect of establishments exceeding certain minimum size as recommended by the Commission.

It appears that during the course of discussion in the Rajya Sabha the word "minimum" was dropped from the Bill wherever it occurred, the Minister for Labour having been responsible for the suggested amendment. The reason for dropping the same was stated by him as under:

"Let the word 'minimum' be dropped and let it be a proper wage board which will look into this question in all its aspects. Now, if that is done, I believe, from my own experience of the industrial disputes with regard to wages, in a way it will solve the question of wages to the working journalists for all time to come."

The Act as finally passed was intitled "The Working Journalists (Conditions of Service) and Miscellaneous Provisions Act (45 of 1955) and received the assent of the President on 20th December, 1955.

The relevant provisions of the Act may now be referred to. It was an Act to regulate certain conditions of service of working journalists and other persons employed in newspaper establishments. "Newspaper establishment" was defined in section 2(d) to mean "an establishment under the control of any person or body of persons, whether incorporated or not, for the production or publication of one or more newspapers or for conducting any news agency or syndicate". The definition of "working journalist" was almost in the same terms as that in the Working Journalists (Industrial Disputes) Act, (I of 1955) and included a proof-reader. All words and expressions used but not defined in this Act and defined in the Industrial Disputes Act, 1947, where under section 2(g) to have the meanings respectively assigned to them in that Act. Section 3 applied the provisions of the Industrial Disputes Act, 1947, as it was in force for the time being, to working journalists as they applied to, or in relation to workmen within the meaning of that Act subject to the modification that section 25-F of that Act in its application to working journalists in regard to the period of notice in relation to the retrenchment of a workman was to be construed

as substituting six months in the case of the retrenchment of an editor and three months, in the case of any other working journalist. The period which lapsed between the publication of the report and the enactment of the Working Journalists (Industrial Disputes) Act, 1955, viz., from 14th July, 1954, to 12th March, 1955, was sought to be bridged over by section 4 enacting special provisions in respect of certain cases of retrenchment during that period. Section 5 provided for the payment of gratuity *inter alia* to a working journalist who had been in continuous service, whether before or after the commencement of the Act, for not less than three years in any newspaper establishment even when he voluntarily resigned from service of that newspaper establishment. Section 6 laid down that no working journalist shall be required or allowed to work in any newspaper establishment for more than one hundred and fortyfour hours during any period of four consecutive weeks, exclusive of the time for meals. Every working journalist was under section 7 entitled to earned leave and leave on medical certificate on the terms therein specified without prejudice to such holidays, casual leave or other kinds of leave as might be prescribed. After thus providing for retrenchment compensation, payment of gratuity, hours of work, and leave, sections 8 to 11 of the Act provided for fixation of the rates of wages in respect of working journalists. Section 8 authorised the Central Government by notification in the Official Gazette to constitute a Wage Board for fixing rates of wages in respect of the working journalists in accordance with the provisions of the Act, which Board was to consist of an equal number of persons nominated by the Central Government to represent employers in relation to the newspaper establishments and working journalists, and an independent person appointed by the Central Government as the Chairman thereof. Section 9 laid down the circumstances which the Wage Board was to have regard to in fixing rates of wages and these circumstances were the cost of living, the prevalent rates of wages for comparable employments, the circumstances relating to the newspaper industry in different regions of the country and to any other circumstance which to the Board may seem relevant. The decision of the Board fixing rates of wages was to be communicated as soon as practicable to the Central Government and this decision was under section 10 to be published by the Central Government in such manner as it thought fit within a period of one month from the date of its receipt by the Central Government and the decision so published was to come into operation with effect from such date as may be specified, and where no date was so specified on the date of its publication. Section 11 prescribed the powers and procedure of the Board and stated that subject to any rules of procedure which might be prescribed, the Board may, for the

purpose of fixing rates of wages, exercise the same powers and follow the same procedure as an Industrial Tribunal constituted under the Industrial Disputes Act, 1947, exercised or followed for the purpose of adjudicating an industrial dispute referred to it. The decision of the Board under section 12 was declared to be binding on all employers in relation to newspaper establishments and every working journalist was entitled to be paid wages at a rate which was to be in no case less than the rate of wages fixed by the Board. Sections 14 and 15 applied the provisions of the Industrial Employment (Standing Orders) Act (XX of 1946) as it was in force for the time being and also the provisions of the Employees' Provident Funds Act (XIX of 1952) as it was in force for the time being, to every newspaper establishment in which twenty or more persons were employed. Section 17 provided for the recovery of money due from an employer and enacted that where any money was due to a newspaper employee from an employer under any of the provisions of the Act, whether by way of compensation, gratuity or wages, the newspaper employee might, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the money due to him, and if the State Government or such authority as the State Government might specify in this behalf was satisfied that any money was so due, it shall issue a certificate for that amount to the Collector and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue. Section 20 empowered the Central Government by notification in the Official Gazette to make rules to carry out the purposes of the Act and in particular and without prejudice to the generality of the foregoing power, such rules were to provide *inter alia* for the procedure to be followed by the Board in fixing rates of wages. All rules made under this section, as soon as practicable after they were made, were to be laid before both Houses of Parliament. The Working Journalists (Industrial Disputes) Act (I of 1955) was repealed by section 21 of the Act.

In pursuance of the power given under section 20 of the Act, the Central Government published, by a notification in the Gazette of India—Part II—Section 3, dated 31st July, 1956, "The Working Journalists Wage Board Rules, 1956". Rule 8 provided that every question considered at a meeting of the Board was to be decided by a majority of the votes of the members present and voting. In the event of equality of votes the Chairman was to have a casting vote. Rule 13 provided for the resignation of the Chairman or any member from his office or membership, as the case may be. The seat held by them was to be deemed to have fallen vacant with effect from the date the

resignation of the Chairman or the member was accepted by the Central Government. When a vacancy thus arose in the office of the Chairman or in the membership of the Board, the Central Government was to take immediate steps to fill the vacancy in accordance with the Act and the proceedings might be continued before the Board so reconstituted from the stage at which the vacancy was so filled.

By a notification dated 2nd May, 1956, the Central Government constituted a Wage Board under section 8 of the Act for fixing rates of wages in respect of working journalists in accordance with the provisions of the Act, consisting of equal representatives of employers in relation to newspaper establishments and working journalists and appointed Shri H. V. Divatia, Retired Judge of the High Court of Judicature, Bombay, as the Chairman of the Board. The three members of the Board who were nominated to represent employers in relation to newspaper establishments were (1) Shri G. Narasimhan, Manager, Hindu, Madras and President, Indian and Eastern Newspaper Society; (2) Shri A. R. Bhat M. L. C., who had been a member of the Press Commission and was the President of the Indian Language Newspapers Association, as also the Chairman of the Minimum Wages Inquiry Committee for the Printing Industry in Bombay and, (3) Shri K. P. Kesava Menon, Editor, Mathrubhumi, Calicut. The other three members of the Board who were nominated to represent working journalists were: (1) Shri G. Venkataraman, M.P., (2) Shri C. Raghavan, Secretary-General, Indian Federation of Working Journalists, and (3) Shri G. N. Acharya, Assistant Editor, Bombay Chronicle.

Shri H. V. Divatia, the Chairman of the Board, had wide and considerable experience as Chairman of the Textile Labour Enquiry Committee, Bombay, had been the President of the First Industrial Court to be set up in India in 1938, and had worked as an Industrial Tribunal dealing with several disputes as between several banks and employees, as well as between several insurance companies and their employees.

The first meeting of the Board was held on 26th May, 1956, in the Bharatiya Vidya Bhavan at Bombay. Sri Kesava Menon and Shri G. Narasimhan were not present at this meeting. It was a preliminary meeting at which the Board set up a Sub-Committee consisting of Shri A. R. Bhat and Shri G. N. Acharya to draft a Questionnaire for issue to the various journals and organisations concerned, with a view to eliciting factual data and other relevant information required for the fixation of wages for the working journalists. The Sub-Committee was requested to bear in mind, while framing the Questionnaire the need for: (1) obtaining detailed accounts of newspaper establishments; (2) proper

evaluation of the nature of and the work of various categories of working journalists; and (3) proper classification of the country into different areas on the basis of certain criteria like population, cost of living, etc. The Questionnaire drafted by the Sub-Committee was to be finalised by the Chairman and circulated to all concerned by the end of June, 1956.

The Questionnaire was accordingly drawn up and was sent to Universities and Governments, etc., and several other organisations and individuals interested in the inquiry of the Board, and to all newspapers individually. It was divided into three parts. Part "A" was intended to be answered by newspapers, news agencies, organisations of employers and of working journalists and any individuals who might wish to do so. Part "B" was meant to be answered by all newspapers and Part "C" by all news agencies.

At the outset the Board pointed out that except where the question itself indicated a different period or point of time, the reporting period for purposes of parts "B" and "C" of the questionnaire was the financial years (April 1, to March, 31) 1952-53, 1953-54, and 1954-55, or in any establishments which followed a different accounting year, a period of three years as near thereto as possible. It further pointed out that under section 11 of the Act the Board had the powers of an Industrial Tribunal constituted under the Industrial Disputes Act. In Part "A" of the Questionnaire under the heading "Cost of Living" cost of living index for the respective centres were called for and a special question was addressed whether the basic minimum wage, dearness allowance and metropolitan allowance in the table attached to paragraph 546 of the Press Commission was acceptable to the party questioned and, if not, what variations would the party suggest and why. Comparable Employment suggested included (a) Higher Secondary School Teachers; (b) College and University teachers; (c) Journalists employed as publicity and public relations officers in the Information Departments of the Central and State Governments; (d) Journalistic employees of the News Service Division of All India Radio and (e) Research personnel of the Economic and Social Research Departments of Central Government Ministries like Finance, Labour and Commerce. Under the heading "Special Circumstances", the only question addressed was question No. 7: "Are there in your region any special conditions in respect of the newspaper industry which affect the fixing of rates of wages of working journalists? If so, specify the conditions and indicate how they affect the question of wages." As regards the Principles of Wage Fixation the party questioned was to categorise the different newspaper establishments and in doing so consider the following factors, among others: (a) Invested Capital; (b) Gross Revenue; (c) Advertisement Revenue;

(d) Circulation ; (e) Periodicity of publication ; (f) The existence of chains, multiple units and combines ; and (g) Location.

In part "B" which was to be answered by newspapers were included under the heading "Accounts" :—

(1) Balance sheets and (2) Trading and Profit and Loss Accounts of the newspapers as in the specimen forms attached thereto for the reporting period. Questions were also addressed in regard to the Revenue of the newspapers *inter alia* from the press, a process studio, outside work, foundry, etc., and subscriptions as also the expenditure incurred on postage, distribution/sale, commission and rebate to advertisers, etc., and other items.

All information which was considered necessary by the Wage Board for the purposes of fixation of the rates of wages was thus sought to be elicited by the Questionnaire.

It appears that Shri K. P. Kesava Menon sent in his resignation on or about 21st June, 1956, and by a notification dated 14th July, 1956, the Central Government accepted the said resignation and appointed in his place Shri K. M. Cherian, Member of the Executive Committee of the Indian and Eastern Newspapers Association, one of the directors of the Press Trust of India and the Chief Editor, Malayala Manorama, Kottayam, as a member of the Board.

Out of 5,465 newspapers, journals etc., to whom the Questionnaire was sent only 381 answered the same ; and out of 502 dailies only 138 answered it. The Board had an analysis made of those who had replied to the Questionnaire and also of their replies thereto in regard to each of the questions contained in the Questionnaire. It also got statements prepared according to the gross revenue of the newspapers, the population of the centres, circulation of the papers, the cost of living index, scales of dearness allowance in certain states, figures of comparable employments, pay scales of important categories of journalists, etc., the total income, break up of expenditure in relation to total income and total expenses, total income in relation to net profits, and net losses and net profits in relation to circulation of the several newspapers which had sent in the replies to the Questionnaire.

Further meetings of the Board were held on 17th August and 20th August, 1956, in Bombay. The chairman informed the members that response from journals, organisations, etc., to whom Questionnaire was sent was unsatisfactory and it was decided to issue a Press Note requesting the papers and journals to send their replies, particularly to Part "B" of the Questionnaire, as soon as possible, inviting their attention to the fact that the Board had powers of an Industrial Tribunal under the Act, and if newspapers failed to send their replies, the Board would be

compelled to take further steps in the matter. It was decided that for purposes of taking oral evidence, the country be divided into 5 zones, namely, Trivandrum, Madras, Delhi, Calcutta and Bombay and the Secretary was asked to summon witnesses to the nearest and convenient centre. It was further decided that one hour should normally be allotted to each newspaper, 3 hours for regional units and 2 hours for smaller units for oral evidence. The Board also discussed the question as to the number of persons who might ordinarily be called for oral evidence from each newspaper or organisation. It thought that one of the important factors governing the findings of the Board would be the circulation of each newspaper, and as such it was decided that the figures with the Audit Bureau of Circulation Ltd. might be obtained at once. The Board also decided to ask witnesses, if necessary, to produce books of accounts, income-tax assessment orders or any other document which in its opinion was essential.

Meetings of the Board were held at Trivandrum from 7th September, to 10th September, 1956, in Madras from 15th September, to 20th September, 1956, in New Delhi from 19th October, to 26th October, 1956, in Calcutta from 25th November, to 4th December, 1956, and in Bombay from 4th January, to 10th January, 1957, from 20th January, to 6th February, 1957, from 25th March, to 31st March, 1957, and finally from 22nd April, to 24th April, 1957.

Evidence of several journalists and persons connected with the newspaper industry was recorded at the respective places and at its meeting in Bombay from 25th March, to 31st March, 1957, the Board entered upon its final deliberations. At this meeting the Chairman impressed upon the members the desirability of arriving at unanimous decisions with regard to the fixation of wages, etc. He further stated that he would be extremely happy if representatives of Newspaper industry and of Working Journalists could come to mutual agreement by direct discussions and he assured his utmost co-operation and help in arriving at decisions on points on which they could not agree. Members welcomed this suggestion and decided to discuss various issues among themselves in the afternoon and on the following days.

After considerable discussion on 25th March, 1957, and 26th March, 1957, in which the representatives of the Newspapers and of Working Journalists had joint sittings, unanimous decisions were arrived at on (i) classification of newspapers, (ii) classification of centres and (iii) classification of employees, except on one point, namely, classification of group, multiple units and chains on the basis of their total gross revenue. This was agreed to by a majority decision. The chairman and the representatives of the working journalists voted in favour while the representatives

of the employers voted against. Regarding scales of pay, the Chairman suggested at the meeting of 27th March, 1957, that pending final settlement of the issue the parties should submit figures of scales based on both assumptions, namely, consolidated wages and basic scales with separate dearness allowance. Both sides agreed to submit concrete suggestions on the following day. At the Board's meeting on 28th March, 1957, the representatives of the employers stated that the term "Rates of Pay" did not include scales of pay; therefore, the Board was not competent to fix scales of working journalists and they submitted a written statement signed by all of them to the Chairman in support of their contention. The representatives of the Working Journalists argued that the Board was competent to fix scales of pay. The Chairman adjourned the sitting of the Board to study this issue. A copy of the written statement submitted by the representatives of the employers was given to the representatives of the working journalists and they submitted a written reply the same afternoon contending that the Board was competent to fix scales of pay of various categories of Working Journalists. At its meeting on 29th March, 1957, the Board discussed its own competency to fix scales of pay. The Chairman expressed his opinion in writing, whereby he held that the Board was competent to fix scales of pay. On a vote being taken according to rule 8 of the Working Journalists Wage Board Rules, 1956, the Chairman and the representatives of the working journalists voted in favour of the competence of the Board to fix scales of pay, while the representatives of the employers voted against it. Thereafter, several suggestions were made on this question, but since there was no possibility of any agreement on this issue, the Chairman suggested that members should submit their specific scales to him for his study to which the members agreed. It was also decided that the Chairman would have separate discussions with representatives of working journalists in the morning and with representatives of employers in the afternoon of 30th March, 1957. It was also decided that the Board should meet again on 31st March, 1957, for further discussions. No final decision was however arrived at in the meeting of the Board held on 31st March, 1957, on scales of pay, allowances, date of operation of the decision, etc. It was decided that the Board should meet again on 22nd April, 1957, to take final decisions.

A meeting of the Board was accordingly held from April 22 to 24, 1957, in the office of the Wage Board at Bombay. It was unanimously agreed that the word "decision" should be used wherever the word "report" occurred. The question of the nature of the decisions which should be submitted to the Government was then

considered. It was agreed that reasons need not be given for each of the decisions, and that it would be sufficient only to record the decisions. The members then requested the Chairman to study the proposals regarding scales of pay, etc., submitted by both the parties and to give his own proposals so that they may take a final decision. Accordingly, the Chairman circulated to all the members his proposals regarding pay scales, dearness allowance, location allowance and retainer allowance.

The following were the decisions arrived at by the Board on the various points under consideration and they were unanimous except where otherwise stated. The same may be set out here so far as they are relevant for the purposes of the inquiry before us.

1. For the purpose of fixation of wages of working journalists, newspaper establishments should be grouped under different classes.

2. Except in the case of weeklies and other periodicals expressly provided for hereinafter, newspaper establishments should be classified on the basis of their gross revenue.

3. For purposes of classification, revenue from all sources of a newspaper establishment, should be taken for ascertaining gross revenue.

4. *Classification of newspaper establishments:*

Dailies—Newspaper Establishments should be classified under the following five classes:—

<i>Class</i>	<i>Gross Revenue</i>
"A"	over Rs. 25 lakhs
"B"	over Rs. 12½ to 25 lakhs
"C"	over Rs. 5 to 12½ lakhs
"D"	over Rs. 2½ to 5 lakhs
"E"	Rs. 2½ lakhs and below

5. Classification of newspaper establishments should be based on the average gross revenue of the three-year period, 1952, 1953 and 1954.

6. It shall be open to the parties to seek re-classification of the newspaper establishments on the basis of the average of every three years commencing from the year 1955.

11. Groups, multiple units and chains should be classified on the basis of the total gross revenue of all the constituent units. (This was a majority decision, the Chairman and the representatives of the working journalists voting for and the representatives of the employers voting against).

12. A newspaper establishment will be classified as:—

(i) A group, if it publishes more than one newspaper from one centre;

(ii) A multiple unit, if it publishes the same newspaper from more than one centre;

(iii) A chain, if it publishes more than one newspaper from more than one centre.

20. Working Journalists employed in newspaper establishments should be grouped as follows:

(a) Full time employees:

Group I: Editor.

Group II: Assistant Editor, Leader Writer, News Editor, Commercial Editor, Sports Editor, Film or Art Editor, Feature Editor, Literary Editor, Special Correspondent, Chief Reporter, Chief Sub-Editor and Cartoonist.

Group III: Sub-Editors and Reporters of all kinds and full time correspondents not included in Group (II); news photographers and other journalists not covered in the groups.

Group IV: Proof Readers.

(b) Part time employees:

Correspondents who are part time employees of a newspaper establishment and whose principal avocation is that of journalism.

An employee should be deemed to be a full time employee if under the conditions of service such employee is not allowed to work for any other newspaper establishments.

23. The wage scales and grades recommended by the Chairman were agreed to by a majority decision. The Chairman and the representatives of the working journalists voted for and the representatives of the employers voted against. Shri Bhat suggested that wage scales should be conditional on a newspaper establishment making profits in any particular year and also that time should be given to the newspaper establishments for bringing the scales into operation. These suggestions, however, were not acceptable to the majority.

Wages, scales and grades: (as agreed to by the majority) were as under: Working journalists of different groups employed in different classes of newspaper establishments should be paid the following basic wages per mensem.

1. *Dailies.*

Class of News-papers	Group of Employees	Starting Pay	Scale
E	IV	90	No Scale
	III		
	II		
	I		
D	IV	150	No Scale
	IV	100	100—5—165 (13 Yrs.) EB—7—200—5 Yrs.

C	III	115	115—7½—205 (12 Yrs.) EB—15—295 (6 Yrs.)
	II	200	200—20—400 (10 Yrs.)
	I		
	IV	100	100—5—165 (13 Yrs.) EB—7—200 (5 Yrs.)
B	III	125	125—10—245 (12 Yrs.) EB—12½—320 (6 Yrs.)
	II	225	225—20—385 (8 Yrs.) EB—30—445 (2 Yrs.)
	I	350	350—25—550 (8 Yrs.)—40—630 (2 Yrs.)
	IV	100	100—5—165 (13 Yrs.) EB—7—200 (5 Yrs.)
A	III	150	150—12½—300 (12 Yrs.) EB—20—420 (6 Yrs.)
	II	350	350—20—510 (8 Yrs.) EB—30—570 (2 Yrs.)
	I	500	500—30—740 (8 Yrs.)—40—820 (2 Yrs.)
	IV	125	125—7½—215 (12 Yrs.) EB—10—275 (6 Yrs.)
	III	175	175—20—415 (12 Yrs.) EB—25—515 (4 Yrs.)
	II	500	500—40—820 (8 Yrs.) EB—50—920 (2 Yrs.)
	I	1000	1000—50—1300 (6 Yrs.)—75—1600 (4 Yrs.)
	IV		

Dearness allowance, Location Allowance and Part-time Employees remuneration were also majority decisions—The Chairman and the representatives of the working journalists voting for and the representatives of the employers voting against.

27. *Other Allowances:*—In view of the paucity of evidence on the subject, the Board decided that the fixation of conveyance and other allowances should be left to collective bargaining between the working journalists and the newspaper establishments concerned.

29. In no case should the present emoluments of the employees be reduced as a result of the operation of this decision.

28. *Fitment of Employees:*—For fitment of the present employees into the new scales, service in a particular grade and category and in the particular newspaper establishment alone should be taken into account.

34. When a newspaper establishment is re-classified as per para 6 supra, the existing pay of the staff should be protected. But future increments and scales should be those applicable to the class of paper into which it falls.

37. *Date of operation:*—The Board's decision should be operative from the date of constitution of the Board (i.e., 2-5-1956) in respect of newspaper establishments coming under Class "A", "B" and "C" and from a date six months from the date of appointment of the Board (i.e., 1-11-1956) in the case of newspaper establishments under class "D" & "E". (This was also a majority decision. The Chairman and the representatives of the working journalists voted for and the representatives of the employers voted against).

40. The Government of India should constitute a Wage Board under the Act, to review the effect of the decisions of the Board on the

newspaper establishments and the working journalists, after the expiry of 3 years but not later than 5 years from the date of the publication of the decisions of the Board.

These decisions were recorded on 30th April, 1957, but the representatives of the employers thought fit to append a Minute of Dissent and the Chairman also put on record a note on the same day explaining the reasons for the decisions thus recorded. These documents are of vital importance in the determination of the issues before us.

In the Minute of Dissent recorded by the representatives of the employers they started with an expression of regret that the conditions in the newspaper industry did not permit them to accept the majority view. They expressed their opinion that the fixation of rates of wages should be governed by the following criteria :

- (i) normal needs of a worker ;
- (ii) capacity of the industry to pay ;
- (iii) nature of the industry ; and
- (iv) effect on the development of the industry and on employment.

They pointed out that :

(a) The newspaper industry was a class by itself. The selling price of its product was ordinarily below its cost of production. Further, the cost of production specially that of newsprint, went on varying and the frequent rises in newsprint price made it difficult to plan and undertake any long term commitment of an increasing expenditure.

(b) The income of the newspaper industry was principally derived from two main sources : sales of copies and advertisement. While sales depended on public acceptance ; income from advertisement depended upon circulation, prestige and purchasing power of readers. All those factors made publishing of newspapers a hazardous undertaking and the hazard continued throughout its existence with the result that it was obligatory that the rates of wages or scales should be fixed at the minimum level, leaving it to the employees to share the prosperity of the units through bonuses.

(c) It was not ordinarily easy for newspapers to increase the selling price and it had been the experience of some established newspapers that such a course, when adopted, had invariably brought about a reduction in circulation. The fall in circulation had in turn an adverse effect on the advertisement revenue. The sales or advertisement income of a newspaper was not responsive to a progressive increase in expenditure.

(d) In any fixation of wages of a section of employees, its effect on other sections had to be taken into consideration. Editorial employees were one section of a newspaper establishment and any increase in their emoluments would have its inevitable repercussions on the wages of other sections. The salaries of working journalists would roughly be one-fifth of the total wage bill. The factory staff had a great bargaining power and as such any increase in the salaries and introduction of scales in the editorial department would have to be followed by an increase in the wages and introduction of time scales in the factory side.

(e) It was the advertisement revenue that principally decided the capacity to pay of a newspaper industry. It was not enough to take into consideration the gross revenue of a newspaper alone but also the proportion of advertisement revenue in it. This meant that minimum salaries and scales to be fixed on an All-India basis would perforce have to be low if the newspapers in language of regions with a low purchasing power such as Kerala and Orissa were not to be handicapped. It would, therefore, be fair both to the industry and employees if wages were fixed region-wise.

(f) The proposals, which the majority had made, clearly showed that, according to it the dominating principle of wage fixation was the need of the worker as conceived by them, irrespective of its effect on the industry. The Board had not before it sufficient data needed for the proper assessment of the paying capacity of the industry. The profit and loss statements of the daily newspaper establishment for the year 1954-55 as submitted to the Board revealed that while 43 of them had shown profits 40 had incurred losses. The condition of the newspaper industry in the country as a whole could not be considered satisfactory. The proposals embodied in the decision made by the majority were therefore unduly high. They would immediately throw a huge burden on many papers, a burden which would progressively grow for some years, and would be still bigger when its impact takes place on the wages of employees of its other sections. All this will in its turn add to the burden of Provident Fund, Gratuity, etc., when the full impact of the burden took place and the wages of the entire newspaper establishments went up, it would throw out of gear the economy of most of the newspapers. It might be that there may not be many closures immediately, because many of the newspapers would not be in a position to meet the liability of retrenchment compensation, gratuity, etc., resulting from such a step, newspapers would try to meet the liability by borrowing to the extent possible and when their credit was exhausted, they must close down. So far as new newspaper promotions

were concerned, they would be few and far between, with the result that after a few years it would be found that the number of daily newspapers in the country had not increased but had gone down. Such an eventuality was not in the interests of the country both from the point of view of employment as well as of freedom of expression.

(g) As regards Chains and Groups the criterion for classification adopted by the majority was unfair and unnatural. The total gross revenue of all the units in a Chain or a Group gave an unreal picture of its capacity to pay.

(h) Giving of retrospective effect, would help only to aggravate the troubles of the newspaper industry which had been already called upon to devise ways and means of meeting the burden of retrospective gratuity.

(i) As regards the prevalent rates of wages for comparable employments the nature of work of the working journalists in newspaper establishments could not be compared with other avocations or professions and the rates of wages of working journalists should be fixed only in the context of the financial condition of the newspaper industry. Comparison, could, however, be made within limits, namely with respect to alternative employments available to persons with similar educational qualifications in particular regions or localities. From that point of view the salaries paid to secondary school teachers, College and University teachers and employees in commercial firms and Banks should be taken into consideration, but the majority had rejected this view.

The note of the Chairman was meant to explain the reasons of the decisions which he stated he at least had in view and some of which were accepted unanimously and others were accepted by some members and thereby became majority decisions. At the outset the Chairman explained that most of the recommendations of the Press Commission were intended for the betterment of the economic condition of small and medium newspapers, such as price page schedule, telescopic rates for Government advertisements and their fair distribution among newspapers, statutory restrictions on malpractices so as to eliminate cut-throat competition and fixation of news agency tariffs which still remained to be implemented and there had been no stability in the prices of news-print which constituted a considerable proportion of the expenditure of a newspaper. These circumstances had necessitated the fixing of a minimum wage lower than that recommended by the Press Commission.

As regards fixation of the rates of wages, the Chairman observed :

"In fixing the rates of wages, we have based them on the condition of the newspaper industry as a whole and not on the effect which

they will produce on a particular newspaper. We can only proceed on the average gross income of a newspaper falling under the same class and not on the lowest unit in that class. Otherwise, there will be no improvement in any unit of the same class, and the *status quo* might remain. With the extremely divergent conditions obtaining in both English as well as Indian language newspapers, it is impossible to try to avoid any small or medium newspaper being adversely affected. When the tone and condition of journalism in India has to be brought on a higher level it is inevitable that in doing so, more or less burden will fall on several newspapers ; I realise that in cases where wages are very low and dearness allowance is also low or even non-existent and there are no scales at all, the reaction to our wage schedule will be one of resentment by the proprietors. Some anomalies may also be pointed out ; but it must be remembered that we had no data of all the newspapers before us and where we had, it was in many cases cannot satisfy all newspapers as well as journalists. However, we have tried to proceed on the basis of accepted principles also keeping in view the recommendations of the Press Commission and not on the editorial expenditure of each newspaper. I am also of the opinion that by rational management there is great scope for increasing the income of newspapers and we have evidence before us that the future of the Indian language newspapers is bright, having regard to increasing literacy and the growth of political consciousness of the reading public. When there are wide disparities, there cannot be any adjustment which might satisfy all persons interested. We hope no newspaper is forced to close down as a result of our decision. But if there is a good paper and it deserves to exist, we hope the Government and the public will help it to continue."

The Chairman then proceeded to observe :

"We do not consider it a matter of regret if our decisions discourage the entry into this industry of persons without the necessary resources required for the payment of a reasonable minimum wage. While we are anxious to promote and encourage the growth of small newspapers, we also feel strongly that it should not be at the expense of the working journalists. The same applies, in our view, to newspapers started for political, religious or any other propaganda."

The reason for grouping all the constituent units of the same group or chain in the same class in which they would fall on the basis of the total gross income of the entire establishment was given by the Chairman as under :

"One of the difficult tasks before us was to fix the wages of journalists working in newspapers which have recently come to exist in our country. All the accounts of the constituent units in the same

group or chain are merged together with the result that the losses of the weaker units are borne from the high income of prosperous units. There is considerable disparity in the wages of journalists doing the same kind of work in the various constituent units situated in different centres. The Press Commission has strongly criticised the methods of such chains and groups and their adverse effects on the employees. We have decided to group all the constituent units of the same group or chain in the same class in which they would fall on the basis of the total gross income of the entire establishment. We are conscious that as a result of this decision, some of the journalists in the weak units of the same group or chain may get much more than those working in its highest income units. If however, our principle is good and scientific, the inevitable result of its application should be judged from the standpoint of Indian Journalism as a whole and not on the burden it casts on a particular establishment. It may be added that in our view, the principle on which we have proceeded is one of the main steps to give effect to the views expressed by the Press Commission."

The Chairman then referred to the points which the representatives of the newspaper employers had urged as to the burden which might be cast as a result of the decisions and expressed himself as under :

"I sympathise with their view point and in my opinion, looking to all the circumstances, especially the fact that this is the first attempt to fix rates of wages for journalists, it is probable that some anomalies may result from the implementation of our decisions. We are, therefore, averse to imposing a wage schedule of all classes of newspapers on a permanent basis. It is, thus important that the wage rates fixed by us should be open to review and revision in the light of experience gained within a period of 3 to 5 years. This becomes necessary especially in view of the fact that the data available to us have not been as complete as we would have wished them to be, and also because it is difficult for us at this stage to work out with any degree of precision, the economic and other effects of our decisions on the newspaper industry as a whole."

The Chairman suggested as a palliative the creation by the Government of India immediately of a standing administrative machinery "which could also combine in itself the functions of implementing and administering our decisions and that of preparing the ground for the review and revision envisaged after 3 to 5 years. This machinery should collect from all newspaper establishments in the country on systematic basis detailed information and data such as those on employment, wage rates, and earnings, financial condition of papers, figures of circulation,

etc., which may be required for the assessment of the effects of our decisions at the time of the review."

The above decision of the Wage Board was published by the Central Government in the Gazette of India, Extraordinary, dated 11th May, 1957. The Commissioner of Labour, Madras issued a circular on 30th May, 1957, calling upon the managements of all newspaper establishments in the State to send to him the report of the gross revenue for the three years, i.e., 1952, 1953 and 1954, within a period of one month from the date of the publication of the Board's decision, i.e., not later than 10th June, 1957. Writ Petition No. 91 of 1957 was thereupon filed on 13th June, 1957, by the Express Newspapers Private Ltd., against the Union of India & others and this petition was followed up by similar petitions filed on 9th August, 1957, by the Press Trust of India Ltd., the Indian National Press (Bombay) Private Ltd., and the Saurashtra Trust being petitions Nos. 99, 100 and 101 of 1957 respectively. The Hindustan Times Ltd., New Delhi filed on 23rd August, 1957, a similar petition being Petition No. 103 of 1957 and three more petitions, being Petitions Nos. 116, 117 and 118 of 1957 were filed by the Loksatta Karyalaya, Baroda, Sandesh Ltd., Ahmedabad and Jan Satta Karyalaya, Ahmedabad, respectively on 18th September, 1957.

The Express Newspapers Private Ltd., the petitioners in Petition No. 91 of 1957, otherwise termed the "Express Group", are the biggest chain in the newspaper world in India. They publish (i) Indian Express, an English Daily from Madras, Bombay, Delhi and Madurai, (ii) Sunday Standard, an English Daily from three centres—Madras, Bombay and Delhi, (iii) Dinamani, a Tamil Daily from Madras and Madurai, (iv) Dinamani Kadir, a Tamil Weekly from Madras, (v) Lokasatta a Marathi Daily and Sunday Lokasatta, a Maratha Weekly from Bombay, (vi) Screen, an English Weekly from Bombay and (vii) Andhra Prabha, a Telugu Daily and Weekly. The total number of working journalists employed by them are 331, out of whom there are 123 proof readers, as against 1570 who form the other members of the staff. The present emoluments of the working journalists in their employ amount to Rs. 9,77,892 whereas if the decision of the Wage Board were given effect to they would go up to Rs. 15,21,282.12 thus increasing the wage bill of the working journalists annually by Rs. 5,43,390.12. They would also have to pay remuneration to the part time correspondents on the basis of retainer as well as payment for news items on column basis. That would involve an additional burden of about Rs. 1 lakh a year. The retrospective operation of the Wage Board's decision with effect from 2nd May, 1956, in their case would further involve a payment of Rs. 5,16,337.20. This would be the extra burden not taking account of the

liability for past gratuity and the recurring gratuity as awarded under the provisions of the Act and also the increased burden which would have to be borne by reason of the impact of the provisions in regard to reduced hours of working, increase in leave, etc., provided therein. If, moreover, the members of the staff who are not included in the definition of working journalists made similar demands for increasing their emoluments and bettering their conditions of service then there would be an additional burden which is estimated at Rs. 9,92,443-68.

The Press Trust of India Ltd., the petitioners in Petition No. 99 of 1957 are a non-profit making co-operative organization of newspaper proprietors. They employ 820 employees in all, out of whom 170 are working journalists and 650 do not come within that definition. Their total wage bill is Rs. 21,00,000 per year (approximately) out of which the annual salary of the working journalists is Rs. 9,00,000. The increase in their wage bill due to increase in the salary of the working journalists as per the decision of the Wage Board would come to Rs. 4,05,600 and they would have to pay by way of arrears by reason of the retrospective operation of the decision another sum of Rs. 4,05,600 to the working journalists. There would also be an additional financial burden of Rs. 60,000 every year by reason of the recurring increments in the monthly salaries of the working journalists employed by them. If the benefits of the Wage Board decision were extended to the other members of the staff who are not working journalists within the definition of that term but who have also made similar demands on them, a further annual burden would be imposed on the petitioners which is estimated at Rs. 3,90,000. If perchance the petitioners not being able to run their concern except at a loss intended to close down the same, the amount which they would have to pay to the working journalists under the provisions of the Act and the decision of the Wage Board would be Rs. 23,68,500 as against the old scale liability of Rs. 11,62,500 and the other members of the staff who do not fall within the category of Working Journalists would have to be paid a further sum of Rs. 15,50,000. The total liability of the petitioners in such an event would amount to Rs. 39,18,000 as against the old liability of Rs. 27,12,500.

The Indian National Press (Bombay) Private Ltd., otherwise known as the Free Press Group, are petitioners in petition No. 100 of 1957. They publish (i) Free Press Journal, a morning English Daily, (ii) Free Press Bulletin, an Evening English Daily, (iii) Bharat Jyoti, an English Weekly, (iv) Janashakti, a morning Gujarati Daily and (v) Navashakti, a Marathi Daily—all from Bombay. They employ 442 employees including part-time correspondents out of whom 65 are working

journalists and 21 are proof readers and the rest form members of the other staff not falling within the category of working journalists. The effect of the decision of the Wage Board would be that there would have to be an immediate payment of Rs. 1,73,811 by reason of the retrospective operation of the decision and there will also be an annual increase in the wage bill to the same extent, i.e., Rs. 1,73,811. There will also be a yearly recurring increase to the extent of Rs. 22,470 and also corresponding increase for contribution to the Provident Fund on account of increase in salary. Under the provisions of the Act in regard to reduced hours of work, and increase in leave, moreover, there will be an increase in liability to pay Rs. 90,669 and Rs. 29,806 respectively, in the case of working journalists, besides the liability for past gratuity in another sum of Rs. 1,08,534 and recurring annual liability for gratuity in a sum of Rs. 17,995. If similar benefits would have to be given to the other members of the staff who do not fall within the definition of working journalists the annual burden would be increased by a sum of Rs. 1,80,000. This would be the position by reason of the petitioners being classified and treated as a chain of newspapers and having been classified as "A" class newspaper establishment on a total computation of the gross revenue of all their units. If they were not so treated and the component units were classified on their individual gross revenue the result would be that the Free Press Journal, the Free Press Bulletin and the Bharat Jyoti would fall within class "A", and Navashakti would fall within class "C" and Janashakti would fall within class "D" thus minimising the burden imposed upon them by the impact of the Wage Board decision.

The Saurashtra Trust the petitioners in Petition No. 101 of 1957 are another chain of newspapers and they publish (i) Janmabhoomi, a Gujarati daily from Bombay, (ii) Janmabhoomi and Pravasi, a Gujarati weekly from Bombay, (iii) Lokmanya, a Marathi daily from Bombay, (iv) Vyapar, a Gujarati Weekly Commercial Paper from Bombay, (v) Fulchhab, a Gujarati Daily from Rajkot, (vi) Pratap, a Gujarati Daily from Surat, (vii) Cuttcha Mitra, a Gujarati daily from Bhuj (Cutch), and, (viii) Nav Bharat, a Gujarati daily from Baroda. They employ 445 employees out of whom 60 are working journalists and 12 proof readers and the rest belong to the other members of the staff. The effect of the Wage Board decision on them would be to impose on them a burden of Rs. 1,59,528 by reason of the retrospective operation of the decision and an annual increase in the wage bill of Rs. 1,59,528 for the first year and an annual recurring increase of Rs. 22,000. The operation of sections 6 and 7 of the Act in regard to reduced hours of

work and provision for increased leave would impose an additional burden of Rs. 42,000 per year. The liability for past gratuity would be Rs. 93,376 and the recurring annual increase in gratuity would be Rs. 11,000. If similar benefits were also given to the other members of the staff who were not working journalists the annual burden will increase by Rs. 5,18,964, by reason of their classification as "A" class newspaper establishment on a chain basis, all the component units have got to be treated as "A" class newspapers, whereas if they were classified on a computation of the gross revenue of their component units Vyapar would fall with class "B" the Janmabhoomi and Lokamanya would fall within Class "C" and the Cuttcha Mitra, Fulchhab and Pratap would fall within Class "E". The iniquity of this measure is, moreover sought to be augmented by their pointing out that whereas the Janmabhoomi from Bombay is placed in the "A" Class, Bombay Samachar (Bombay) a morning Gujarati daily from Bombay which has a larger gross revenue than Janmabhoomi taken as a single unit is placed in Class B. Similarly, the Pratap from Surat is placed in Class A, whereas the Gujrat Mitra from Surat which has a larger gross revenue than the Pratap is placed in Class "B" because of its being treated as a unit by itself; and the Fulchhab from Rajkot is also placed in Class "A" whereas the Jaihind from Rajkot which has a larger gross revenue than the Fulchhab is placed in Class "C" for an identical reason. The total cost of closing down the concern if perchance the petitioners have to so close down owing to their inability to carry on the business except at a loss is worked out at Rs. 6,13,921 for working journalists as against the old basis of Rs. 1,00,890. The figure for the rest of the staff who are not working journalists is computed at Rs. 3,08,112 with the result that the total cost of closing down on the new basis under the provisions of the Act and the decision of the Wage Board would be Rs. 9,22,033 as against what otherwise would have been a sum of Rs. 4,09,002.

The Hindustan Times Ltd., New Delhi, the petitioners in petition No. 103 of 1957, otherwise called "the Hindustan Times Group" publish (i) Hindustan Times, an English (morning) Daily, (ii) Hindustan Times (Evening News) an English (evening) Daily, (iii) Overseas Hindustan Times, an English Weekly, (iv) Hindustan, a Hindi Daily, and (v) Saptahik Hindustan, a Hindi Weekly—all from Delhi. They employ a total number of 695 employees out of whom 79 are working journalists, 14 are proof readers and the rest viz., 602 are other members of the staff. The wages paid to the working journalists absorb about one-third of the total wage bill as against 602 other members of the staff whose wage bill constitutes the remaining two-thirds. If the deci-

sion of the Wage Board is given effect to the petitioners would be subjected to the following additional liabilities in respect of working journalists alone: (i) Increase in the annual wage bill Rs. 2,16,000 (approx.) (ii) Arrears of payments from 2nd May, 1956, to 30th April, 1957, Rs. 1,89,000 (iii) Past liability in respect of gratuity as on 31st March, 1957, Rs. 2,65,000 (iv) Recurring annual liability of gratuity Rs. 28,000. The total liability thus comes to Rs. 6,98,000. The above figures do not include increased liability on account of the petitioner's contribution towards Provident Fund, Leave rules and payment to part time correspondents. There would also be a further recurring increase in the wage bill by reason of the increments which would have to be given to the various categories of working journalists on the scales of wages prescribed by the Wage Board. If other members of the staff (who are not "working journalists") were to be considered for increase in their emoluments etc., there will be a further burden on the petitioners computed as under:

(a) Increase in the annual wage bill, Rs. 5,02,000 (approx.), (b) arrears of payments from 2nd May, 1956 to 30th April, 1957 Rs. 4,51,000 (approx.), (c) Past liability in respect of gratuity as on 31st March, 1957, Rs. 5,50,000 (approx.), (d) Recurring annual liability for gratuity Rs. 60,000 (approx.). The total comes to Rs. 15,63,000.

The petitioners in Petition No. 116 of 1957 are the Loksatta Karyalaya, Baroda which publish the Loksatta, a Gujarati Daily from Baroda. They employ 15 working journalists. The annual wage bill of working journalists would have to be increased by reason of the decision of the wage board by Rs. 10,800; the burden of payment of retrospective liability being Rs. 9,600. Moreover, there will be a recurring annual burden of Rs. 6,340 inclusive of the expenditure involved by reason of the provisions as to (i) notice pay, (ii) gratuity, (iii) retrenchment compensation and (iv) extra burden of reduced hours of work and increased leave.

The Sandesh Ltd., the petitioners in Petition No. 117 of 1957, otherwise styled, the Sandesh Group, Ahmedabad publish (i) Sandesh, a morning Gujarati Daily, (ii) Sevak, an evening Gujarati Daily, (iii) Bal Sandesh, a Gujarati Weekly, and (iv) Aram, and (v) Sat Sandesh, Gujarati Monthlies—all from Ahmedabad. They employ a total staff of 205 employees out of whom there are 11 working journalists, 7 proof readers and the rest 187 constitute the other members of the staff. The increase in the wage bill of the working journalists under the provisions of the Act would be Rs. 24,807 per year besides a similar liability for Rs. 24,807 by reason of the retrospective operation of the decision. There will be an increase in expenditure to the tune of Rs. 30,900 by

reason of the reduced working hours and increase in leave and holidays, a liability of Rs. 31,597 for past gratuity and Rs. 24,807 every year for recurring gratuity as also Rs. 1,530 for recurring increase in wages of the working journalists. The financial burden in the case of proof-readers who are included in the definition of working journalists under the terms of the Act would be Rs. 5,724 per year. If similar benefits were to be given to the other members of the staff who are not working journalists the annual increase in the burden will be Rs. 1,89,816. The total costs of closing down if such an eventuality were contemplated would be Rs. 1,08,997 for the working journalists only as against a liability of Rs. 22,755 on the old basis. The other members of the staff would have to be paid Rs. 1,46,351 and the total cost of closing down the whole concern would thus come to Rs. 2,55,349 under the new dispensation as against Rs. 1,69,106 as of old.

The Jansatta Karyalaya, Ahmedabad, petitioners in Petition No. 118 of 1957 bring out (i) Jansatta, a Gujarati Daily and (ii) Chandni, a Gujarati Monthly from Ahmedabad. They employ 15 working journalists, 6 proof-readers and 87 other members of the staff thus making a total number of 108 employees. The increase in the wage-bill of the working journalists would come to Rs. 29,808. The liability for past gratuity would be Rs. 6,624 and the recurring annual gratuity would be Rs. 2,303 and the annual recurring increase in wages would come to Rs. 2,210. The financial burden in case of proof-readers would be Rs. 6,480 per year as per the decision of the wage board. If similar benefits had to be given to the other members of the staff who are non-working journalists the annual burden will increase by Rs. 48,720. The total cost of closing down, if such a contingency ever arose, would come to Rs. 1,00,798 under the provisions of the Act and the wage board decision as against Rs. 45,206 on the old basis.

All these petitions filed by the several petitioners as above followed a common pattern. After succinctly reciting the history of the events narrated above which led to the enactment of the impugned Act and the decision of the Wage Board, they challenged the vires of the Act and the decision of the Wage Board. The vires of the Act was challenged on the ground that the provisions thereof were violative of the fundamental rights guaranteed by the Constitution under article 19(1)(a), article 19(1)(g) and article 14; but in the course of the arguments before us another article, viz., article 32 was also added as having been infringed by the Act. The decision of the Wage Board was challenged on various grounds which were in *pari materia* with the objections that had been urged by the representatives of the employers in the Wage Board in their minute of dissent above referred to. It was also contended that the

implementation of the decision would be beyond the capacity of the petitioners and would result in their utter collapse. The reply made by the respondent was that none of the fundamental rights guaranteed under article 19(1)(a), article 19(1)(g), article 14 and/or article 32 were infringed by the impugned Act, that the functions of the Wage Board were not judicial or quasi-judicial in character, that the fixation of the rates of wages was a legislative act and not a judicial one, that the decision of the Wage Board had been arrived at after taking into consideration all the criteria for fixation of wages under section 9(i) of the Act and the material as well as the evidence led before it, that a considerable portion of the decisions recorded by the Wage Board were unanimous, that the Wage Board had the power and authority also to fix the scales of wages and to give retrospective operation to its decision, and that the financial position of the petitioners was not such as to lead to their collapse as a result of the impact of the provisions of the impugned Act and the decision of the Wage Board.

The petitioners in Petitions Nos. 91 of 1957, 99 of 1957, 100 of 1957, 101 of 1957 and 103 of 1957 also filed petitions for special leave to appeal against the decision of the Wage Board being Petitions Nos. 323, 346, 347, 348 and 359 of 1957 respectively and this Court granted the Special Leave in all these petitions under article 136 of the Constitution subject to the question of the maintainability of the appeals being open to be urged at the hearing. Civil Appeals arising out of these special leave petitions were ordered to be placed along with the Writ Petitions aforesaid for hearing and final disposal and Civil Appeals Nos. 699 of 1957, 700 of 1957, 701 of 1957, 702 of 1957 and 703 of 1957 arising therefrom thus came up for hearing and final disposal before us along with the Writ Petitions under article 32 mentioned above. We took up the hearing of the Writ Petitions first as they were more comprehensive in scope than the Civil Appeals filed by the respective parties and heard Counsel at considerable length on the questions arising for our determination therein.

Before we discuss the vires of the impugned Act and the decision of the Wage Board, it will be appropriate at this juncture to clear the ground by considering the principles of wage fixation and the machinery employed for the purpose in various countries. Broadly speaking, wages have been classified into three categories, viz., (1) the living wage, (2) the fair wage, and (3) the minimum wage.

The concept of the living wage:

"The concept of the living wage which has influenced the fixation of wages, statutorily or otherwise, in all economically advanced countries is an old and well-established one, but most of current defini-

tions are of recent origin. The most expressive definition of the living wage is that of Justice Higgins of the Australian Commonwealth Court of Conciliation in the Harvester case. He defined the living wage as one appropriate for "the normal needs of the average employee, regarded as a human being living in a civilized community". Justice Higgins has, at other places, explained what he meant by this cryptic pronouncement. The living wage must provide not merely for absolute essentials such as food, shelter and clothing but for "a condition of frugal comfort estimated by current human standards". He explained himself further by saying that it was a wage "sufficient to insure the workmen food, shelter, clothing, frugal comfort, provision for evil days, etc., as well as regard for the special skill of an artisan if he is one". In a subsequent case he observed that "treating marriage as the usual fate of adult men, a wage which does not allow of the matrimonial condition and the maintenance of about five persons in a home would not be treated as a living wage". According to the South Australian Act of 1912, the living wage means "a sum sufficient for the normal and reasonable needs of the average employee living in a locality where work under consideration is done or is to be done." The Queensland Industrial Conciliation and Arbitration Act provides that the basic wage paid to an adult male employee shall not be less than is "sufficient to maintain a well-conducted employee of average health, strength and competence and his wife and a family of three children in a fair and average standard of comfort, having regard to the conditions of living prevailing among employees in the calling in respect of which such basic wage is fixed, and provided that in fixing such basic wage the earnings of the children or wife of such employee shall not be taken into account". In a tentative budget inquiry conducted in the United States of America in 1919 the Commissioner of the Bureau of Labour Statistics analysed the budgets with reference to three concepts, viz.,

- (i) the pauper and poverty level,
- (ii) the minimum of subsistence level, and
- (iii) the minimum of health and comfort level,

and adopted the last for the determination of the living wage. The Royal Commission on the Basic Wage for the Commonwealth of Australia approved of this course and proceeded through norms and budget enquiries to ascertain what the minimum of health and comfort level should be. The commission quoted with approval the description of the minimum of health and comfort level in the following terms:

"This represents a slightly higher level than that of subsistence, providing not only for the material needs of food, shelter, and body

overing, but also for certain comforts, such as clothing sufficient for odily comfort, and to maintain the wearer's instinct of self-respect and decency, some insurance against the more important misfortunes—death, disability and fire—good education for the children, some amusement, and some expenditure for self-development."

Writing practically in the same language, the United Provinces Labour Enquiry Committee classified levels of living standard in four categories, viz.,

- (i) the poverty level,
- (ii) the minimum subsistence level,
- (iii) the subsistence plus level and
- (iv) the comfort level,

and chose the subsistence plus level as the basis of what it called the minimum living wage". The Bombay Textile Labour Inquiry Committee, 1937, considered the living wage standard at considerable length and, while accepting the concept of the living wage as described above, observed as follows:

".....what we have to attempt is not an exact measurement of a well-defined concept. Any definition of a standard of living is necessarily descriptive rather than logical. Any minimum, after all, is arbitrary and relative. No completely objective and absolute meaning can be attached to a term like the "living wage standard" and it has necessarily to be judged in the light of the circumstances of the particular time and country."

The Committee then proceeded through the use of norms and standard budgets to lay down what the basic wage should be, so that it might approximate to the living wage standard "in the light of the circumstances of the particular time and country."

The Minimum Wage-Fixing Machinery published by the I.L.O. has summarised these views as follows:

"In different countries estimates have been made of the amount of a living wage, but the estimates vary according to the point of view of the investigator. Estimates may be classified into at least three groups:

- (1) the amount necessary for mere subsistence,
- (2) the amount necessary for health and decency, and
- (3) the amount necessary to provide a standard of comfort."

It will be seen from this summary of the concepts of the living wage held in various parts of the world that there is general agreement that the living wage should enable the male earner to provide for himself and his family not merely the bare essentials of food, clothing and shelter but a measure of frugal comfort including education for the

children, protection against ill-health, requirements of essential social needs, and a measure of insurance against the more important misfortunes including old age." Report of the Committee on Fair Wages (1947 to 1949), pp. 5-7, paras 6 & 7.

Article 43 of our Constitution has also adopted as one of the Directive Principles of State Policy that:

"The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities"

This is the ideal to which our social welfare State has to approximate in an attempt to ameliorate the living conditions of the workers.

The concept of the minimum wage:

"The International Convention of 1928 prescribes the setting up of minimum wage-fixing machinery in industries in which "no arrangements exist for the effective regulation of wages by collective agreement or otherwise and wages are exceptionally low"..... "As a rule, though the living wage is the target, it has to be tempered, even in advanced countries, by other considerations, particularly the general level of wages in other industries and the capacity of industry to pay. This view has been accepted by the Bombay Textile Labour Inquiry Committee which says that "the living wage basis affords an absolute external standard for the determination of the minimum" and that "where a living wage criterion has been used in the giving of an award or the fixing of a wage, the decision has always been tempered by other considerations of a practical character."

"In India, however, the level of the national income is so low at present that it is generally accepted that the country cannot afford to prescribe by law a minimum wage which would correspond to the concept of the living wage as described in the preceding paragraphs. What then should be the level of minimum wage which can be sustained by the present stage of the country's economy? Most employers and some Provincial Governments consider that the minimum wage can at present be only a bare subsistence wage. In fact, even one important all-India organisation of employees has suggested that "a minimum wage is that wage which is sufficient to cover the bare physical needs of a worker and his family." Many others, however,consider that a minimum wage should also provide for some other essential requirements such as a minimum of education, medical facilities and other amenities. We consider that a minimum wage must provide not merely for the bare sustenance of life but for the

preservation of the efficiency of the worker. For this purpose, the minimum wage must also provide for some measure of education, medical requirements, and amenities". Report of the Committee on Fair Wages, pp. 7-9, paras. 8-10.

This is the concept of the "minimum wage" adopted by the Committee on Fair Wages. There are however variations of that concept and a distinction has been drawn for instance in Australian industrial terminology between the basic wage and the minimum wage:

"The basic wage there approximates to a bare minimum subsistence wage and no normal adult male covered by an award is permitted to work a full standard hours week at less than the assessed basic wage rate. The basic wage is expressed as the minimum at which normal adult male unskilled workers may legally be employed, differing from the amounts fixed as legal minima for skilled and semi-skilled workers, piece workers and casual workers respectively. The minimum wage is the lowest rate at which members of a specified grade of workers may legally be employed" O.D.R. Feenander, Industrial Regulation in Australia (1947) Ch. XVII., p. 155.

There is also a distinction between a bare subsistence or minimum wage and a statutory minimum wage. The former is a wage which would be sufficient to cover the bare physical needs of a worker and his family, that is, a rate which has got to be paid to the worker irrespective of the capacity of the industry to pay. If an industry is unable to pay to its workmen at least a bare minimum wage it has no right to exist. As was observed by us in Civil Appeal No. 235 of 1956—*Messrs. Crown Aluminium Works v. Their Workmen* [1958] 13 F. J. R. 292:

"It is quite likely that in under-developed countries, where unemployment prevails on a very large scale, unorganised labour may be available on starvation wages, but the employment of labour on starvation wages cannot be encouraged or favoured in a modern democratic welfare state. If an employer cannot maintain his enterprise without cutting down the wages of his employees below even a bare subsistence or minimum wage, he would have no right to conduct his enterprise on such terms."

The statutory minimum wage however is the minimum which is prescribed by the statute and it may be higher than the bare subsistence or minimum wage, providing for some measure of education, medical requirements and amenities, as contemplated above. (Cf. also the connotation of "minimum rate of wages" in s. 4 of the Minimum Wages Act XI of 1948).

The concept of the fair wage;

"The payment of fair wages to labour is one of the cardinal recommendations of the Industrial Truce Resolution..... Marshal would consider the rate of wages prevailing in an occupation as "fair" if it is "about on level with the average payment for tasks in other trades which are of equal difficulty and disagreeableness, which require equally rare natural abilities and an equally expensive training." Prof. Pigou would apply two degrees of fairness in judging a wage rate, viz., "fair in the narrower sense" and "fair in the wider sense". A wage rate, in his opinion, is "fair in the narrower sense" when it is equal to the rate current for similar workmen in the same trade and neighbourhood and fair "in the wider sense" when it is equal to the predominant rate for similar work throughout the country and in the generality of trades."

"The Indian National Trade Union Congress..... is of the opinion that the wage fixed by collective agreements, arbitrators, and adjudicators could at best be treated, like the minimum wage, as the starting point and that wherever the capacity of an industry to pay a higher wage is established, such a higher wage should be deemed to be the fair wage. The minimum wage should have no regard to the capacity of an industry to pay and should be based solely on the requirements of the worker and his family. "A fair wage" is, in the opinion of the Indian National Trade Union Congress, "a step towards the progressive realization of a living wage". Several employers while they are inclined to the view that fair wages would, in the initial stages, be closely related to current wages, are prepared to agree that the prevailing rates could suitably be enhanced according to the capacity of an industry to pay and that the fair wage would in time progressively approach the living wage. It is necessary to quote one other opinion, viz., that of the Government of Bombay, which has had considerable experience in the matter of wage regulation. The opinion of that Government is as follows :

"Nothing short of a living wage can be a fair wage if under competitive conditions an industry can be shown to be capable of paying a full living wage. The minimum wage standards set up the irreducible level, the lowest limit or the floor below which no workers shall be paid. . . . A fair wage is settled above the minimum wage and goes through the process of approximating towards a living wage."

While the lower limit of the fair wage must obviously be the minimum wage, the upper limit is equally set by what may broadly be called the capacity of industry to pay. This will depend not only on the present

economic position of the industry but on its future prospects. Between these two limits the actual wages will depend on a consideration of the following factors and in the light of the comments given below :

- (i) the productivity of labour;
 - (ii) the prevailing rates of wages in the same or similar occupations in the same or neighbouring localities;
 - (iii) the level of the national income and its distribution; and
 - (iv) the place of the industry in the economy of the country."
- Report of the Committee on Fair Wages, pp. 4, 9-11, paras. 11-15.

It will be noticed that the "fair wage" is thus a mean between the living wage and the minimum wage and even the minimum wage contemplated above is something more than the bare minimum or subsistence wage which would be sufficient to cover the bare physical needs of the worker and his family, a wage which would provide also for the preservation of the efficiency of the worker and for some measure of education, medical requirements and amenities.

This concept of minimum wage is in harmony with the advance of thought in all civilised countries and approximates to the statutory minimum wage which the State should strive to achieve having regard to the Directive Principle of State Policy mentioned above.

The enactment of the Minimum Wages Act, 1948 (XI of 1948) affords an illustration of an attempt to provide a statutory minimum wage. It was an Act to provide for fixing minimum rates of wages in certain employments and the appropriate Government was thereby empowered to fix different minimum rates of wages for (i) different scheduled employments; (ii) different classes of work in the same scheduled employment; (iii) adults, adolescents, children and apprentices; and (iv) different localities; and (b) such minimum rates of wages could be fixed by the hour, by the day or by any larger period as may be prescribed.

It will also be noticed that the content of the expressions "minimum wage", "fair wage" and "living wage" is not fixed and static. It varies and is bound to vary from time to time. With the growth and development of national economy, living standards would improve and so would our notions about the respective categories of wages expand and be more progressive.

It must however be remembered that whereas the bare minimum or subsistence wage would have to be fixed irrespective of the capacity of the industry to pay, the minimum wage thus contemplated postulates 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.

Fixation of scales of wages :—

A question arises as to whether the fixation of rates of wages would also include the fixation of scales of wages. The rates of wages and scales of wages are two different expressions with two different connotations. "Wages" have been defined in the Industrial Disputes Act, 1947, to mean

"all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment."

Similar definition of "wages" is to be found in the Minimum Wages Act (XI of 1948) also. They would therefore include all payments made from time to time to a workman during the course of his employment as such and not merely the starting amount of wages at the beginning of his employment. The dictionary meaning of the term in the *Concise Oxford Dictionary* is also the same, viz.,

"Amount paid periodically, especially by the day or week or month, for time during which workman or servant is at employer's disposal".

The use of the word "rate" in the expression "rates of wages" has not the effect of limiting the connotation of the term. "Rate" is described in the *Concise Oxford Dictionary* as "a statement of numerical proportion prevailing or to prevail between two sets of things either or both of which may be unspecified, amount, etc., mentioned in one case for application to all similar ones, standard or way of reckoning (measure of) value, etc." In Chambers' *Twentieth Century Dictionary* its meaning is given as: estimated amount or value (Shakespeare) and also "amount determined according to a rule or basis, a standard; a class or rank, manner or mode".

"Rates of wages" therefore mean the manner, mode or standard of the payments of remuneration for work done whether at the start or in the subsequent stages. Rates of wages would thus include the scales of wages and there is no antithesis between the two expressions, the expression being applicable both to the initial as well as subsequent amounts of wages. It is true that in references made to Industrial Tribunals fixing of scales of pay has been specifically mentioned e.g., in the industrial dispute between certain banking companies and their workers. But that is not sufficient to exclude the "scales of wages" from being comprised within the larger connotation of the expression "rates of wages" which is capable of including the scales of wages also within its ambit. Even without the specific mention of the scales of

wages it would be open to fix the same in an inquiry directed towards the fixation of the rates of wages.

It is also true that Industrial Tribunals have laid down that the increments of wages or scales of remuneration could only be fixed having due regard to the capacity of the industry to pay. In the case of the *Britannia Building & Iron Co. Ltd.* [1954] 1 L.L.J. 651, 654:

"As time scales increase the wage bill year after year which is reflected in the cost of production, such scales should not, in our opinion, be forced upon the employer of industrial labour unless it is established that the employer has the present capacity to pay and its financial capacity can be counted upon in future. Thus, both financial ability and stability are requisite conditions."

Similar observations were made in the case of the *Union Drug Co. Ltd.*, [1954] 1 L.L.J. 766, 767.

"For before incremental scales can be imposed by adjudication, it is essential to see whether employer would be able to bear its burden. The financial condition of the company must be such as to lead to the conclusion that it would be able to pay the increments year by year for an appreciable number of years, for wage scales when settled are intended to be long term schemes."

This consideration however of the capacity of the industry to pay does not militate against the construction adopted above that rates of wages do comprise within their scope the scales of wages also and it therefore follows that the fixation of rates of wages would also include the fixation of scales of wages. As a matter of fact, the provisions in regard to the statutory minimum wages in Queensland, Western Australia and Tasmania prescribe scales of wages which are graduated according to age and experience.

The capacity of the industry to pay being thus one of the essential ingredients in the fixation of wages, it is relevant to consider the different methods of measuring such capacity.

The capacity of the industry to pay :

The capacity of industry to pay can mean one of three things, viz :

- (i) the capacity of a particular unit (marginal, representative or average) to pay,
- (ii) the capacity of a particular industry as a whole to pay, or
- (iii) the capacity of all industries in the country to pay.

"Ideas on this subject have varied from country to country. In New Zealand and Australia the capacity to pay is calculated with reference to all industries in the country and no special concessions are shown to depressed industries. In Australia the Arbitration Court considered that "in view of the absence of clear means of measuring the general wage-

paying capacity of total industry, the actual wage upon which well-situated labourers were at the time maintaining the average family unit could justifiably be taken as the criterion of what industry could probably pay to all labourers". This is at best a secondary definition of capacity, for it could only serve to show that certain industries or units could afford to pay as much as certain others."

"The Bombay Textile Labour Inquiry Committee came to the conclusion that it was not possible to define the term "capacity to pay" in a precise manner and observed as follows :

"The capacity to pay a wage cannot obviously be determined merely by the value of production. There is the important question of determining the charges that have to be deducted before arriving at the amount that can be paid in wages. The determination of each of a large number of charges involves difficulties, both theoretical and practical. Interest charges, remuneration to salaried staffs and managing agents, sales commissions, profits, all these cannot for any large organised industry be taken as pre-determined in a fixed manner. Neither is it to be expected that representatives of labour would accept without challenge the current levels of expenditure on these items—apart from the consideration whether the industry has been reasonably well managed or not."

"That Committee was, however, of the opinion that capacity should not be measured in terms of the individual establishment and that "the main criterion should be the profit making capacity of the industry in the whole province....."

"In determining the capacity of an industry to pay it would be wrong to take the capacity of a particular unit or the capacity of all industries in the country. The relevant criterion should be the capacity of a particular industry in a specified region and, as far as possible, the same wages should be prescribed for all units of that industry in that region. It will obviously not be possible for the wage fixing board to measure the capacity of each of the units of an industry in a region and the only practicable method is to take a fair cross-section of that industry". (Report of the Committee on Fair Wages, pp. 13—15, paras. 21 & 23).

It is clear therefore that the capacity of an industry to pay should be gauged on an industry-cum-region basis after taking a fair cross-section of that industry. In a given case it may be even permissible to divide the industry into appropriate classes and then deal with the capacity of the industry to pay classwise.

As regards the measure of the capacity again there are two points of view in regard to the same:

"One view is that the wage-fixing machinery should, in determining the capacity of industry to pay, have regard to

(i) a fair return on capital and remuneration to management ; and

(ii) a fair allocation to reserves and depreciation so as to keep the industry in a healthy condition.

The other view is that the fair wage must be paid at any cost and that industry must go on paying such wage as long as it does not encroach on capital to pay that wage.....

The objective is not merely to determine wages which are fair in the abstract, but to see that employment at existing levels is not only maintained but, if possible, increased. From this point of view, it will be clear that the level of wages should enable the industry to maintain production with efficiency. The capacity of industry to pay should, therefore, be assessed in the light of this very important consideration. The wages board should also be charged with the duty of seeing that fair wages so fixed for any particular industry are not very much out of line with wages in other industries in that region. Wide disparities would inevitably lead to movement of labour, and consequent industrial unrest not only in the industry concerned but in other industries." (Report of the Committee on Fair Wages, p. 14, para, 24.)

The main consideration which is to be borne in mind therefore is that the industry should be able to maintain production with efficiency and the fixation of rates of wages should be such that there are no movements from one industry to another owing to wide disparities and employment at existing levels is not only maintained, but if possible, increased.

Different tests have been suggested for measuring the capacity of the industry to pay: viz:

- (1) The selling price of the product ;
- (2) the volume of the output ;
- (3) the profit and loss in the business ;
- (4) the rates which have been agreed to by a large majority of the employers ;
- (5) the amount of unemployment brought about or likely to be brought about by the imposition of the increased wage, etc.

They are however not quite satisfactory. The real measure of the capacity of the industry to pay has been thus laid down in "*Wages & the States*" by E.M. Burns at p. 387 :

"It would be necessary to inquire *inter alia* into the elasticity of demand for the product, for on this depends the extent to which

employers could transfer the burden of the increased wage to consumers. It would also be necessary to inquire how far the enforced payment of a higher wage would lead employers to tighten up organisation and so pay the higher wage without difficulty.

.....
Similarly it frequently happens that an enhanced wage increases the efficiency of the lowest paid workers; the resulting increase in production should be considered in conjunction with the elasticity of demand for the commodity before the ability of a trade to pay can fairly be judged.

.....
Again unless what the trade can bear be held to imply that in no circumstances should the existing rate of profit be reduced, there is no reason why attempts should not be made to discover how far it is possible to force employers to bear the burden of an increased rate without driving them out of business. This would involve an investigation into the elasticity of supply of capital and organising ability in that particular trade, and thus an inquiry into the rate of profits in other industries, the ease with which transferences might be made, the possibility of similar wage regulation extending to other trades, and the probability of the export of capital and organising ability, etc."

The principles which emerge from the above discussion are:

(1) that in the fixation of rates of wages which include within its compass the fixation of scales of wages also, the capacity of the industry to pay is one of the essential circumstances to be taken into consideration except in cases of bare subsistence or minimum wage where the employer is bound to pay the same irrespective of such capacity;

(2) that the capacity of the industry to pay is to be considered on an industry-cum-region basis after taking a fair cross section of the industry; and

(3) that the proper measure for gauging the capacity of the industry to pay should take into account the elasticity of demand for the product, the possibility of tightening up the organisation so that the industry could pay higher wages without difficulty and the possibility of increase in the efficiency of the lowest paid workers resulting in increase in production considered in conjunction with the elasticity of demand for the product—no doubt against the ultimate back-ground that the burden of the increased rate should not be such as to drive the employer out of business.

These are the principles of fixation of rates of wages and it falls now to be considered what is the machinery employed for such fixation.

The machinery for fixation of wages:

"The fixation of wages may form the subject matter of reference to industrial tribunals or similar machinery under the Labour Relations Law. But this machinery is designed for the prevention and settlement of industrial disputes which have either arisen or are apprehended, disputes relating to wages being one of such disputes. The ensuring of an adequate wage is however a distinctive objective and it requires the setting up of some kind of wage fixing board, whether they be trade boards or general boards. It is seldom that legislative enactments themselves fix the rates of wages, though a few such instances are known. This method of regulation of wages has now become obsolete in view of its inflexibility" (The Report of the Committee on Fair Wages, p. 26, para. 49.)

"The constitution of Boards falls naturally into two main groups. On the one hand, there are those not representatives of one but of all trades, workers in general and employers in general being represented. This group includes among others the Industrial Welfare Commission of Texas, consisting of the Commissioner of Labour, the representative of employers of labour on the Industrial Accidents Board and the State Superintendent of Public Instruction; the Minimum Wage Board of Manitoba, composed of two representatives of employers, and two of workers (one of each to be a woman) and one disinterested person; and the South Australian Board of Industry, consisting of a President and four Commissioners, two of whom are to be nominated by the South Australian Employers' Federation and two by the United Trades and Labour Council of the State. On the other hand are those Boards representative of one trade only or of part of a trade, or of a group of allied trades. An attempt is made to obtain a body of specialists and the membership of the Board reflects this intention. It will contain an equal number of representatives of employers and workers, together with an impartial chairman, and in some cases members of the public as well. Of this type are the British Trade Boards; the South Australian, Victorian and Tasmanian Wages Boards; and the Advisory or Wages Boards set up by many of the Central Commissioners in the United States and Canada. ("Wages & The State" by E. M. Burns at p. 187).

The following is a brief description of the composition and working of wages boards in the United Kingdom:

"In the United Kingdom where trade boards, and not general boards, have been set up, the Minister of Labour appoints a board if he is satisfied that no adequate machinery exists in a particular trade or

industry for effectively regulating the wages and that it is necessary to provide such machinery. The trade board is a fairly large body consisting of an equal number of representatives of employers and workers with a few independent members including the Chairman. Although appointments are made by the Minister, the representatives of employers and workers are appointed on the recommendation of the associations concerned. The trade board publishes a notice announcing its tentative proposals for the fixation or revision of a wage rate and invites objections or comments. After a two months' notice the board takes a final decision and submits a report to the Minister who must confirm the rate unless, for any special reasons, he returns the recommendations to the board for further consideration". (The Report of the Committee on Fair Wages, pages 25-26, para. 50.)

The Wage Council Act, 1945(8 & 9 Geo. VI. ch. 17) provides for the establishment of Wage Councils. The Minister of Labour and National Services has the power to make a wages council order after considering objections made with respect to the draft order on behalf of any person appearing to him to be affected. The Wage Council makes such investigation as it thinks fit and publishes notice of the Wage Regulation proposals and parties affected are entitled to make written representations with respect to these proposals which representations the Wage Council considers. The Wage Council can make such further enquiries as it considers necessary and thereafter submit the proposals to the Minister either without amendment or with such amendments as it thinks fit in regard to the same. The Minister considers these wage regulation proposals and makes an order giving effect to the proposals from such date as may be specified in the order. Remuneration fixed by the wage regulation orders is called statutory minimum remuneration.

There are also similar provisions under the Agricultural Wage Regulation Act, 1924 (14 & 15 Geo. V, ch. 37) in regard to the regulation of wages by Agricultural Wages Committees and the Agricultural Wages Board.

In Canada and Syria a board consists of generally 5 members, but in China the size of the board varies from 9 to 15. In all these countries employers and workers obtain equal representation. In Canada the boards are required to enquire into the conditions of work and wages. In some Provinces the boards are authorised to issue orders or decrees while in others the recommendations have to be submitted to the Lieutenant Governor who issues orders.

"In the United States of America some state laws prescribe that the representatives of employers and workers should be elected, but in the majority of States the administrative authorities are authorised to

make direct appointments. The boards so set up are empowered to make enquiries, to call for records, to summon witnesses and to make recommendations regarding minimum wages. Some of the American laws lay down a time-limit for the submission of proposals. The administrative authority may accept or reject a report and refer it back for reconsideration, or form a new board for considering the matter afresh. Some of the laws provide that if the report is not accepted, the matter must be submitted again to the same wages board or a new wages board". (Report of the Committee on Fair Wages, page. 26, para. 50.)

The whole procedure for the determination of wages in the United States of America is described in two decisions of the Supreme Court: (i) *Interstate Commerce Com. v. Louisville & M. R.* (1912) 227 U.S. 88; 57 Law Ed. 431 and (ii) *Opp Cotton Mills v. Administrator* (1940) 312 U.S. 126; 85 Law Ed. 624.

The Fair Labour Standards Act of 1938 in the U.S.A. provides for convening by the Administrator of Industry Committees for each such industry which from time to time recommend the minimum rate or rates of wages to be paid by the employers. The Committee recommends to the Administrator the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry. Wage orders can thereupon be issued by the Administrator after due notice to all interested persons and giving them an opportunity to be heard.

In Australia also there are provisions in various States for the appointment of wage boards the details of which we need not go into. We may only refer to the wage board system in Victoria which was established in 1896 as a means of directly regulating wages and working conditions in industries subject to "sweating", and was not intended to control industrial relations as such.

"Under the Factories and Shops Act, 1924, wage boards are set up for the various industries with a court of Industrial Appeals to decide appeals from a determination of a wage board. Industries for which there is no special wage board are regulated by the General Wages Board, which consists of two employers' representatives nominated by the Victorian Chamber of Manufacturers, two employees' representatives nominated by the Melbourne Trade Hall Council, and a chairman, agreed upon by these four members or nominated by the minister for labour". (Kenneth F. Walker, "Industrial Relations in Australia".)

It may be noted that in the majority of cases these wage boards are constituted of equal number of representatives of employers and

employees and one or more independent persons, one of whom is appointed the Chairman.

The position in India has been thus summarised :

"The history of wage-fixation in India is a very recent one. There was practically no effective machinery until the last war for the settlement of industrial disputes or the fixation of wages. The first important enactment for the settlement of disputes was the Bombay Industrial Disputes Act, 1938 which created an Industrial Court. The Act had limited application and the Court was not charged with the responsibilities of fixing and regulating wages. During the war State intervention in the settlement of industrial disputes became necessary, and numerous adjudicators were appointed to adjudicate on trade disputes under the Defence of India Rules. The Industrial Disputes Act, 1947, is the first effective measure of all-India applicability for the settlement of industrial disputes. Under this Act various Tribunals have passed awards regulating wages in a number of important industries.

"The first enactment specifically to regulate wages in this country is the Minimum Wages Act, 1948. This Act is limited in its operation to the so-called sweated industries in which labour is practically unorganised and working conditions are far worse than in organised industry. Under that 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 proposals for the fixation of wages in the official gazette and to invite objections. The appropriate Government finally fixes the minimum rates of wages on receipt of the recommendations of the Committee or of objections from the public. There is no provision for any appeal. There is an advisory board in each Province to co-ordinate the work of the various committees. There is also a Central Advisory Board to co-ordinate the work of provincial boards. Complaints of non-payment of the minimum rates of wages fixed by Government may be taken to claims authorities. Breaches of the Act are punishable by criminal courts." (Report of the Committee on Fair Wages, pages, 26-27, para. 51, 52.)

It is worthy of note that these committee, sub-committees, Advisory Board and Central Advisory Board are to consist of persons to be nominated by the Central 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.

"Under a recent amendment to the Bombay Industrial Relations Act, 1946, wage boards can be set up in the Province of Bombay either separately for each industry or for a group of industries. The wage board is to consist of an equal number of representatives of employers and employees and some independent persons including the Chairman, all of whom are nominated by the Government. The board decides disputes relating to reduction in the number of persons employed, rationalisation or other efficiency systems of work, wages and the period and mode of payment, hours of work and leave with or without pay. When a matter has been referred to a wages board, no proceedings may be commenced or continued before a conciliator, conciliation board, labour court or industrial court. The wages boards are authorised to form committees for local areas for the purpose of making enquiries. It is obligatory on Government to declare the decisions of the wages boards binding, but where Government feel that it will be inexpedient on public grounds to give effect to the whole or any part of the decision, the matter has to be placed before the Provincial Legislature, the decision of which will be binding. There is provision for the filing of appeals from the decisions of the wages boards to the Industrial Court". (Report of the Committee on Fair Wages, p. 27, para. 52.) Those wage boards moreover are under the superintendence of the Industrial Court.

We may also notice here Recommendation 30 being the recommendation concerning the application of Minimum Wage-Fixing Machinery made by the International Labour Office in 1949. (Extracts from Conventions & Recommendations, 1919-49, published by International Labour Office (1949)).

"(1) The minimum wage-fixing machinery whatever form it may take (for instance, trade board for individual trades, tribunals), should operate by way of investigation into the relevant conditions in the trade or part of trade concerned and consultation with the interests primarily and principally affected, that is to say, the employers and workers in the trade or part of trade, whose views on all matters relating to the fixing of the minimum rate of wages should in any case be solicited and be given full and equal consideration.

"(2) (a) To secure greater authority for the rates that may be fixed, it should be the general policy that the employers and workers concerned through representatives equal in number or having equal voting strength, should jointly take a direct part in the deliberations and decisions of the wage-fixing body ; in any case, where representation

is accorded to one side, the other side should be represented on the same footing. The wage-fixing body should also include one or more independent persons whose votes can ensure effective decisions being reached in the event of the votes of the employers' and workers' representatives being equally divided. Such independent persons should, as far as possible, be selected in agreement with or after consultation with the employers' and workers' representatives on the wage-fixing body.

"(b) In order to ensure that the employers' and workers' representatives shall be persons having the confidence of those whose interests they respectively represent, the employers and workers concerned should be given a voice as far as is practicable in the circumstances in the selection of their representatives, and if any organisations of the employers and workers exist these should in any case be invited to submit names of persons recommended by them for appointment on the wage-fixing body.

(c) The independent person or persons mentioned in paragraph (a) should be selected from among men or women recognised as possessing the necessary qualifications for their duties and as being dissociated from any interest in the trade or part of trade concerned which might be calculated to put their impartiality in question."

The following appraisalment of the system of establishing Trade Boards by the Committee on Fair Wages may be noted in this context :

"A trade board has the advantage of expert knowledge of the special problems of the trade for which it has been set up and is, therefore, in a position to evolve a scheme of wages suited to the conditions obtaining in the trade. The system, however, suffers from the limitation that there is no one authority to co-ordinate the activities of the various boards with the result that wide disparities may arise between the scales sanctioned for similar industries. A general board ensures due co-ordination but is far less competent than a trade board to appreciate the special problems of each trade. The Bombay Textile Labour Inquiry Committee have stated in their report that the trade board system is the best suited to Indian conditions, particularly because the very manner of functioning of trade boards is such that wages are arrived at largely by discussion and conciliation and that it is only in exceptional cases that the deciding votes of the Chairman and of the independent members have to be given". (Report of the Committee on Fair Wages, p. 27, para 53.)

It is clear therefore that a wage board relating to a particular trade or industry constituted of equal number of representatives of employers and employees, with an independent member or members one of whom is

appointed a Chairman, is best calculated to arrive at the proper fixation of wages in that industry.

Principles for guidance.

If a wage board is thus appointed it is necessary that the principles for its guidance in wage fixation should also be laid down by the appointing authority. The following passage from "Minimum Wages—An International Survey—I. L. O., Geneva, 1939", summarises the position as it obtains in various countries:

"As will be clear from the analysis of legislation given earlier in this monograph, the fundamental principles of the Australian system, both in the Commonwealth and in the State sphere, is that of the living wage. Even in those cases where the law contains no reference to this principle its importance is in practice great.....As a criterion of wage regulation the principle of the living wage is however no more than a vague and general indication of the purpose of the legislation. It leaves the broadest possible discretion in practice to the wage fixing tribunals. In the case of the Commonwealth laws indeed the Court is left completely free to determine the principles on which the basic or living wage is to be assessed. Under certain of the State laws specific, though limited, directions are given. Thus in Queensland there is a statutory definition of the family unit on whose requirements the basic wage is to be calculated. In certain cases the general emphasis on the criterion of the workers' needs is supplemented by directions to fix wage rates that will be "fair and reasonable" and in doing so to take into account the average standard of comfort being enjoyed by workers in the same locality or in similar occupations. Such references, it may be noted, involve at least an indirect allusion to general economic conditions and the capacity of industry to pay, since the standards currently enjoyed are closely related to these factors. In at least one case (in Queensland) the Court is specifically directed to examine the probable effects of its decisions upon industry and the community in general."

In the United States of America the Fair Labour Standards Act of 1938 enunciates certain principles for the guidance of the industry committees which are convened by the Administrator under the Act :

"The Committee shall recommend to the Administrator the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry" and further "in determining whether such classifications should be made in any industry, in making such classification, and in determining the minimum wage rates for such classification, no classification shall be made, and no minimum wage rate shall be fixed, solely on a regional basis, but the industry committee and

the Administrator shall consider among other relevant factors the following :

(1) competitive conditions as affected by transportation, living, and production cost ;

(2) the wages established for work of like or comparable character by collective labour agreements negotiated between employers and employees by representatives of their own choosing ; and

(3) the wages paid for work of like or comparable character by employers who voluntarily maintain minimum wage standards in the industry.

No classification shall be made under this section on the basis of age or sex."

The normal rule however is to leave a wide discretion to the Tribunals responsible for the fixation of wages inasmuch as they being constituted of equal numbers of representatives of the employers and the employees are best calculated to appreciate the whole position and arrive at correct results.

Procedure to be followed :

The procedure to be followed by the Wage Boards is equally fluid. The Wage Councils and the Central Co-ordinating Committees appointed under the Wages Council Act, 1945, as also the Agricultural Wages Committees and the Agricultural Boards appointed under the Agricultural Wages Regulation Act, 1924, in the United Kingdom each of them subject, of course, to the regulations which might be made by the Minister as to the meetings and procedure of these bodies including quorum, etc., is entitled to regulate its procedure in such manner as it thinks fit.

The Wage Boards in Australia "are called together informally by the Chairman upon request of either party. No legal formalities or procedures need be complied with. Meetings of wage boards are held in the offices of the Department of Labour an officer of the department acting as secretary." (Kenneth F. Walker "Industrial Relations in Australia", page 24.)

The wage boards thus constituted are left to regulate their procedure in such manner as they think fit and it is not necessary that any regulation should be made in regard to the procedure to be adopted by them in the conduct of the enquiry before them.

There are, however, a number of safeguards which have been provided in order to protect the interests of the parties concerned. The Wages Councils established by the Minister of Labour and National Services in the United Kingdom are so established after considering objections from persons appearing to be affected thereby and wage

regulation orders are also recommended by these councils after considering the written representations in regard to their proposals which are duly published in the manner prescribed. These recommendations are again, in their turn, considered by the Minister and it is only after the Minister is satisfied that these wage regulation orders are promulgated, the Minister having the power in proper cases to send the same back for reconsideration by the wage councils. When these proposals are again submitted by the wage council the same procedure is followed as in the case of original proposals made by them.

The reports of the Industry Committees convened by the Administrator in the United States of America are subject to scrutiny by the Administrator who gives notice to all interested persons and gives them an opportunity of being heard in regard to the same. It is only after this is done that he approves and carries into effect the recommendations in these reports on his being fully satisfied that they are proper and if he disapproves of these recommendations he again refers the matter to such committees for further consideration and recommendations. The orders of the Administrator are again subject to review in the Circuit Court of Appeals in the United States and further revision in the U.S. Supreme Court upon *certiorari* or certification.

As regards the determinations of the Special Boards in some of the States of the Commonwealth of Australia appeals lie against the same to the court of Industrial Appeals and they are also challengeable before the High Court.

Such safeguards are also provided in our Minimum Wages Act (XI of 1948). Here the work of the Committees, Sub-committees and Advisory Committees is co-ordinated by Advisory Boards and the work of the Advisory Boards is co-ordinated by the Central Advisory Board which advises the Central Government in the matter of the fixing of the minimum rates of wages and other matters under the Act and it is after the receipt of such advice from the Central Advisory Board by the appropriate Government that the latter takes action in the matter of fixation or revision of minimum rates of wages. Where, however, the appropriate Government proposes to fix the minimum rates of wages without reference to the various committees or sub-committees, it publishes its proposals by notification in the Official Gazette for the information of persons likely to be affected thereby and fixes the minimum rates of wages only after considering the representations received by it from the interested parties.

The Wage Boards appointed by the amended Bombay Industrial Relations Act, 1946, are subject to the appellate jurisdiction as well as

supervisory jurisdiction of the Industrial Courts in the State and parties affected by their decisions are entitled to file appeals against the same in the Industrial Courts.

If these safeguards are provided against the determinations of the wage boards, it will be really immaterial what procedure they adopt in the course of the proceedings before them. They would normally be expected to adopt all procedure necessary to gather sufficient data and collect sufficient materials to enable them to come to a proper conclusion in regard to the matters submitted to them for their determination. If, however, at any time they flouted the regulations prescribed in regard to the procedure to be followed by them or in the absence of any such regulations adopted a procedure which was contrary to the principles of natural justice their decision would be vitiated and liable to be set aside by the appropriate authority.

Character of the functions performed :

There is considerable divergence of opinion in regard to the character of the functions performed by these wage boards and a controversy has arisen as to whether the functions performed by them are administrative, judicial or quasi-judicial or legislative in character. The question assumes importance on two grounds, viz., (i) whether the decisions of the wage boards are open to judicial review and (ii) whether the principle of *audi alteram partem* applies to the proceedings before the wage boards. If the functions performed by them were administrative or legislative in character they would not be subject to judicial review and not only would they not be amenable to the writs of *certiorari* or prohibition, under articles 32 and 226 of the Constitution, they would also not be amenable to the exercise of special leave jurisdiction under article 136. Their decisions moreover would not be vulnerable on the ground that the principle of *audi alteram partem*, i.e., no man shall be condemned unheard, was not followed in the course of the proceedings before them and the procedure adopted by them was contrary to the principles of natural justice.

It is well settled that writs of *certiorari* and prohibition will lie only in respect of judicial or quasi-judicial acts :

"the orders of *certiorari* and prohibition will lie to bodies and persons other than courts *stricto sensu*. Any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, is subject to the controlling jurisdiction of the High Court of justice, exercised by means of these orders." (Halsbury's *Laws of England*, 3rd Edn., Vol. II, at p. 55, para 114).

The principle of *audi alteram* also applies only to judicial or quasi-judicial proceedings. As was observed by the Judicial Committee of the Privy Council in *Patterson v. Dist. Commissioner of Accra*, [1948] A.C. 341, 350:

"On this part of this case, Counsel suggested that the provisions of section 9 were in the nature of a "mass punishment" of the inhabitants of the proclaimed District and he relied on the well-known passage from the judgment of the Court in *Bonaker v. Evans* (16 Q.B. 162, 171) "no proposition can be more clearly established than that a man cannot incur the loss of liberty or property for an offence by a judicial proceeding until he has had a fair opportunity of answering the charge against him, unless indeed the legislature has expressly or impliedly given an authority to act, without that necessary preliminary. This is laid down in (here No. of cases are mentioned) and many other cases, concluding with that of *Capel v. Child* [(1832) 2 C.L.J. 558] Bayley B. says that he knows of no case in which you are to have a judicial proceeding, by which a man is to be deprived of any part of his property, without his having an opportunity of being heard." Their Lordships have already indicated that, in their view, the section does not contemplate any judicial proceeding, and thus a decision against the appellant does not infringe the principles stated in *Bonaker v. Evans*."

The distinction between a legislative and a judicial function is thus brought out in Cooley's *Constitutional Limitations*, 8th Edn., Vol. I at p. 185 under the caption of "the powers which the legislative department may exercise":—

"On general principles, therefore, these enquiries, deliberations, orders, and decrees, which are peculiar to such a department, must in their nature be judicial acts. Nor can they be both judicial and legislative; because a marked difference exists between the employment of judicial and legislative tribunals. The former decide upon the legality of claims and conduct, and the latter make rules upon which, in connection with the constitution, those decisions should be founded. It is the province of judges to determine what is the law upon existing cases. In fine, the law is applied by one, and made by the other. To do the first, therefore, is to compare, the claims of parties with the law of the land before established—is in its nature judicial act. But to do the last—to pass new rules for the regulation of new controversies—is in its nature a legislative act; and if these rules interfere with the past, or the present, and do not look wholly to the future, they violate the definition of a law as "a rule of civil conduct", because no rule of conduct can with consistency operate upon what occurred before the rule itself was promulgated.

"It is the province of judicial power, also to decide private disputes between or concerning persons; but of legislative power to regulate public concerns, and to make laws for the benefit and welfare of the State. Nor does the passage of private statutes, when lawful, are enacted on petitions, or by the consent of all concerned; or else they forbear to interfere with past transactions and vested rights."

The following classic passage from the opinion of Holmes, J. in *Prentiss v. Atlantic Coast Line Co., Ltd.*, (1908) 53 Law Ed. 150, 158, 159; 211 U.S. 210, 226-227, is very apposite in this context:

"A judicial inquiry investigates, declares, and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation, on the other hand looks to the future and changes existing conditions by making a new rule, to be applied thereafter to all or some part of those subject to its power. The establishment of a rate is the making of a rule for the future, and therefore, is an act legislative not judicial in kind,"

.....
That question depends not upon the character of the body, but upon the character of the proceedings.

.....
The nature of the final act determines the nature of the previous enquiry."

(See also *Mitchell Coal & C. Co. v. Pennsylvania R. Co.*, 57 Law Ed. 1479 at p. 1482) and *Louisville & Nashville Railroad Company v. Green Garrett*, 58 Law Ed. 229 at p. 239.)

A practical difficulty however arises in thus characterising the functions as legislative or judicial because the functions performed by administrative agencies do not fall within water-tight compartments. Stason and Cooper in their treatise on "Cases and other materials on Administrative Tribunals" point out at page 150:

"One of the great difficulties of properly classifying a particular function of an administrative agency is that frequently—and, indeed typically—a single function has three aspects. It is partly legislative, partly judicial and partly administrative. Consider, for example, the function of rate-making. It has sometimes been characterised as legislative, sometimes as judicial. In some aspects, actually, it involves merely executive or administrative powers. For example, where the Inter-State Commerce Commission fixes a tariff of charges for any railroad, its function is viewed as legislative. But where the question for decision is whether a shipment of a mixture of coffee and chicory should be charged the rate established for coffee or the lower rate established for chicory, the question is more nearly judicial. On the other hand,

where the problem is merely the calculation of the total freight charges due for a particular shipment, the determination can fairly be described as an administrative act."

This difficulty is solved by the Court considering in a proper case whether the administrative agency performs a predominantly legislative or judicial or administrative function and determining its character accordingly. (Vide: *Saratoga Springs v. Saratoga Gas, Electric Light & Power Co.* (191 New York 123), and *People ex rel. Central Park North & East River R. Co. v. W. Willcox.* (194 New York 383).)

The function of the wage board in the United Kingdom has been characterised as legislative in character by various text-book writers.

Robson's *Justice and Administrative Law*, 3rd Edition, states at p. 608:

"An example of a subordinate body of this type is a wage council, which is not an administrative tribunal but a subordinate legislative authority."

Griffith's *Principles of Administrative Law* contains the following passage at p. 39:

"The subordinate legislation which occupies more space than any other subject relates to Wages Councils. By the Wages Councils Act, 1945, the Minister of Labour and National Service was empowered to establish by orders Wages Councils to operate in industries and trades. Six such orders were made in 1947. Wages Councils, under the Act, may submit to the Minister detailed "wages regulations proposals" for fixing remuneration and making provisions for holidays. The Minister then makes orders embodying and giving effect to these proposals. In 1947, fifty-five such orders were made, covering thirty-one different trades.

Barbare Wootton in "*Social Foundations of Wage Policy; Modern Methods of Wage Determination*" makes the following observations at page 88:

"Both arbitration tribunals and courts of inquiry share—with one important difference—the tripartite structure of statutory wage councils; they are composed of equal numbers of representatives of employers and of workers under an independent chairman together with (in some cases) additional independent members. The essential difference between their structure and that of statutory wage authorities is that the representative members of the latter are chosen from within the industry concerned, whereas employers and workers on arbitration tribunal come from outside the industry whose disputes they have to resolve; if in any case technical knowledge of a particular industry is required, this is normally supplied by the help of assessors who take no

part in the final award. This difference between the constitution of wage boards and that of arbitration tribunals clearly implies a corresponding distinction between the legislative function of the former and the judicial function of the latter. The wages board drafts laws for its own industry, whereas the arbitration court gives judgment on matters submitted by others. The choice of industrial arbitrators unconnected with the industries the merits of whose claims they must pledge, is evidently intended as a guarantee that they, like other judges, will be free from bias arising from personal interest."

The High Court of the Commonwealth of Australia has taken a similar view in *Australian Boot Trade Employees Federation v. Whybrow & Co.*, (1910) 10 C.L.R. 266, 317, in discussing an award made by the wages board empowered by a State statute to fix minimum rates of wages. The test applied for determining the character of that function may be stated in the words of Issacs, J. at page 317:

"If the dispute is as to the relative rights of parties as they rest on past or present circumstances, the award is, in the nature of a judgment, which might have been the decree of an ordinary judicial tribunal acting under the ordinary judicial power. There the law applicable to the case must be observed. If, however, the dispute is as to what shall in the future be the mutual rights and responsibilities of the parties—in other words, if no present rights are asserted or denied, but a future rule of conduct is to be prescribed, thus creating new rights and obligations, with sanctions for non-conformity—then the determination that so prescribes, call it an award, or arbitration, determination, or decision or what you will, is essentially of a legislative character, and limited only by the law which authorises it. If, again, there are neither present rights asserted, nor a future rule of conduct prescribed, but merely a fact ascertained necessary for the practical effectuation of admitted rights, the proceeding, though called an arbitration, is rather in the nature of an appraisal or ministerial act."

As against this trend of opinion it has been urged that the decisions of the wage councils in the shape of wage regulation proposals submitted to the Minister in Great Britain under the Wage Councils Act derive their sanction from the orders made by the Minister giving effect to these proposals; but for such orders of the Minister they would merely remain the determinations of the Wage Councils and would not acquire any legislative character. In regard to the determinations of the wage boards empowered by the statutes to fix the minimum rates of wages in the Commonwealth of Australia also it is pointed out that under the provisions of the Factories & Shops Act, 1905, of Victoria "Every

determination of any Special Board shall unless and until so quashedhave the like force, validity and effect as if such determination had been enacted in this Act....." thus investing the determination of the boards with the characteristics of a legislative Act.

Reference is made to the provisions of the Fair Labour Standards Act of 1938, in the United States of America, where the wages orders ultimately approved by the Administrator are subject to judicial review in the Circuit Courts of Appeals or in the United States courts of appeals of the particular District and also subject to further review by the Supreme Court of the United States of America on certification.

The Minimum Wages Act, 1948, in our country also provides for the Committees, Sub-Committees, Advisory Sub-Committees, Advisory Boards and Central Advisory Boards for fixing minimum rates of wages and the recommendations of these committees are forwarded to the appropriate Government who by notification in the Official Gazette fix minimum rates of wages in respect of each scheduled employment. The notification is a token of the approval by the appropriate Government of these recommendations of the Committees and invests them with legal sanction.

The recent amendment of the Bombay Industrial Relations Act, 1946, empowers the State Government by notification in the Official Gazette to constitute for one or more industries a Wage Board for the State and enjoins these wage boards to follow the same procedure as the Industrial Court in respect of arbitration proceedings before it and appeals from the decisions of these wage boards lie to the Industrial Courts which has powers of superintendence and control over these wage boards and it cannot, under the circumstances, be urged that these wage boards perform any legislative functions.

These are the two opposite points of view which have been pressed before us and it is impossible to state that the functions performed by the wage boards are necessarily of a legislative character. It is no doubt true that their determinations bind not only the employers and the employees in the present, but they also operate when accepted by the appropriate government or authorities and notified in accordance with law, to bind the future employers and employees in the industry. If that were the only consideration the dictum of Justice Holmes cited above would apply and the functions performed by these Wage Boards would be invested with a legislative character. This is however not all, and regard must be had to the provisions of the statutes constituting the wage boards. If on a scrutiny of the provisions in regard thereto one can come to the conclusion that they are appointed only with a view

to determine the relations between the employers and the employees in the future in regard to the wages payable to the employees there would be justification for holding that they were performing legislative functions. If, however, on a consideration of all the relevant provisions of the statutes bringing the wage boards into existence, it appears that the powers and procedure exercised by them are assimilated to those of Industrial Tribunals or their adjudications are subject to judicial review at the hands of higher Tribunals exercising judicial or quasi-judicial functions, it cannot be predicated that these wage boards are exercising legislative functions. Whether they exercise these functions or not is thus to be determined by the relevant provisions of the statutes incorporating them and it would be impossible to lay down any universal rule which would help in the determination of this question.

Even if on the construction of the relevant provisions of the statute we come to the conclusion that the functions performed by a particular Wage Board are not of a legislative character, the question still remains whether the functions exercised by them are administrative in character or judicial or quasi-judicial in character, because only in the latter event would their decision be amenable to the writ jurisdiction or to the special leave jurisdiction above referred to.

There is no doubt that these wage boards are not exercising purely judicial functions. They are not courts in the strict sense of the term and the functions which they perform may at best be quasi-judicial in character. The fact that they are administrative agencies set up for the purpose of fixation of wages do not necessarily invest their functions with an administrative character and in spite of their being administrative bodies they can nevertheless be exercising quasi-judicial functions if certain conditions are fulfilled.

The position in law has been thus summarised in Halsbury's *Laws of England*, 3rd Edition, Vol. 11, at pages 55-56:

"The orders of *certiorari* and prohibition will lie to bodies and persons other than courts *stricto sensu*. Any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, is subject to the controlling jurisdiction of the High Court of Justice, exercised by means of these orders. It is not necessary that it should be a court; an administrative body in ascertaining facts or law may be under a duty to act judicially notwithstanding that its proceedings have none of the formalities of, and are not in accordance with the practice of, a court of law. It is enough if it is exercising, after hearing evidence, judicial functions in the sense that it has to decide on evidence between a proposal and an opposition. A body may be under a duty, however, to

act judicially (and subject to control by means of these orders) although there is no form of *lis inter partes* before it; it is enough that it should have to determine a question solely on the facts of the particular case, solely on the evidence before it, apart from questions of policy or any other extraneous considerations."

"Moreover an administrative body, whose decision is actuated in whole or in part by questions of policy, may be under a duty to act judicially in the course of arriving at that decision. Thus, if in order to arrive at the decision, the body concerned had to consider proposals and objections and consider evidence, if at some stage of the proceedings leading up to the decision there was something in the nature of a *lis* before it, then in the course of such consideration and at that stage the body would be under a duty to act judicially. If, on the other hand, an administrative body in arriving at its decision has before it at no stage any form of *lis* and throughout has to consider the question from the point of view of policy and expediency, it cannot be said that it is under a duty at any time to act judicially."

(See also the decision of this Court in *Nagindra Nath Bora v. Commissioner of Hills Divisions, etc.*, C.As. Nos. 668, 669, 670 & 672 of 1957, decided on 7th February, 1958.

In order, therefore, to determine whether an administrative body is exercising a quasi-judicial function, it would be necessary to examine in the first instance, whether it has to decide on evidence between a proposal and an opposition and secondly, whether it is under a duty to act judicially in the matter of arriving at its decision.

"The duty to act judicially may arise in widely differing circumstances which it would be impossible to attempt to define exhaustively. The question whether or not there is a duty to act judicially must be decided in each case in the light of the circumstances of the particular case and the construction of the particular statute, with the assistance of the general principles already set out." (*Ibid*, para. 115).

The decision in *R. v. Manchester Legal Aid Committee; Ex parte R. A. Brand & Co. Ltd.*, [1952] 2 Q.B. 413, 428, 429, 430, lays down when an administrative body can be said to have a duty to act judicially:

"The true view, as it seems to us, is that the duty to act judicially may arise in widely different circumstances which it would be impossible, and, indeed, inadvisable, to attempt to define exhaustively. Where the decision is that of a court, then, unless, as in the case, for instance, of justices granting excise licences, it is acting in a purely ministerial capacity, it is clearly under a duty to act judicially. When, on the

other hand, the decision is that of an administrative body and is actuated in whole or in part by questions of policy, the duty to act judicially may arise in the course of arriving at that decision. Thus, if, in order to arrive at the decision, the body concerned had to consider proposals, and objections and consider evidence, then there is the duty to act judicially in the course of that inquiry. That, as it seems to us, is the true basis of the decision in *Errington v. Minister of Health*, [1935] 1 K. B. 249....."

(See also *Rex v. The London County Council; Ex parte the Entertainments Protection Association Ltd.*, [1931] 2 K.B. 215, 233-4.)

"Further, an administrative body in ascertaining facts or law may be under a duty to act judicially notwithstanding that its proceedings have none of the formalities of and are not in accordance with the practice of a court of law."

Vide *Board of Education v. Rice* (1911) A.C. 179, 182:

"More recently it has been held by this Court on many occasions that *certiorari* will lie to quash the decision of rent control tribunals, and this notwithstanding that such a tribunal is entitled to act on its own knowledge and information, without evidence unless submitted, and without a hearing except on notice from a party; see *Rex v. Brighton and Area Rent Tribunal* (1950) 2 K.B. 410.

"If, on the other hand, an administrative body in arriving at its decision at no stage has before it any form of *lis* and throughout has to consider the question from the point of view of policy and expediency, it cannot be said that it is under a duty at any stage to act judicially: Compare *Franklin v. Minister of Town and Country Planning* [1948] A.C. 87, 102".

It is strenuously urged before us by learned counsel for the petitioners that if the functions which the wage boards perform in the matter of fixation of the rates of wages are considered in the light of the principles cited above, it would appear that as between the employers, on the one hand, and the employees, on the other, there is proposition and opposition. The employees demand that a particular statutory minimum wage should be fixed and the scales of wages should also be determined in a particular manner. The employers on their part would maintain that the *status quo* should continue or that, in any event, much less than the statutory minimum wage demanded by the employees should be fixed and also that the scales of wages should be fixed on a gradation which is much less than, or in any event, different from, that suggested by the employees. The employees may say that certain factors which are material in the fixation of wages and which affect the employees should

be considered as determinative of the rates of wages while the importance of these factors may be sought to be minimized by the employers who might put forward certain other factors affecting them, in their turn, as determinative of those rates, the importance of which may be sought to be minimized by the employees on the other hand. All these would create proposition and opposition on both sides with the result that a *lis* would arise between them. The determination of these points at issue would have to be arrived at by the wage boards and the wage boards could only do so after collecting proper data and materials and hearing evidence in that behalf. If the functions performed by the wage board would thus consist of the determination of the issues as between a proposition and an opposition on data and materials gathered by the board in answers to the Questionnaire issued to all parties interested and the evidence led before it, there is no doubt that there would be imported in the proceedings of the wage board a duty to act judicially and the functions performed by the wage board would be quasi-judicial in character. It has been on the other hand urged before us by the learned counsel for the respondents that the very constitution of the wage boards is against the fundamental principle of jurisprudence which postulates that no man should be a judge in his own cause. It was laid down by the House of Lords in *Franklin v. Minister of Town and Country Planning* (supra) at page 103:

"My Lords, I could wish that the use of the word "bias" should be confined to its proper sphere. Its proper significance, in my opinion, is to denote a departure from the standard of even-handed justice which the law requires from those who occupy judicial office, or those who are commonly regarded as holding a quasi-judicial office, such as an arbitrator. The reason for this clearly is, that having to adjudicate as between two or more parties, he must come to his adjudication with an independent mind, without any inclination or bias towards one side or other in the dispute."

The representatives of the employers and the representatives of the employees who are appointed on the wage board along with an independent Chairman and some other members, it is submitted, would necessarily have a bias in favour of those whom they represent and therefore would not be competent to be judges and the wage board thus constituted could hardly be called a judicial body.

There is considerable force in these contentions, but we do not feel called upon to express our final opinion on this question in view of the conclusion which we have hereafter reached in regard to the *ultra vires* character of the decision of the Wage Board itself. We are however bound to observe that whatever be the character of the functions per-

formed by the Wage Boards whether they be legislative or quasi-judicial, if proper safeguards are adopted of the nature discussed earlier, e. g., provision for judicial review or the adopting of the procedure as in the case of the recommendations of the Wage Councils in the United Kingdom, or the reports of the advisory committees which come to be considered by the Administrator under the Fair Labour Standards Act of 1938 in the United States of America, no objection could ever be urged against the determinations of the wage boards thus arrived at on the score of the principles of natural justice having been violated.

We now proceed to consider how far the impugned Act violates the fundamental rights of the petitioners.

Re: Article 19(1)(a).

Article 19(1)(a) guarantees to all citizens the right to freedom of speech and expression. It has, however, got to be read along with article 19(2) which lays down certain constitutionally permissible limitations on the exercise of that right. Article 19(2) as substituted by the Constitution (First Amendment) Act, 1951, with retrospective effect reads as under :

" Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. "

If any limitation on the exercise of the fundamental right under article 19(1) (a) does not fall within the four corners of article 19(2) it cannot be upheld.

Freedom of speech and expression includes within its scope the freedom of the press and it would be apposite here to refer to the following passages from "*Freedom of the Press—A Framework of Principles*" (Report of the Commission on Freedom of Press in the United States of America).

The general meaning of freedom :

To be free is to have the use of one's powers of action (i) without restraint or control from outside and (ii) with whatever means or equipment the action requires.

" The primary suggestion of the term " freedom " is the negative one, the absence of external interference whether to suppress or to constrain. To be free is essentially to be free *from* something—some arbitrary impediment to action, some dominating power or authority. And so long as it can be taken for granted that the unhindered person

has all he needs to act with—which is usually the case—the negative meaning remains the chief element of the conception.

" But since freedom is for action, and action is for an end, the positive kernel of freedom lies in the ability to achieve the end; to be free means to be free for some accomplishment. And this implies *command of the means* to achieve the end. Unless the equipment necessary for effective action is at hand, unrestraint may be a mockery of freedom.....Unrestraint without equipment is not liberty for any end which demands equipment. " (pp. 54-55)

.....
Resulting conception of freedom of the press .

" The emerging conception of freedom of the press may be summarised as follows :

As with all freedoms, press freedom means freedom from and freedom for. A free press is free from compulsions from whatever source, governmental or social, external or internal. From compulsions, not from pressures; for no press can be free from pressures except in a moribund society empty of contending forces and beliefs. These pressures, however, if they are persistent and distorting—as financial, clerical, popular, institutional pressures may become—approach compulsion; and something is then lost from effective freedom which the press and its public must unite to restore.

" A free press is free for the expression of opinion in all its phases. It is free for the achievement of those goals of press service on which its own ideals and the requirements of the community combine and which existing techniques make possible. For these ends it must have full command of technical resources, financial strength, reasonable access to sources of information at home and abroad, and the necessary facilities for bringing information to the national market. The press must grow to the measure of this market. (page 228).

.....
There is paucity of authority in India on the nature, scope and extent of this fundamental right to freedom of speech and expression enshrined in article 19(1)(a) of the Constitution. The first case which came up for decision before this court was that of *Ramesh Thaper v. The State of Madras*, [1950] S.C.R. 594, 597. It was a case of a ban on the entry and circulation of the appellant's journal in the State of Madras under the provisions of section 9(1-A) of the Madras Maintenance of Public Order Act, 1949, and it was observed by Patanjali Sastri, J., (as he then was) at page 597:

" There can be no doubt that freedom of speech and expression includes freedom of propagation of ideas, and that freedom is ensured

by the freedom of circulation. "Liberty of circulation is as essential to that freedom as the liberty of publication. Indeed, without circulation the publication would be of little value." : *Ex parte Jackson*, (1877) 96 U.S. 727; 24 Law. Ed. 877. See also *Lovell v. City of Griffin*, (1937) 303 U.S. 444; 82 Law. Ed. 949.

Brij Bhushan & Another v. The State of Delhi, [1950] S.C.R. 605, was the next case which came up for decision before this Court and it concerned the constitutionality of section 7(i)(c) of the East Punjab Public Safety Act, 1949. It was a provision for the imposition of pre-censorship on a journal. Patanjali Sastri, J., (as he then was) who delivered the majority judgment observed at page 608:—

"There can be little doubt that the imposition of pre-censorship on a journal is a restriction on the liberty of the press which is an essential part of the right to freedom of speech and expression declared by article 19(1)(a). As pointed out by Blackstone in his *Commentaries* "the liberty of the Press consists in laying no previous restraint upon publications, and not in freedom from censure for criminal matter when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press". (Blackstone's *Commentaries*, Vol. IV, pages 151, 152).

These are the only two decisions of this Court which involve the interpretation of article 19(1)(a) and they only lay down that the freedom of speech and expression includes freedom of propagation of ideas which freedom is ensured by the freedom of circulation and that the liberty of the press is an essential part of the right to freedom of speech and expression and that liberty of the press consists in allowing no previous restraint upon publication.

There is, however, a considerable body of authority to be found in the decisions of the Supreme Court of the United States of America bearing on this concept of the freedom of speech and expression. Amendment 1 of that Constitution lays down:

"Congress shall make no law.....abridging the freedom of speech or of the press....."

It is trite to observe that the fundamental right to the freedom of speech and expression enshrined in article 19(1)(a) of our Constitution is based on these provisions in Amendment I of the Constitution of the United States of America and it would be therefore legitimate and proper to refer to those decisions of the Supreme Court of the United States of America in order to appreciate the true nature, scope and extent of this right in spite of the warning administered by this Court against the use of American and other cases. (Vide *State of Travancore-*

Cochin & Others v. Bombay Co. Ltd., [1952] S.C.R. 1112 at p. 1120, and *State of Bombay v. R.M.D. Chamarbagwala*, A.I.R. [1957] S.C. 699 at p. 717).

Grosjean v. American Press Co., [1935] 297 U.S. 233, 249; 80 Law. Ed. 660, was a case where a statute imposed a license tax on the business of publishing advertisements and it was observed at p. 668:

"The evils to be prevented were not the censorship of the press merely, but any action of the government by means of which it might prevent such free and general discussion of public matters as seems absolutely essential to prepare the people for an intelligent exercise of their rights as citizens." (Vide 2 Cooley, *Constitutional Limitations* 8th Ed., p. 886).

The Statute was there struck down as unconstitutional because in the light of its history and of its present setting it was seen to be a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public was entitled in virtue of the constitutional guarantees.

The following passage from the dissenting opinion in *The Associated Press v. The National Labour Relations Board*, [1936] 301 U.S. 103, 136; 81 Law. Ed. 953, 963, is also instructive:

"If the freedom of the press does not include the right to adopt and pursue a policy without governmental restriction, it is a misnomer to call it freedom. And we may as well deny at once the right to the press freely to adopt a policy and pursue it, as to concede that right and deny the liberty to exercise an uncensored judgment in respect of the employment and discharge of the agents through whom the policy is to be effectuated."

It was also observed there at p. 965:

"Due regard for the Constitutional guarantee requires that the publisher or agency of the publisher of news shall be free from restraint in respect of employment in the editorial force."

Schneider v. Irvingtor, [1939] 308 U.S. 147; 84 Law. Ed. 155, 164, was concerned with the effect of the Municipal Regulations against littering of streets. In the course of its decision the Court made the following observations at page 164:

"This Court has characterised the freedom of speech and that of the Press as fundamental personal rights and liberties. The phrase is not an empty one and was not lightly used. It reflects the belief of the framers of the Constitution that exercise of the rights lies at the foundation of free government by free press. It stresses as do many opinions of this court the importance of preventing the restriction of enjoyment of these liberties."

Non-interference by the State with this right was emphasized in *Thomas v. Collins*, [1944] 323 U.S. 516, 545; 89 Law. Ed. 430, at p. 448:

"But it cannot be the duty, because it is not the right, of the State to protect the public against false doctrine. The very purpose of the First Amendment is to foreclose public authority from assuming a guardianship of the public mind through regulating the press, speech, and religion. In this field every person must be his own watchman for truth, because the forefathers did not trust any Government to separate the true from the false for us"

In 93 Law. Ed. at p. 1151 is given a summary of the decisions of the Supreme Court of the United States of America on this subject under the heading "The Supreme Court and the right of Free Speech and Press" and it contains at page 1153 the following passage under the caption "Right in General: Freedom from Censorship and Punishment":

"The freedom of speech and of press are fundamental personal rights and liberties, the exercise of which lies at the foundation of free Government by free men..... The very purpose of the First Amendment is to foreclose public authority from assuming a guardianship of the public mind through regulating the press, speech, and religion; it rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public."

The dissenting opinion of Douglas, J., in *Beauharnais v. Illinois*, (1951) 343 U.S. 250, 285; 96 Law Ed. 919, 943, contains the following at page 943:

"There is room for regulation of the ways and means of invading privacy. No such leeway is granted the invasion of the right of free speech guaranteed by the First Amendment. Until recent years that had been the course and direction of constitutional law. Yet recently the Court in this and other cases has engrafted the right of regulation onto the First Amendment by placing in the hands of the legislative branch the right to regulate "within reasonable limits" the right of free speech. This to me is an ominous and alarming trend. The free trade in ideas which the framers of the Constitution visualised disappears. In its place there is substituted a new orthodoxy—an orthodoxy that changes with the whims of the age or the day, an orthodoxy which the majority by solemn judgment proclaims to be essential to the safety, welfare, security, morality, or health of society. Free speech in the constitutional sense disappears. Limits are drawn—limits dictated by expediency, political opinion, prejudices or some other desideratum of legislative action."

It is clear from the above that in the United States of America:

(a) the freedom of speech comprehends the freedom of press and the freedom of speech and press are fundamental personal rights of the citizens;

(b) the freedom of the press rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public;

(c) such freedom is the foundation of free Government of a free people;

(d) the purpose of such a guarantee is to prevent public authorities from assuming the guardianship of the public mind; and

(e) freedom of press involves freedom of employment or non-employment of the necessary means of exercising this right or in other words, freedom from restriction in respect of employment in the editorial force.

This is the concept of the freedom of speech and expression as it obtains in the United States of America and the necessary corollary thereof is that no measure can be enacted which would have the effect of imposing a precensorship, curtailing the circulation or restricting the choice of employment or unemployment in the editorial force. Such a measure would certainly tend to infringe the freedom of speech and expression and would, therefore, be liable to be struck down as unconstitutional.

The press is, however, not immune from the ordinary forms of taxation for support of the Government nor from the application of the general laws relating to industrial relations. It was observed in *Grosjean v. American Press Co.* (*supra*);

"It is not intended by anything we have said to suggest that the owners of newspapers are immune from any of the ordinary forms of taxation for support of the Government; but this is not an ordinary form of tax but one single in kind with a long history of hostile misuse against the freedom of the Press.

"The predominant purpose of the grant of immunity here invoked was to preserve an untrammelled press as a vocal source of public information. The newspapers, magazines and other journals of the country, it is safe to say, have shed and continue to shed, more light on the public and business affairs of the nation than any other instrumentality of publicity; and since informed public opinion is the most potent of all restraints upon mis-Government, the suppression or abridgement of the publicity afforded by a free press cannot be regarded otherwise than with grave concern. The tax here involved is bad not because it

takes money from the pockets of the appellees. If that were all, a wholly different question would be presented. It is bad: Because, in the light of its history and of its present setting, it is seen to be a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the constitutional guarantees. A free press stands as one of the great interpreters between the Government and the people. To allow it to be fettered is to fetter ourselves."

In *The Associated Press v. National Labour Relations Board* (*supra*), it was held that the freedom of the press safeguarded by the First Amendment was not abridged by the application in the case of an editor employed by the Associated Press to determine the news value of the items received and to rewrite them for transmission to members of the association throughout the United States who must function without bias and prejudice, of the provisions of the National Labour Relations Act which inhibited an employer from discharging an employee because of union activities. It was further observed at page 960:

"So it is said that any regulation protective of union activities or the right collectively to bargain on the part of such employees is necessarily an invalid invasion of the freedom of the press. We think that the contention not only has no relevance to the circumstances of the instant case but is an unsound generalisation."

Murdock v. Pennsylvania (1942) 319 U.S. 105, 136; 87 Law. Ed. 1292, 1311, was a case of a license fee for the sale of religious books and Mr. Justice Frankfurter in his dissenting opinion at page 1311 has observed:

"A tax upon newspaper publishing is not invalid simply because it falls upon the exercise of a constitutional right. Such a tax might be invalid if it invidiously singled out newspaper publishing for bearing the burden of taxation imposed upon them in such ways as to encroach on the essential scope of a free press. If the Court could justifiably hold that the tax measures in these cases were vulnerable on that ground, I would unreservedly agree. But the Court has not done so, and indeed could not."

In *Oklahoma Press Publishing Co. v. Walling* (1945) 327 U.S. 186, 194; 90 Law. Ed. 614, 621., and in *Mabee v. White Plains Publishing Co.* (1945) 327 U.S. 178; 90 Law. Ed. 607, the Federal Fair Labour Standards Act was held applicable to the press and it was observed in the former case at page 621:

"Here there was no singling out of the press for treatment different from that accorded other business in general. Rather the

Act's purpose was to place publishers of newspapers upon the same plane with other businesses and the exemption for small newspapers had the same object. Nothing in the *Grosjean Case*, (*supra*), forbids Congress to exempt some publishers because of size from either a tax or a regulation which would be valid if applied to all."

The Constitution of the United States of America—Analysis and Interpretation—Prepared by the Legislative Reference Library of Congress, summarises the position thus at page 792:

"The Supreme Court, citing the fact that the American Revolution 'really began when.....that Government (of England) sent stamps for newspaper duties to the American colonies' has been alert to the possible use of taxation as a method of suppressing objectionable publications. Persons engaged in the dissemination of ideas are, to be sure, subject to ordinary forms of taxation in like manner as other persons. With respect to licence or privilege taxes, however, they stand on a different footing. Their privilege is granted by the Constitution and cannot be withheld by either State or Federal Government.

"The application to newspapers of the Anti-Trust Laws, the National Labour Relations Act, or the Fair Labour Standards Act, does not abridge the freedom of the press."

The laws regulating payment of wages have similarly been held as not abridging the freedom of speech and expression and the following observations in the same publication (at page 988) in regard to the Minimum Wage Laws are apposite:

"*Minimum Wage Laws*: The theory that a law prescribing minimum wages for women and children violates due process by impairing freedom of contract was finally discarded in 1937 (*West Coast Hotel Co. v. Parrish*, 300 U.S. 379). The current theory of the Court particularly when labour is the beneficiary of legislation, was recently stated by Justice Douglas, for a majority of the Court, in the following terms: "Our recent decisions make plain that we do not sit as a super-legislature to weigh the wisdom of legislation nor to decide whether the policy which it expresses offends the public welfare.....But the state legislatures have constitutional authority to experiment with new techniques; they are entitled to their own standard of the public welfare; they may within extremely broad limits control practices in the business—labour field, so long as specific constitutional prohibitions are not violated and so long as conflicts with valid and controlling federal laws are avoided (*Day-Brite Lighting Inc. v. Missouri* 342 U.S. 421, 423. (1952))."

While, therefore, no such immunity from the general laws can be claimed by the press it would certainly not be legitimate to subject the

press to laws which take away or abridge the freedom of speech and expression or which would curtail circulation and thereby narrow the scope of dissemination of information, or fetter its freedom to choose its means of exercising the right or would undermine its independence by driving it to seek Government aid. Laws which single out the press for laying upon it excessive and prohibitive burdens which would restrict the circulation, impose a penalty on its right to choose the instruments for its exercise or to seek an alternative media, prevent newspapers from being started and ultimately drive the press to seek Government aid in order to survive, would, therefore, be struck down as unconstitutional.

Such laws would not be saved by article 19(2) of the Constitution. This Court had occasion to consider the scope of article 19(2) in *Brij Bhushan & Another v. The State of Delhi* [1950] S.C.R. 605, where Fazl Ali, J., in his dissenting judgment observed at p. 619 :

"It must be recognised that freedom of speech and expression is one of the most valuable rights guaranteed to a citizen by the Constitution and should be jealously guarded by the Court. It must also be recognised that free political discussion is essential for the proper functioning of a democratic government, and the tendency of the modern jurists is to deprecate censorship though they all agree that "liberty of the press" is not to be confused with its "licentiousness". But the Constitution itself has prescribed certain limits and this Court is only called upon to see whether a particular case comes within those limits."

Unless, therefore, a law enacted by the Legislature comes squarely within the provisions of article 19(2) it would not be saved and would be struck down as unconstitutional on the score of its violating the fundamental right of the petitioners under article 19(1)(a).

In the present case it is obvious that the only justification for the enactment of the impugned Act is that it imposes reasonable restrictions in the interests of a section of the general public, viz., the working journalists and other persons employed in the newspapers establishments. It does not fall within any of the categories specified in article 19(2), viz.:

"In the interest of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."

Article 19(2) being thus out of the question the only point that falls to be determined by us is whether the provisions of the impugned Act in any way take away or abridge the petitioners fundamental right of freedom of speech and expression.

It was contended before us by the learned Attorney-General that it was only legislation directly dealing with the right mentioned in article

19(1)(a) that was protected by it. If the legislation was not a direct legislation on the subject, article 19(1)(a) would have no application, the test being not the effect or result of legislation but its subject-matter. In support of his contention he relied upon the following observations of Kania, C.J., in *A.K. Gopalan v. The State of Madras*, [1950] S.C.R. 88, at p. 100:

"As the preventive detention order results in the detention of the applicant in a cell it was contended on his behalf that the rights specified in article 19(1), (a), (b), (c), (d), (e) and (g) have been infringed. It was argued that because of his detention he cannot have a free right to speech as and where he desired and the same argument was urged in respect of the rest of the rights mentioned in sub-clauses (b), (c), (d), (e) and (g). Although this argument is advanced in a case which deals with preventive detention, if correct, it should be applicable in the case of punitive detention also to any one sentenced to a term of imprisonment under the relevant section of the Indian Penal Code. So considered, the argument must clearly be rejected. In spite of the saving clauses (2) to (5), permitting abridgement of the rights connected with each of them, punitive detention under several sections of the Penal Code, e.g., for theft, cheating, forgery and even ordinary assault, will be illegal. Unless such conclusion necessarily follows from the article, it is obvious that such construction should be avoided. In my opinion, such result is clearly not the outcome of the Constitution. The article has to be read without any pre-conceived notions. So read, it clearly means that the legislation to be examined must be directly in respect of one of the rights mentioned in the sub-clauses. If there is a legislation directly attempting to control a citizen's freedom of speech or expression, or his right to assemble peaceably and without arms, etc., the question whether that legislation is saved by the relevant saving clause of article 19 will arise. If, however, the legislation is not directly in respect of any of these subjects, but as a result of the operation of other legislation, for instance, for punitive or preventive detention, his right under any of these sub-clauses is abridged, the question of the application of article 19 does not arise. The true approach is only to consider the directness of the legislation and not what will be the result of the detention otherwise valid, on the mode of the detenu's life. On that short ground, in my opinion, this argument about the infringement of the rights mentioned in article 19(1) generally must fail. Any other construction put on the article, it seems to me, will be unreasonable."

This opinion was expressed by Kania, C.J., alone the other learned judges forming the Bench not expressing themselves on this question. This passage was, however, cited, with approval by a Bench of this Court

in *Ram Singh & Others v. The State of Delhi*, [1951] S.C.R. 451, 455. It was held by the Full Court in that case that though personal liberty is sufficiently comprehensive to include the freedoms enumerated in article 19(1) and its deprivation would result in the extinction of these freedoms, the Constitution has treated these constitutional liberties as distinct fundamental rights and made separate provisions in articles, 19, 21 and 22 as to the limitations and conditions subject to which alone they could be taken away or abridged. Consequently, even though a law which restricts the freedom of speech and expression is not directed solely against the undermining of security of the state or its overthrow but is concerned generally in the interests of public order may not fall within the reservation of clause (2) of article 19 and may therefore be void, an order of preventive detention cannot be held to be invalid merely because :

"the detention is made with a view to prevent the making of speeches prejudicial to the maintenance of public order....."

This was also a case of detention under the Preventive Detention Act and the detention of the detainee had been ordered with a view to prevent him from making speeches prejudicial to the maintenance of public order. Public order was not one of the categories mentioned in article 19(2) as it then stood, and any restriction imposed upon the freedom of speech and expression could not be justified on that ground, the only relevant ground in that connection then being undermining of the security of the State or its overthrow. A restriction on the freedom of speech and expression in the maintenance of public order would therefore, not have been justified under article 19(2) and if the Court had come to the conclusion that there was an infringement of the right of freedom of speech and expression the order could not have been saved under article 19(2). The Court, however, took the view that the direct object of the order was preventive detention and not the infringement of the right of freedom of speech and expression, which was merely consequential upon the detention of the detainee and, therefore, upheld the validity of the order. It was, therefore, urged by the learned Attorney-General that the object of the impugned Act was only to regulate certain conditions of service of working journalists and other persons employed in the newspaper establishments and not to take away or abridge the right of freedom of speech and expression enjoyed by the petitioners and that, therefore, the impugned Act could not come within the prohibition of article 19(1)(a) read with article 13(2) of the Constitution.

It was contended, on the other hand, on behalf of the petitioners that the Court has got to look at the true nature and character of the legislation and judge its substance and not its form, or, in other words,

its effect and operation. It was pointed out that the impugned Act viewed as a whole was one to regulate the employment of the necessary organs of newspaper publications and therefore related to the freedom of the Press and as such came within the prohibition. Reliance was placed in this behalf on the following passage in *Minnesota ex rel. Olson* ((1930) 283 U.S. 697, 708; 75 Law. Ed. 1357, 1363):

"With respect to these contentions it is enough to say that in passing upon constitutional questions the Court has regard to substance and not to mere matters of form, and that, in accordance with familiar principles, the statute must be tested by its operation and effect."

The following observations of Mahajan, J., (as he then was) in *Dwarkadas Shrinivas of Bombay v. The Sholapur Spinning and Weaving Co., Ltd., and others*, ([1954] S. C. R. 674, 683.), were also relied upon :

"In order to decide these issues it is necessary to examine with some strictness the substance of the legislation for the purpose of determining what it is that the legislature has really done; the Court, when such questions arise, is not overpersuaded by the mere appearance of the legislation. In relation to Constitutional prohibitions binding a legislature it is clear that the legislature cannot disobey the prohibitions merely by employing indirect method of achieving exactly the same result. Therefore, in all such cases the court has to look behind the names, forms and appearances to discover the true character and nature of the legislation."

The impugned Act is as its long title shows an Act to regulate certain conditions of service of working journalists and other persons employed in newspaper establishments and in the very forefront of the Act, the Industrial Disputes Act, 1947 is by section 3 made applicable to working journalists with certain modification in connection with the application of section 25-F of that Act. The rest of the provisions contained in Chapter II concern themselves with the payment of gratuity, hours of work and leave and fixation of wages of the working journalists. The regulation of the conditions of service is thus the main object which is sought to be achieved by the impugned Act. Chapter III of the Act applies the provisions of the Industrial Employment (Standing Orders) Act, 1946 and the Employees' Provident Funds Act, 1952, to all the employees of the newspaper establishments wherein twenty or more newspaper employees are employed and covers working journalists as well as other employees in the employ of the newspaper establishments. The miscellaneous provisions contained in Chapter IV are designed merely to implement or to carry out the provisions of the main part of

the Act and they do not make any difference so far as the effect and operation of the Act is concerned. If this is the true nature of the Act it is impossible to say that the Act was designed to affect the freedom of speech and expression enjoyed by the petitioners or that, that was its necessary effect and operation. It was conceded in the course of the arguments that if a general law in regard to the industrial or labour relations had been applied to the press industry as a whole no exception could have been taken to it. If the matter had rested with the application of the Industrial Disputes Act, 1947, to the working journalists or with the application of the Industrial Employment (Standing Orders) Act, 1946 or the Employees' Provident Funds Act, 1952, to them no exception could have been taken to this measure. It was, however, urged that apart from the application of these general laws to the working journalists, there are provisions enacted in the impugned Act in relation to payment of gratuity, hours of work, leave and fixation of the rates of wages which are absolutely special to the press industry qua the working journalists and they have the effect of singling out the press industry by creating a class of privileged workers with benefits and rights which have not been conferred upon other employees and the provisions contained therein have the effect of laying a direct and preferential burden on the press, have a tendency to curtail the circulation and thereby narrow the scope of dissemination of information, fetter the petitioners freedom to choose the means of exercising their right and are likely to undermine the independence of the press by having to seek Government aid.

It is obvious that the enactment of this measure is for the amelioration of the conditions of the workmen in the newspaper industry. It would not be possible for the State to take up all the industries together and even as a matter of policy it would be expedient to take the industries one by one. Even in regard to the workmen employed it would be equally expedient to take a class of employees who stand in a separate category by themselves for the purpose of benefiting them in the manner contemplated. This circumstance by itself would, therefore, not be indicative of any undue preference or a prejudicial treatment being meted out to that particular industry, the main object being the amelioration of the conditions of those workmen. It could not also be said that there was any ulterior motive behind the enactment of such a measure because the employers may have to share a greater financial burden than before or that the working of the industry may be rendered more difficult than before. These are all incidental disadvantages which may manifest themselves in the future working of the industry, but it could not be said that the Legislature in enacting that measure was aiming at these disadvantages when it was trying to ameliorate the

conditions of the workmen. Those employers who are favourably situated, may not feel the strain at all while those of them who are marginally situated, may not be able to bear the strain and may in conceivable cases have to disappear after closing down their establishments. That, however, would be a consequence which would be extraneous and not within the contemplation of the Legislature. It could, therefore, hardly be urged that the possible effect of the impact of these measures in conceivable cases would vitiate the legislation as such. All the consequences which have been visualized in this behalf by the petitioners *viz.*, the tendency to curtail circulation and thereby narrow the scope of dissemination of information, fetters on the petitioners freedom to choose the means of exercising the right, likelihood of the independence of the press being undermined by having to seek government aid; the imposition of penalty on the petitioners' right to choose the instruments for exercising the freedom or compelling them to seek alternative media etc., would be remote and depend upon various factors which may or may not come into play. Unless these were the direct or inevitable consequences of the measures enacted in the impugned Act, it would not be possible to strike down the legislation having that effect and operation. A possible eventuality of this type would not necessarily be the consequence which could be in the contemplation of the Legislature while enacting a measure of this type for the benefit of the workmen concerned.

Even though the impugned Act enacts measures for the benefit of the working journalists who are employed in newspaper establishments, the working journalists are but the vocal organs and the necessary agencies for the exercise of the right of free speech and expression, and any legislation directed towards the amelioration of their conditions of service must necessarily affect the newspaper establishments and have its repercussions on the freedom of the Press. The impugned Act can therefore be legitimately characterized as a measure which affects the press, and if the intention or the proximate effect and operation of the Act was such as to bring it within the mischief of article 19(1)(a) it would certainly be liable to be struck down. The real difficulty, however, in the way of the petitioners is that whatever be the measures enacted for the benefit of the working journalists neither the intention nor the effect and operation of the impugned act is to take away or abridge the the right of freedom of speech and expression enjoyed by the petitioners.

The gravamen of the complaint of the petitioners against the impugned Act, however, has been the appointment of the wage board

for fixation of rates of wages for the working journalists and it is contended that apart from creating a class of privileged workers with benefits and rights which were not conferred upon other employees of industrial establishments, the Act has left the fixation of rates of wages to an agency invested with arbitrary and uncanalised powers to impose an indeterminate burden on the wage structure of the press, to impose such employer-employee relations as in its discretion it thinks fit and to impose such burden and relations for such time as it thinks proper. This contention will be more appropriately dealt with while considering the alleged infringement of the fundamental right enshrined in article 19(1)(g). Suffice it to say that so far as article 19(1)(a) is concerned this contention also has a remote bearing on the same and need not be discussed here at any particular length.

Re: Article 19(1)(g). The fundamental right of the petitioners herein is the right to carry on any occupation, trade or business.

This freedom also is hemmed in by limitations which are to be found in article 19(6), which in so far as it is relevant for our purposes enacts:

"Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right, conferred by the said sub-clause."

The contention under this head is thus elaborated on behalf of the petitioners:

1. The impugned Act imposes unreasonable restrictions on the freedom to carry on business:

(a) in empowering the fixation of rates of wages on criteria relevant only for fixation of minimum wages;

(b) in empowering fixation of wages, grant of gratuity and compensation without making it incumbent on the Board to consider the major factor of the capacity of the industry to pay;

(c) in authorizing the Board to have regard to not what is relevant for such fixation but to what the Board deems relevant for the purpose; and

(d) in providing for a procedure which does not compel the Board to conform to the Rules under the Industrial Disputes Act, 1947, thus permitting the Board to follow any arbitrary procedure violating the principle of *audi alteram partem*.

2. The restrictions enumerated above in so far as they affect the destruction of the petitioners' business exceed the bounds of permissible legislation under article 19(1)(g).

The unreasonableness of the restriction is further sought to be emphasized by pointing out that under section 12 of the impugned Act, the decision of the Board is declared binding on all employers, though the working journalists are not bound by the same and are entitled, if they are dissatisfied with it, to agitate for further revision by raising industrial disputes between themselves and their employers and having them adjudicated under the Industrial Disputes Act, 1947.

The test of reasonable restrictions which can be imposed on the fundamental right enshrined in article 19(1)(g) has been laid down by this Court in two decisions;

In *Chintaman Rao v. The State of Madhya Pradesh*, (1950) S.C.R. 759, Mahajan, J., (as he then was) observed at page, 763:

"The phrase 'reasonable restriction' connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word 'reasonable' implies intelligent care and deliberation, that is, the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in article 19(1)(g), and the social control permitted by clause (6) of article 19, it must be held to be wanting in that quality." (cited with approval in *Dwarka Prasad Laxmi Narain v. The State of Uttar Pradesh & Others*, (1954) S.C.R. 803, 811 and in *Ch. Tika Ramji v. State of Uttar Pradesh & Others*, (1956) S.C.R. 393, 446.)

The State of Madras v. V. G. Rao (1952) S.C.R. 597, was the next case in which this phrase came to be considered by this Court and Patanjali Sastri, C.J., observed at page 606:

"This Court had occasion in *Dr. Khare's case* (1950) S.C.R. 519, to define the scope of the judicial review under clause (5) of article 19 where the phrase 'imposing reasonable restrictions on the exercise of the right' also occurs and four of the five judges participating in the decision expressed the view (the other judge leaving the question open) that both the substantive and the procedural aspects of the impugned restrictive law should be examined from the point of view of reasonableness: that is to say, the Court should consider not only factors such as the duration and the extent of the restrictions but also the circumstances under which and the manner in which their imposition has been authorised. It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract, standard, or general pattern, of reasonableness can be laid down as applicable to all cases. The nature

of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict."

This criterion was approved of in *State of West Bengal v. Subodh Gopal Bose & Others* (1954) S.C.R. 587, 626, where the present Chief Justice further expressed his opinion that the fact of the statute being given retrospective operation may also be properly taken into consideration in determining the reasonableness of the restriction imposed in the interest of the general public. (See also a recent decision of this Court in *Virendra v. State of Punjab* A.I.R. 1957 S.C. 896.)

The appointment of a wage board for the purposes of fixing rates of wages could not be and was not challenged as such because the constitution of such wage boards has been considered one of the appropriate modes for the fixation of rates of wages. The Industrial Disputes Act, 1947, can only apply when an industrial dispute actually arises or is apprehended to arise between the employers and the employees in a particular industrial establishment. Though under the amendment of that Act by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (36 of 1956), there is a provision for the appointment of a National Tribunal by the Central Government for the adjudication of industrial disputes which in the opinion of the Central Government involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such dispute (Vide section 7-B) the condition precedent, however, is the existence of an industrial dispute or the apprehension of one. If the wages for the employees of a particular industry have got to be fixed without such an industrial dispute having arisen or being apprehended to arise, the only proper mode of such fixation would be the appointment of wage boards for the purpose. They take the place of Industrial Tribunals or National Industrial Tribunals and are generally constituted of equal number of representatives of the employers and the employees in that particular industry along with a quota of independent member or members one of whom is appointed the Chairman of the Board.

The main grievance of the petitioners, however, has been that the relevant criteria for the fixation of rates of wages were not laid down in section 9(1) of the Act. Section 8 empowered the Central Government to constitute a wage board for fixing rates of wages in respect of working journalists in accordance with the provisions of the Act and section 9(1) directed that in fixing such rates of wages the Board shall have regard to the cost of living, the prevalent rates of wages for

comparable employments, the circumstances relating to the newspaper industry in different regions of the country and to any other circumstances which to the Board may seem relevant. These criteria, it was contended, were only relevant for fixing minimum rates of wages, though the word "minimum" which had been used in the Bill No. 13 of 1955 as introduced in the Rajya Sabha was deleted when the Act

actually came to be passed and it was further contended that the capacity of the industry to pay which was an essential circumstance to be taken into consideration in the fixation of wages was not set out as one of the circumstances to be taken into consideration by the Board in fixing rates of wages. It was also contended that the other circumstances which the Board was directed to consider in addition to those specifically enumerated in section 9(1) were such as to the Board may seem relevant thus relegating these circumstances to the subjective determination of the Board with the necessary consequence that no Court or other authority could scrutinize the same objectively.

We do not propose to enter into any elaborate discussion on the question whether it would be competent to us in arriving at a proper construction of the expression "fixing rates of wages" to look into the Statement of Objects and Reasons attached to the Bill No. 13 of 1955 as introduced in the Rajya Sabha or the circumstances under which the word "minimum" came to be deleted from the provisions of the Bill relating to rates of wages and the wage board and the fact of such deletion when the Act came to be passed in its present form. There is a consensus of opinion that these are not aids to the construction of the terms of the Statute which have, of course, to be given their plain and grammatical meaning (See : *Ashvini Kumar Ghosh & Anr. v. Arabinda Bose & Anr.*, [1953] S.C.R. 1 and *Pravat Kumar Kar and others v. William Trevelyan Curtiez Parkar* [1949] 1 F.J.R. 245). It is only when the terms of the statute are ambiguous or vague that resort may be had to them for the purpose of arriving at the true intention of the Legislature. No such reference is, however, necessary in the case before us, even though perchance, the expression "fixing rates of wages" be considered ambiguous in so far as it does not specify whether the "wages" there are meant to be "living wages", "fair wages", or "minimum wages". We have already stated in the earlier part of this judgment that the Act was passed with a view to implement the recommendations of the Press Commission's Report and we have already seen that the concept of minimum wage, as adopted by the Press Commission was not that of a bare subsistence or minimum wage but what it termed a minimum wage was meant to provide for not merely the bare subsistence of living, but for the efficiency of the worker, making provision also for some measure

of education, medical requirements and amenities. If this was the concept of a minimum wage which the Legislature set about to implement, that minimum was certainly higher than the bare subsistence or minimum wage, and, in any event, required a consideration by the Wage Board of the capacity of the industry to pay, even though the Press Commission itself did not think it necessary, to do so, it having expressed the opinion that if a newspaper industry could not afford to pay to its employees a minimum wage which would enable them to live decently and with dignity, that newspaper had no right to exist.

This was the concept of a minimum wage which was sought to be implemented by the Legislature and for that purpose the capacity of the industry to pay was an essential circumstance to be taken into consideration and the deletion of the word "minimum", if at all, had the effect of widening the scope of the enquiry before the Wage Board. If the word "minimum" had been used in relation to the rates of wages and the wages board in the impugned Act, the Wage Board in its deliberations would have been necessarily confined to a consideration of that aspect alone. But, by the deletion of that word from the context, the Wage Board was invested with a power to determine the question of the fixation of rates of wages unfettered by any such limitations and to fix the rates of wages in any proper manner having regard to the circumstances of the case, whether the resultant wages would be a statutory minimum wage or would approximate to a standard of wage, though having regard to the economic conditions of our country at present they could not find it within their power to fix living wages for the working journalists. The criteria which were specified in section 9(1) of the Act comprised also the prevalent rates of wages for comparable employments. This criterion had no relation whatever to minimum wages. Reference may be made in this connection to a decision of the Industrial Court in the case of *Nellimarla Jute Mills*, [1953] 1 L.L.J. 666, where it was held that the comparison with rates of wages in other concerns could be undertaken for determining fair wage and the upper limit of wages but not for determining the minimum or floor level of wages which should depend on the minimum requirements of the workers' family consisting of three consumption units. This criterion was no doubt taken into consideration by the members of the Committee on Fair Wages as also by the Press Commission and even though the Press Commission considered that to be an essential ingredient of the minimum wage as contemplated by it, we are not inclined to stress that circumstance so much and come to the conclusion that what was contemplated in section 9(1) was merely a minimum wage and no other.

If, therefore, the criterion of the prevalent rates of wages for comparable employments can on a true construction of section 9(1) be considered consistent only with the fixation of rates of wages which are higher than the bare subsistence or minimum wage, whether they be statutory minimum wage or fair wage or even living wage, it could not be urged that the criteria specified in section 9(1) of the Act were relevant only for fixation of minimum wages. The capacity of the industry to pay was therefore, one of the essential circumstances to be taken into consideration by the Wage Board whether it be for the fixation of rates of wages or the scales of wages which, as we have observed before, were included within the expression "rates of wages". This was by no means an unimportant circumstance which could be assigned a minor role. It was as important as the cost of living, and the prevalent rates of wages for comparable employments and ought to have been specifically mentioned in section 9(1). The Legislature, however, was either influenced in not mentioning it as such by reason of the view taken by the Press Commission in that behalf or thought that the third criterion which was specified in section 9(1) viz., the circumstances relating to the newspaper industry in different regions of the country was capable of including the same. Even here, there is considerable difficulty in reconciling oneself to this mode of construction. The capacity of the industry to pay, can only be considered on an industry-cum-region basis and this circumstance from that point of view would be capable of being included in this criterion, viz., the circumstances relating to the newspaper industry in different regions of the country. Even if it were thus capable of being included, the minor role assigned to it along with literacy of the population, the popularity of the newspapers, predilections of the population in the matter of language and other circumstances of the like nature prevailing in the different regions of the country would make it difficult to imagine that this circumstance of the capacity of the industry to pay was really in the mind of the Legislature, particularly when it is remembered that the Press Commission attached no significance to the same. From that point of view, the criticism of the petitioners would appear to be justified viz.,—that it was not made incumbent on the Board to consider the major factor of the capacity of the industry to pay as an essential circumstance in fixing the rates of wages. It is, however, well-recognized that the Courts would lean towards the constitutionality of an enactment and if it is possible to read this circumstance as comprised within the category of circumstances relating to the newspaper industry in different regions of the country, the Court should not strike down the provisions as in any manner whatever unreasonable and violative of the fundamental right of the petitioners.

We are, therefore, of opinion that section 9(1) did not eschew the consideration of this essential circumstance, viz., the capacity of the industry to pay and it was not only open but incumbent upon the wage board to consider that essential circumstance in order to arrive at the fixation of the rates of wages of the working journalists.

The last criterion enumerated in section 9(1) of the Act was "any other circumstance which to the Board may seem relevant" and it was urged that this was left merely to the subjective determination of the Board and the Board was at liberty to consider the circumstances, if any, falling within this category in its own absolute discretion which could not be controlled by any higher authority. If the matters were left to be objectively determined then it would certainly be enquired into and the existence or otherwise of such circumstances would be properly scrutinized in appropriate proceedings. The manner in which, however, this criterion was left to be determined by the Board on its subjective satisfaction was calculated to enable the Board to exercise arbitrary powers in regard to the same and that was quite unreasonable in itself. The case of *Thakur Raghbir Singh v. Court of Wards, Ajmer & Others*, ([1953] S.C.R. 1049, at p. 1052), was pointed out as an illustration of such an arbitrary power having been vested in the Court of Wards which could in its own discretion and on its subjective determination assume the superintendence of the property of a landed proprietor who habitually infringed the rights of his tenants. The provision was there struck down because such subjective determination which resulted in the superintendence of the property of a citizen being assumed could not be scrutinized and the propriety thereof investigated by higher authorities.

This argument, however, does not help the petitioners because this criterion is on a *par* with or *ejusdem generis* with the other criteria which have been specifically enumerated in the earlier part of the section. The major and important criteria have been specifically enumerated and it would be impossible for the Legislature exhaustively to enumerate the other circumstances which would be relevant to be considered by the Board in arriving at the fixation of the rates of wages. In the course of the enquiry the Board might come across other relevant circumstances which would weigh with it in the determination of the rates of wages and it would not be possible for the Legislature to think of them or to enumerate the same as relevant considerations and it was, therefore, and rightly in our opinion, left to the Board to determine the relevancy of those circumstances and take them into consideration while fixing the rates of wages. If the principles which should guide the Board in fixing the rates of wages were laid down with sufficient

clarity and particularity and the criteria so far as they were of major importance were specifically enumerated there was nothing wrong in leaving other relevant considerations arising in the course of the enquiry to the subjective satisfaction of the Board. The Board was, after all, constituted of equal numbers of representatives of employers and employees and they were best calculated to take into account all the relevant circumstances apart from those which were specifically enumerated in the section.

It was, however, contended that the procedure to be followed by the Board for fixing the rates of wages was not laid down and it was open to the Board to follow any arbitrary procedure violating the principle of *audi alteram partem* and as such this also was unreasonable. Section 20(2)(d) of the impugned Act gave power to the Central Government to make rules *inter alia* in regard to the procedure to be followed by the Board in fixing rates of wages and section 11 provided that subject to any rules which might be prescribed the Board may, for the purpose of fixing rates of wages, exercise the same powers and follow the same procedure as an Industrial Tribunal constituted under the Industrial Disputes Act, 1947, exercises or follows for the purpose of adjudicating an industrial dispute referred to it. This was, however, an enabling provision which vested in the Board the discretion whether to exercise the same powers and follow the same procedure as an Industrial Tribunal. The Board was at liberty not to do so and follow its own procedure which may be arbitrary or violative of the principle of *audi alteram partem*.

It has to be remembered, however, that in the United Kingdom the wage Councils and the Central Co-ordinating Committees under the Wages Councils Act, 1945, and the Agricultural Wages Board under the Agricultural Wages Regulations Act, 1924, also are empowered to regulate their proceedings in such manner as they think fit. The Wage Boards in Australia have also no formal procedure prescribed for them, though the Wage Boards which are established under the amended Bombay Industrial Relations Act, 1946, are enjoined to follow the same procedure as an Industrial Court in respect of industrial proceedings before it. It would not, therefore, be legitimate to hold that the procedure to be followed by the wage board for fixing rates of wages must necessarily be prescribed by the statute constituting the same. It is no doubt contemplated in each of these statutes that rules of procedure may be prescribed; but even though they may be so prescribed, it is left to the discretion of the wage boards to regulate their procedure in such manner as they think fit, subject of course to the rules thus prescribed. A wide discretion is

thus left with the wage boards to prescribe their own rules of procedure but it does not, therefore, follow that they are entitled to follow any arbitrary rules of procedure. The wage boards are responsible bodies entrusted with the task of gathering data and materials relevant for the determination of the issues arising before them and even though they are not judicial tribunals but administrative agencies they would elicit all relevant information and invite answers to the questionnaire or representations from the parties concerned, hear evidence and arrive at their determination after conforming to the principles of natural justice. Even though they may perform quasi-judicial functions, the exercise of arbitrary powers by them would not be countenanced by any Court or higher authority.

In the present case, however, we have in the forefront of the impugned Act a provision as to the application of the Industrial Disputes Act, 1947, to working journalists. No doubt certain specific provisions as to payment of gratuity, hours of work and leave are specifically enacted, but when we come to the fixation of rates of wages we find that a wage board has been constituted for the purpose. The principles to be followed by the wage board for fixing rates of wages are also laid down and the decision of the board is to be published in the same manner as awards of Industrial Courts under the Industrial Disputes Act. Then follows section 11 which talks of the powers and procedure of the Board and there also subject to any rules of procedure which may be prescribed by the Central Government. The Board is empowered to exercise the same powers and follow the same procedure as an Industrial Tribunal constituted under the Industrial Disputes Act. If regard be had to this provision it is abundantly clear that the intention of the Legislature was to assimilate the wage board thus constituted as much as possible to an Industrial Tribunal constituted under the Industrial Disputes Act, 1947, and it was contemplated that the Board may for fixing rates of wages exercise the same powers and follow the same procedure. The decision of the Board was to be binding on all the employers though the working journalists were at liberty to further agitate the question under the Industrial Disputes Act if they were not satisfied with the decision of the wage board and wanted a further increase in their rates of wages, thus determined. All these circumstances point to the conclusion that even though the Board was not bound to exercise the same powers and follow the same procedure as an Industrial Tribunal constituted under the Industrial Disputes Act, the Board was, in any event, not entitled to adopt any arbitrary procedure violating the principles of natural justice.

If on the construction of the relevant sections of the statute the

functions which the wage board was performing would be tantamount to laying down a law or rule of conduct for the future so that all the employers and the employees in the industry not only those who were participating in it in the present but also those who would enter therein in the future would be bound by it, the dictum of Justice Holmes would apply and the functions performed by the wage board could be characterised as legislative in character. Where, however, as in the present case, the constitution of the Wage Board is considered in the background of the application of the provisions of the Industrial Disputes Act to the working journalists and the provisions for the exercise of the same powers and following the same procedure as an industrial tribunal constituted under the Industrial Disputes Act, it would be possible to argue that the wage board was not exercising legislative functions but was exercising functions which were quasi-judicial in character.

In this connection, it was also pointed out that the Legislature itself while enacting the impugned Act did not consider these functions as legislative at all. The Rules of Procedure and Conduct of Business in Lok Sabha (1957) provide in rule No. 70 for a Bill involving proposals for the delegation of legislative power shall further be accompanied by a memorandum explaining such proposals and drawing attention to their scope and stating also whether they are of normal or exceptional character. There is also a committee on subordinate legislation which is established for scrutinizing and reporting to the House whether the powers to make regulations, rules, sub-rules, by-laws etc., conferred by the Constitution or delegated by Parliament are being properly exercised within such delegation (vide rule 317 *ibid*). The constitution by the Legislature of the wages board in the matter of the fixation of rates of wages was not considered as a piece of delegated legislation in the memorandum regarding delegated legislation appended to the draft Bill No. 13 of 1955, introduced in the Rajya Sabha on 28th September, 1955, and the only reference that was made there was to clause 19 of the Bill which empowered the Central Government to make rules in respect of certain matters specified therein and it was stated that these were purely procedural matters of a routine character and related *inter alia* to prescribing hours of work, payment of gratuity, holidays, earned leave or other kinds of leave and the procedure to be followed by the Minimum Wages Board in fixing minimum wages and the manner in which its decisions may be published. Clause 19(3) of the Bill further provided that all rules made under this section shall as soon as practicable after they are made, be laid before both Houses of Parliament. These clauses were ultimately passed as section 20 of the impugned Act

but they were the only piece of delegated legislation contemplated by the Legislature and were covered by the memorandum regarding the same which was appended to the Bill. The decision of the Wage Board was not to be laid before both the Houses of Parliament which would have been the case if the fixation of rates of wages was a piece of delegated legislation. It was only to be published by the Central Government after it was communicated to it by the Wage Board in such manner as the Central Government thought fit, a provision which was akin to the publication of awards of the Industrial Tribunals by the appropriate Government under the provisions of the Industrial Disputes Act, 1947. This circumstance also was pointed out as indicative of the intention of the Legislature not to constitute the Wage Board a sub-legislative authority. While recognising the force of these contentions we may observe that it is not necessary for our purposes to determine the nature and character of the functions performed by the Wage Board here. It is sufficient to say that the Wage Board was not empowered or authorised to adopt any arbitrary procedure and flout the principles of natural justice.

It was next contended that the restrictions imposed on newspaper establishments under the terms of the impugned Act were unreasonable in so far as they would have the effect of destroying the business of the petitioners and would therefore exceed the bounds of permissible legislation under article 19(6). It was urged that the right to impose reasonable restrictions on the petitioners right to carry on business did not empower the Legislature to destroy the business itself and reliance was placed in support of this proposition on *Stone v. Farmers Loan and Trust Co.* (1885) 116 U.S. 307, 331; 29 Law. Ed. 636, 644, where it was observed:

"From what has thus been said it is not to be inferred that this power of limitation or regulation is itself without limit. This power to regulate is not a power to destroy, and limitation is not the equivalent of confiscation."

Similar observations of the Judicial Committee of the Privy Council in the *Municipal Corporation of the City of Toronto v. Virgo* (1896) A.C. 83, 93. (J.C.) and the *Attorney-General for Ontario v. Attorney-General for the Dominion* (1896) A.C. 348, 363, were also relied upon and particularly the following observations in the former case:

"But their Lordships think there is a marked distinction to be drawn between the prohibition or prevention of a trade and the regulation or governance of it and indeed a power to regulate and govern seems to imply the continued existence of that which is sought to be regulated or governed."

These observations were considered by this Court in *Saghir Ahmed v. State of U.P. & Others*, (1955) 1 S.C.R. 707, 724, and, after considering the various cases which were cited by both sides, this Court observed:

"Be that as it may, although in our opinion the normal use of the word "restriction" seems to be in the sense of "limitation" and not "extinction" we would on this occasion prefer not to express any final opinion in this matter" and the Court ultimately wound up by saying that "whether the restrictions are reasonable or not would depend to a large extent on the nature of the trade and the conditions prevalent in it."

Even if the provisions of the impugned Act would not necessarily have the effect of destroying the business of the petitioners but of crippling it and making it impossible for the petitioners to continue the same except under onerous conditions, they would have the effect of curtailing their circulation and drive them to seek Government aid and thereby impose an unreasonable burden on their right to carry on business and would come within the ban of article 19(1)(g) read with article 13(2) of the Constitution.

Several provisions of the impugned Act were referred to in this context. Section 2(f) of the Act which defines "working journalist" so as to include "proof-reader" was pointed out in this connection and it was urged that even though the Press Commission Report recommended the exclusion of certain class of proof-readers from the definition of working journalists, the Legislature went a step further and included all proof-readers within that definition thereby imposing upon the newspaper establishments an unreasonable burden far in excess of what they were expected to bear. The provision as to the notice in relation to the retrenchment of a working journalist was also extended beyond the limitations specified in section 25 F of the Industrial Disputes Act, 1947, and was extended to six months in the case of an editor and three months in the case of any other working journalist. The provision with regard to retrenchment was also made applicable retrospectively to all cases of retrenchment which had occurred between July 14, 1954 and March 12, 1955; so also the payment of gratuity was ordered not only in the case usually provided for but also in cases where a working journalist who had been in continuous service for not less than three years voluntarily resigned from service from a newspaper establishment. The hours of work prescribed were 144 hours only during any period of four consecutive weeks and they were far less in number than the hours of work recommended by the Press Commission Report. The fixation of rates of wages was entrusted to the Wage Board which could fix any wages which it thought proper irrespective of the capacity of the industry to

pay and might be such as the industry could not bear. These provisions taken each one by itself may not have the effect of destroying the petitioners' business altogether or even crippling it in the manner indicated but, taken cumulatively, along with the provisions contained in sections 14 and 15 of the impugned Act which applied the provisions of the Industrial Employment (Standing Orders) Act, 1946, and the Employees' Provident Funds Act, 1952, to newspaper establishments would certainly bring about that result and would therefore constitute an unreasonable restriction on the petitioners' right to carry on business.

We shall deal with these contentions one by one.

There is no doubt that "proof-readers" were not all recommended by the Press Commission to be included in the definition of working journalists, but it has to be remembered that proof-readers occupy a very important position in the editorial staff of a newspaper establishment. B. Sen Gupta in his *Journalism as a Career* (1955) talks of the position of the proof-reader as follows :

"The proof-reader is another important link in the production of a newspaper. On him depends, not to a small extent, the reputation of a paper. He has to be very careful in correcting mistakes and pointing out any error of fact or grammar that has crept into any news item or article through oversight or hurry on the part of the sub-editor. He has not only to correct mistakes but also to see that corrections are carried out." and the *Kemsley Manual of Journalism* has the following passage at page 337 :

"Having thus seen the proof-reader in action, let us consider in detail what proof-reading denotes. It is primarily the art and practice of finding mistakes in printed matter before publication and of indicating the needed corrections. It includes the detection of variations between the type and the copy from which it was set, mis-statements of facts, figures or dates, errors in grammar, inaccuracies in quotations, and other defects. Often, too, it happens that, though the proof-reader does not feel justified in himself making a correction, he takes other action. If he thinks there is a mistake but is not sure, he must query the proof so that the editorial staff may decide. He may spot a libel, or think he has. In either case it is important that the matter shall be queried and passed back to editorial authority.

"It is obvious from this that proof-readers should be men of exceptional knowledge and sound-judgment. They should be conversant with current affairs, familiar with names of public men and quite sure how they should be spelled. Some specialize in different branches of sport, others in theatre, the cinema, music and so on. This saves much time in looking up books of reference, though, of course, the books are there."

As a matter of fact, the Wage Board in the Schedule to its decision defines "proof-Reader" as "a person who checks up printed matter or "proof" with editor copy to ensure strict conformity of the former with the latter. Factual discrepancies, slips of spelling, grammar and syntax may also be discovered by him and either corrected or get them corrected."

If this is the important role played by the proof-readers then no wonder that the Legislature, in spite of the recommendations of the Press Commission, included them also in the definition of 'working journalist'. No doubt they would be entitled to higher wages by reason of the fixation of rates of wages by the wage board but that would by itself be no ground for holding the inclusion of proof-readers within the definition of working journalist an unreasonable burden on newspaper establishments.

The provisions in regard to notice cannot be said to be *per se* unreasonable. Apart from the recommendations of the Press Commission in that behalf, Halsbury's *Laws of England*, Vol. 22, 2nd Edition, page 150, para 249, Foot Note (e) contains the following statement in regard to the periods of reasonable notice to which persons of various employments have been found entitled :

Newspaper Editor from 6 months (*Foxbonne v. Vernon & Co., Ltd.* [1894] 10 T.L.R. 647)

to 12 months (*Greedy v. Sun Printing and Publishing Association* [1916] 33 T.L.R. 77 Ca).

Sub-Editor of a newspaper 6 months (*Chamberlain vs. Bennett* [1892] 8 T.L.R. 234).

Foreign Correspondent to the Times : 6 months period (*Lowe v. Walter* [1892] 8 T.L.R. 358).

The Press Commission also recommended that the period of notice for the termination of services should be based on the length of the service rendered and the nature of the appointment. There could be no hard and fast rule as to what the notice period should be. The practice upheld by law or by collective bargaining varies from country to country. In England the practice established by some judicial decisions is that the editor is entitled to a year's notice and an assistant editor to six months notice. After examining the provisions in regard to notice which are in vogue in England, the Commission also noticed a decision in Bombay (Suit No. 735 of 1951 in the City Civil Court) where the judge concerned held that in the circumstances of the particular case the plaintiff, an assistant editor was entitled to a notice of four months although in normal times, he said, the rule adopted in England of six months should be the correct rule to adopt in India and a longer period of notice was suggested for editors because it was comparatively much

more difficult to secure another assignment for a journalist of that seniority and standing in the profession.

The period of six months, in the case of an editor, and three months, in the case of any other working journalists prescribed under section 3(2) of the impugned Act was, therefore, not open to any serious objection.

The retrospective operation of this provision in regard to the period between 14th July, 1954 and 12th March, 1955, was designed to meet the few cases of those employees in the editorial staff of the newspaper establishments who had been retrenched by the managements anticipating the implementation of the recommendations of the Press Commission. There was nothing untoward in that provision also.

When we come however to the provision in regard to the payment of gratuity to working journalists who voluntarily resigned from service from newspaper establishments, we find that this was a provision which was not at all reasonable. A gratuity is a scheme of retirement benefit and the conditions for its being awarded have been thus laid down in the Labour Court decisions in this country.

In the case of the Ahmedabad Municipal Corporation, [1955] L.A.C. 155, it was observed at page 158:

"The fundamental principle in allowing gratuity is that it is a retirement benefit for long services, a provision for old age and the trend of the recent authorities as borne out from various awards as well as the decisions of this Tribunal is in favour of double benefit..... We are, therefore, of the considered opinion that provident fund provides a certain measure of relief only and a portion of that consists of the employees' wages, that he or his family would ultimately receive, and that this provision in the present day conditions is wholly insufficient relief and two retirement benefits when the finances of the concern permit ought to be allowed." (See also *Nandy Droogh Mines Ltd.*, [1956] L.A.C. 265 at page 267).

These were cases however of gratuity to be allowed to employees on their retirement. The Labour Court decisions have however awarded gratuity benefits on the resignation of an employee also. In the case of *Cipla Ltd.* [1955] 2 L.L.J. 355 at page 358, the Court took into consideration the capacity of the concern and other factors therein referred to and directed gratuity on full scale.....which included.....(2) on voluntary retirement or resignation of an employee after 15 years continuous service.

Similar considerations were imported in the case of the *Indian Oxygen & Acetylene Co., Ltd.*, [1956] 1 L.L.J. 435. where it was observed;

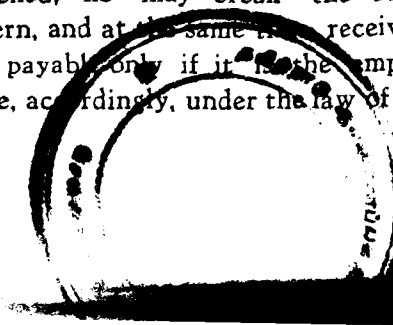
"It is now well-settled by a series of decisions of the appellate tribunals that where an employer company has the financial capacity the workmen would be entitled to the benefit of gratuity in addition to the benefits of the Provident Fund. In considering the financial capacity of the concern what has to be seen is the general financial stability of the concern. The factors to be considered before granting a scheme of gratuity are the broad aspects of the financial condition of the concern, its profit earning capacity, the profit earned in the past, its reserves and the possibility of replenishing the reserves, the claim of capital put having regard to the risk involved, in short the financial stability of the concern."

There also the Court awarded gratuity under ground No. 2, viz., on retirement or resignation of an employee after 15 years of continuous service and 15 months' salary or wage.

It will be noticed from the above that even in those cases where gratuity was awarded on the employee's resignation from service, it was granted only after the completion of 15 years continuous service and not merely on a minimum of 3 years service as in the present case. Gratuity being a reward for good, efficient and faithful service rendered for a considerable period (Vide Indian Railway Establishment Code, Vol. I at page 614—Chapter XV, paragraph 1503), there would be no justification for awarding the same when an employee voluntarily resigns and brings about a termination of his service, except in exceptional circumstances.

One such exception is the operation of what is termed "The conscience clause". In Fernand Terrou and Lucion Solal's *Legislation for Press, Film and Radio in the World To-day* (a series of studies published by UNESCO in 1951) the following passage occurs in relation to "Journalists' Working Conditions and their Moral Rights", at page 404:

"Among the benefits which the status of professional journalist may confer (whether it stems from the law or from an agreement) is one of particular importance, since it goes to the very core of the profession. It concerns freedom of information. It is intended to safeguard the journalist's independence, his freedom of thought and his moral rights. It constitutes what has been called in France the "conscience clause". The essence of this clause is that when a journalist's integrity is seriously threatened, he may break the contract binding him to the newspaper concern, and at the same time receive all the indemnities which are normally payable only if it is the employer who breaks the contract. In France, accordingly, under the law of 1935,



the indemnity for dismissal which, as we have seen, may be quite substantial, is payable even when the contract is broken by a professional journalist, in cases where his action is inspired by "a marked change in the character or policy of the newspaper or periodical, if such change creates for the person employed a situation prejudicial to his honour, his reputation, or in a general way his moral interests.

"This moral right of a journalist, is comparable to the moral right of an author or artist, which the law of 1935 was the first to recognize has since been acknowledged in a number of countries. It was stated in the collective contract of January 31, 1938, in Poland in this form: "The following are good and sufficient reasons for a journalist to cancel his contract without warning; (a) the exertion of pressure by an employer upon a journalist to induce him to perform an immoral action; (b) a fundamental change in the political outlook of the journal, proclaimed by public declaration or other-wise made manifest, if the journalist's employment would thereafter be contrary to his political opinions or the dictates of his conscience."

A similar clause is to be found in Switzerland, in the collective agreement signed on 1st April, 1948, between the Geneva Press Association and the Geneva Union of Newspaper Publishers:

"If a marked change takes place in the character or fundamental policy of the newspaper, if the concern no longer has the same moral, political or religious character that it had at the moment when an editorial employee was engaged and if this change is such as to prejudice his honour, his reputation or, in a general way, his moral interests, he may demand his instant release. In these circumstances he shall be entitled to an indemnity.....This indemnity is payable in the same manner as was the salary."

The other exception is where the employee has been in continuous service of the employer for a period of more than 15 years.

Where however an employee voluntarily resigns from service of the employer after a period of only three years, there will be no justification whatever for awarding him a gratuity and any such provision of the type which has been made in section 5(1)(a)(iii) of the Act would certainly be unreasonable. We hold therefore that this provision imposes an unreasonable restriction on the petitioners' right to carry on business and is liable to be struck down as unconstitutional.

The provision in regard to the hours of work also cannot be considered unreasonable having regard to the nature and quality of the work to be done by working journalists.

That leaves the considerations of fixation of rates of wages by the wage board. As we have already observed, the wage board is constituted

of equal numbers of representatives of the newspaper establishments and the working journalists with an independent chairman at its head and principles for the guidance of the wage board in the fixation of such rates of wage directing the wage board to take into consideration amongst other circumstances the capacity of the industry to pay have also been laid down and it is impossible to say that the provisions in that behalf are in any manner unreasonable. It may be that the decision of the wage board may be arrived at ignoring some of these essential criterias which have been laid down in section 9(1) of the Act or that the procedure followed by the wage board may be contrary to the principles of natural justice. But that would affect the validity of the decision itself and not the constitution of the wage board which as we have seen cannot be objected to on this ground.

The further provision contained in section 17 of the Act in regard to the recovery of money due from an employer empowering the State Government or any such authority appointed in that behalf to issue a certificate for that amount to the collector in the same manner as an arrear of land revenue was also impeached by the petitioners on this ground. That provision, however, relates only to the mode of recovery and not to the imposition of any financial burden as such on the employer. We shall have occasion to deal with this provision in connection with the alleged infringement of the fundamental right under article 14 hereafter. We do not subscribe to the view that such a provision infringes the fundamental right of the petitioners to carry on business under article 19(1)(g).

This attack of the petitioners on the constitutionality of the impugned Act under article 19(1)(g) viz., that it violates the petitioners' fundamental right to carry on business, therefore, fails except in regard to section 5(1)(a)(iii) thereof which being clearly severable from the rest of the provisions, can be struck down as unconstitutional without invalidating the other parts of the impugned Act.

Re: Article 14.—The question as formulated is that the impugned Act selected the working journalists for favoured treatment by giving them a statutory guarantee of gratuity, hours of work and leave which other persons in similar or comparable employment had not got and in providing for the fixation of their salaries without following the normal procedure envisaged in the Industrial Disputes Act, 1947.

The following propositions are advanced:—

1. In selecting the Press industry employers from all industrial employers governed by the ordinary law regulating industrial relations under the Industrial Disputes Act, 1947 and Act I of 1955, the impugned Act subjects the press industry employers to discriminatory treatment.

2. Such discrimination lies in :

(a) singling out newspaper employees for differential treatment ;

(b) saddling them with a new burden in regard to a section of their workers in matters of gratuities, compensation, hours of work and wages ;

(c) devising a machinery in the form of a Pay Commission for fixing the wages of working journalists ;

(d) not prescribing the major criterion of capacity to pay to be taken into consideration ;

(e) allowing the Board in fixing the wages to adopt any arbitrary procedure even violating the principle of *audi alteram partem* ;

(f) permitting the Board the discretion to operate the procedure of the Industrial Disputes Act for some newspapers and any arbitrary procedure for others ;

(g) making the decision binding only on the employers and not on the employees ; and

(h) providing for the recovery of money due from the employers in the same manner as an arrear of land revenue.

3. The classification made by the impugned Act is arbitrary and unreasonable, in so far as it removes the newspaper employers *vis-a-vis* working journalists from the general operation of the Industrial Disputes Act, 1947 and Act I of 1955.

The principle underlying the enactment of article 14 has been the subject-matter of various decisions of this Court and it is only necessary to set out the summary thereof given by Das, J., (as he then was) in *Budhan Choudhry & Others v. The State of Bihar* [1955] 1 S.C.R. 1045, at p. 1048 :

" The provisions of article 14 of the Constitution have come up for discussion before this Court in a number of cases, namely, *Chiranjit Lal Chowdhuri v. The Union of India* [1950] S.C.R. 869, *The State of Bombay v. F. N. Balsara* [1951] S.C.R. 682, *The State of West Bengal v. Anwar Ali Sarkar* [1952] S.C.R. 284, *Kathi Raning Rawat v. The State of Saurashtra*, [1952] S.C.R. 435, *Lachmandas Kewalram Ahuja v. The State of Bombay*, [1952] S.C.R. 710, *Quasim Razvi v. The State of Hyderabad*, [1953] S.C.R. 581, and *Habeeb Mohamad v. The State of Hyderabad*, [1953] S.C.R. 661. It is, therefore, not necessary to enter upon any lengthy discussion as to the meaning, scope and effect of the article in question. It is now well-established that while article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification

must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that the differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases ; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well-established by the decisions of this Court that article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

It is in the light of these observations that we shall now proceed to consider whether the impugned Act violates the fundamental right of the petitioners guaranteed under article 14 of the Constitution.

We have already set out what the Press Commission had to say in regard to the position of the working journalists in our country. A further passage from the report may also be quoted in this context :

"It is essential to realise in this connection that the work of a journalist demands a high degree of general education and some kind of specialised training. Newspapers are a vital instrument for the education of the masses and it is their business to protect the rights of the people, to reflect and guide public opinion and to criticize the wrong done by any individual or organization however high placed. They form an essential adjunct to democracy. The profession must, therefore, be manned by men of high intellectual and moral qualities. The journalists are in a sense creative artists and the public rightly or wrongly, expect from them a general omniscience and a capacity to express opinion on any topic that may arise under the sun. Apart from the nature of their work the conditions under which that work is to be performed, are peculiar to this profession. Journalists have to work at very high pressure and as most of the papers come out in the morning, journalists are required to work late in the night and round the clock. The edition must go to press by a particular time and all the news that breaks before that hour has got to find its place in that edition. Journalism thus becomes a highly specialized job and to handle it adequately a person should be well-read, have the ability to size up a situation and to arrive quickly at the correct conclusion, and have the capacity to stand the stress and strain of the work involved. His work cannot be measured, as in other industries, by the quantity of the output, for the quality of work is an essential element in measuring the capacity of the journalists. Moreover, insecurity of tenure is a peculiar feature of this profession. This is not to say that no security exists in other professions but circumstances may arise in connection with

profession of journalism which may lead to unemployment in this profession, which would not necessarily have that result in other professions. Their security depends to some extent on the whims and caprices of the proprietors. We have come across cases where a change in the ownership of the paper or a change in the editorial policy of the paper has resulted in a considerable change in the editorial staff. In the case of other industries a change in the proprietorship does not normally entail a change in the staff. But, as the essential purpose of a newspaper is not only to give news but to educate and guide public opinion, a change in the proprietorship or in the editorial policy of the paper may result and in some cases has resulted in a wholesale change of the staff on the editorial side. These circumstances, which are peculiar to journalism must be borne in mind in framing any scheme for improvement of the conditions of working journalists." (Paragraph 512).

These were the considerations which weighed with the Press Commission in recommending the working journalists for special treatment as compared with the other employees of newspaper establishments in the matter of amelioration of their conditions of service.

We may also in this connection refer to the following passage from the *Legislation for Press, Film and Radio in the World To-day* (a series of studies published by UNESCO in 1951) at page 403 :

"Under certain systems, special advantages more extensive than those enjoyed by ordinary employees are conferred upon journalists. These may be sanctioned by the law itself. For instance, certain Latin American countries have enacted legislation in favour of journalists which is in some cases very detailed and far-reaching and offers special benefits, more particularly in the form of protection against the risk of sickness or disability, dismissal or retirement. In Brazil, professional journalists, who must be of Brazilian birth and nationality, enjoy very considerable tax exemptions.

"In France, the law of 29th March, 1935, conferred on journalists substantial advantages which at the time were far in advance of general social legislation. Thus, for example, this law gives all professional journalists the right to an annual holiday with pay. One month's holiday is granted to journalists who have been working for a newspaper or periodical for at least one year, and five weeks to journalists whose contract has been in force for 10 years at least. Should a contract of indefinite duration be terminated, the journalist is entitled to one or two months' notice and also to an indemnity for dismissal which may not be less than one month's salary per year or part of a year of service, at the most recent rate of pay. However, if the period of service

exceeds 15 years, the amount of the indemnity is fixed, as we have seen, by an arbitral committee."

The working journalists are thus a group by themselves and could be classified as such apart from the other employees of newspaper establishments and if the Legislature embarked upon a legislation for the purpose of ameliorating their conditions of service there was nothing discriminatory about it. They could be singled out thus for preferential treatment against the other employees of newspaper establishments. A classification of this type could not come within the ban of article 14. The only thing which is prohibited under this article is that persons belonging to a particular group or class should not be treated differently as amongst themselves and no such charge could be levelled against this piece of legislation. If this group of working journalists was specially treated in this manner there is no scope for the objection that that group had a special legislation enacted for its benefit or that a special machinery was created for fixing the rates of its wages different from the machinery employed for other workmen under the Industrial Disputes Act, 1947. The payment of retrenchment compensation and gratuities, the regulation of their hours of work and the fixation of the rates of their wages as compared with those of other workmen in the newspaper establishments could also be enacted without any such disability and the machinery for fixing their rates of wages by way of constituting a wage board for the purpose could be similarly devised. There was no industrial dispute as such which had arisen or was apprehended to arise as between the employers and the working journalists in general, though it could have possibly arisen as between the employers in a particular newspaper establishment and its own working journalists. What was contemplated by the provisions of the impugned Act, however, was a general fixation of rates of wages of working journalists which would ameliorate the conditions of their service and the constitution of a wage board for this purpose was one of the established modes of achieving that object. If, therefore, such a machinery was devised for their benefit, there was nothing objectionable in it and there was no discrimination as between the working journalists and the other employees of newspaper establishments in that behalf. The capacity of the industry to pay was certainly to be taken into consideration by the wage board, as we have already seen before, and the procedure of the Board also was assimilated to that adopted by an Industrial Tribunal under Industrial Disputes Act, 1947, or was, in any event, to be such as would not be against the principle of *audi alteram partem* or the principles of natural justice. There was no occasion, if the wage board chose to exercise the same powers and follow the same procedure as the

Industrial Tribunal under the Industrial Disputes Act, 1947, for it to discriminate between one set of newspaper establishments and others. If it in fact assumed unto itself the powers of the Industrial Tribunal it would be bound to follow the procedure prescribed under the Industrial Disputes Act, 1947 and if it were thus to follow the same, no discrimination could ever be made in the manner suggested. The decision of the Wage Board was no doubt made binding only on the employers and the working journalists were at liberty to agitate the question of increase in their wages by raising an industrial dispute in regard thereto. Once the rates of wages were fixed by the wage board, it would normally follow that they would govern the relationship between the employers and the working journalists, but if liberty was reserved to the working journalists for further increase in their wages under the provisions of the Industrial Disputes Act, there was nothing untoward in that provision and that did not by itself militate against the position that what was done for the benefit of the working journalist was a measure for the amelioration of their conditions of service as a group by themselves. There could not be any question of discrimination between the employers on the one hand and the working journalists on the other. They were two contesting parties ranged on opposite sides and the fact that one of them was treated in a different manner from the other in the matter of the amelioration of the conditions of service of the weaker party would not necessarily vitiate the decision of the wage board. The weaker of the two parties could certainly be treated as a class by itself and the conferment of special benefits in the matter of trying to ameliorate their conditions of service could certainly not be discriminatory.

The provisions contained in section 17 of the Act in regard to the recovery of money due from the employers in the same manner as an arrear of land revenue also was not discriminatory. In the conflict between the employers and the employees it very often came about that the employers did not implement the measures which had been enacted for the benefit of the employees and the employees were thus hard put to realise and cash those benefits. Even the Industrial Disputes Act, 1947, contained a like provision in section 33 C thereof (vide the amendment incorporated therein by Act 36 of 1956) which in its turn was a reproduction of the old section 25-I which had been inserted therein by Act 43 of 1953. It may be remembered that if the provisions of the Industrial Disputes Act, 1947, which was a general Act, had been made applicable to the working journalists there would have been no quarrel with the same. Much less there could be any quarrel with the introduction of section 17 into the impugned Act when the aim and object of such provision was to provide the working journalists who were a group

by themselves from amongst employees employed in the newspaper establishments with a remedy for the recovery of the monies due to them in the same manner as the workmen under the Industrial Disputes Act, 1947. We do not see anything discriminatory in making such a provision for the recovery of monies due by the employers to these working journalists.

Similar is the position in regard to the alleged discrimination between press industry employers on the one hand and the other industrial employers on the other. The latter would certainly be governed by the ordinary law regulating industrial relations under the Industrial Disputes Act, 1947. Employers qua the working journalists again would be a class by themselves and if a law was enacted to operate as between them in the manner contemplated by the Act that could not be treated as discriminatory. If measures have got to be devised for the amelioration of the conditions of working journalists who are employed in the newspaper establishments, the only way in which it could be done was by directing this piece of legislation against the press industry employers in general. Even considering the Act as a measure of social welfare legislation the State could only make a beginning somewhere without embarking on similar legislations in relation to all other industries and if that was done in this case no charge could be levelled against the State that it was discriminating against one industry as compared with the others. The classification could well be founded on geographical basis or be according to objects or occupations or the like. The only question for consideration would be whether there was a nexus between the basis of classification and the object of the Act sought to be challenged. In our opinion, both the conditions of permissible classification were fulfilled in the present case. The classification was based on an intelligible differentia which distinguished the working journalists from other employees of newspaper establishments and that differentia had a rational relation to the object sought to be achieved, viz., the amelioration of the conditions of service of working journalists.

This attack on the constitutionality of the Act also, therefore, fails.

Re: Article 32: In regard to the infringement of article 32, the only ground of attack has been that the impugned Act did not provide for the giving of the reasons for its decision by the wages board and thus rendered the petitioners' right to approach the Supreme Court for enforcement of their fundamental right nugatory. It is contended that the right to apply to the Supreme Court for a writ of *certiorari* required an order infringing a fundamental right, that such a right was

itself a fundamental right and any legislation which attempted to restrict or defeat this right was an infraction of article 32 and was as such void. It is further contended that a writ of *certiorari* could effectively be directed only against a speaking order, i.e., an order disclosing reasons, and if a statute enabled the passing of an order that need give no reasons such statute attempted to sterilize the powers of this Court from investigating the validity of the order and was, therefore, violative of article 32.

Learned counsel for the petitioners has relied upon a decision of the English Court in *Rex v. Northumberland Com. Appeal Tribunal; Ex parte Shaw* ([1951] 1 K.B. 711, 718) where Lord Goddard, C. J., observed at page 718:

"Similarly anything that is stated in the order which an inferior Court has made and which has been brought up into this Court can be examined by the Court, if it be a speaking order, that is to say, an order which sets out the grounds of the decision. If the order is merely a statement of conviction that there shall be a fine of 40s. or an order of removal or quashing a poor rate, there is an end of it: This Court cannot examine further. If the inferior Court tells this Court why it has been done what it has and makes it part of its order this Court can examine it."

This decision was affirmed by the Court of Appeal (and the decision of the Court of Appeal is reported in [1952] 1 K.B. 338) and while doing so Denning, L.J., (as he then was) discussed at page 352, what was it that constituted the record:

"What then is the record?.....Following these cases I think the record must contain at least the document which initiates the proceedings, the pleadings if any and the adjudication but not the evidence nor the reasons unless the Tribunal chooses to incorporate them. If the tribunal does state its reasons and these reasons are wrong in law *certiorari* lies to quash the decision."

This decision only affirmed that *certiorari* could lie only if an order made by the inferior Tribunal was a speaking order. It did not lay down any duty on the inferior Tribunal to set out the reasons for its order but only pointed out that if no reasons were given it would be impossible for the High Court to interfere by exercising its prerogative jurisdiction in the matter of *certiorari*.

A more relevant decision on this point is that of this Court in *A. K. Gopalan v. The State of Madras & Another* (*supra*). In that case the provision of law which was impugned amongst others was one which prevented the detinue on pain of prosecution from disclosing to the Court the grounds of his detention communicated to him by the

detaining authority. This provision was struck down as *ultra vires* and void. The reason given by Mahajan, J., (as he then was) is stated at page 243:

"This Court would be disabled from exercising its functions under article 32 and adjudicating on the point that the grounds given satisfy the requirements of the sub-clause if it is not open to it to see the grounds that have been furnished. It is a guaranteed right of the person detained to have the very grounds which are the basis of the order of detention. This Court would be entitled to examine the matter and to see whether the grounds furnished are the grounds on the basis of which he has been detained or they contain some other vague or irrelevant material. The whole purpose of furnishing a detained person with the grounds is to enable him to make a representation refuting these grounds and of proving his innocence. In order that this Court may be able to safeguard this fundamental right and to grant him relief it is absolutely essential that the detinue is not prohibited under penalty of punishment to disclose the grounds to the Court and no injunction by law can be issued to this Court disabling it from having a look at the grounds. Section 14 creates a substantive offence if the grounds are disclosed and it also lays a duty on the Court not to permit the disclosure of such grounds. It virtually amounts to a suspension of a guaranteed right provided by the Constitution inasmuch as it indirectly by a stringent provision makes administration of the law by this Court impossible and at the same time it deprives a detained person from obtaining justice from this Court. In my opinion, therefore, this section when it prohibits the disclosure of the grounds contravenes or abridges the rights given by Part III to a citizen and is *ultra vires* the powers of Parliament to that extent."

It is no doubt true that if there was any provision to be found in the impugned Act which prevented the wages board from giving reasons for its decision, it might be construed to mean that the order which was thus made by the wages board could not be a speaking order and no writ of *certiorari* could ever be available to the petitioners in that behalf. It is also true that in that event this Court would be powerless to redress the grievances of the petitioners by issuing a writ in the nature of *certiorari* and the fundamental right which a citizen has of approaching this Court under article 32 of the Constitution would be rendered nugatory.

The position, however, as it obtains in the present case is that there is no such provision to be found in the impugned Act. The impugned Act does not say that the wage board shall not give any reason for its decision. It is left to the discretion of the wage board

whether it should give the reasons for its decision or not. In the absence of any such prohibition it is impossible for us to hold that the fundamental right conferred upon the petitioners under article 32 was in any manner whatever sought to be infringed. It may be noted that this point was not at all urged in the petitions which the petitioners had filed in this Court but was taken up only in the course of the arguments by the learned counsel for the petitioners. It appears to have been a clear after-thought: but we have dealt with the same as it was somewhat strenuously urged before us in the course of the arguments. We are of the opinion that the Act cannot be challenged as violative of the fundamental right enshrined in article 32 of the Constitution.

In regard to the constitutionality of the Act, therefore, we have come to the conclusion that none of the provisions thereof is violative of the fundamental rights enshrined in articles 19(1)(a), 19(1)(g), 14 and/or 32 save the provision contained in section 5(i)(a)(iii) of the Act which is violative of the fundamental right guaranteed under article 19(1)(g) of the Constitution and is therefore unconstitutional and should be struck down.

Apart from challenging the vires of the Act dealt with above, the petitioners contend that the decision of the wage board itself is illegal and void because:

- (1) Re-constitution of the Board was *ultra vires* and unauthorised by the Act as it stood at the time, the rules having been published only on 30th July, 1956.
- (2) The decision by a majority was unwarranted by the Act and since there was no provision in the Act, the rules providing for the same went beyond the Act and were, therefore, *ultra vires*.
- (3) The procedure followed by the Board offended the principles of natural justice and was therefore invalid;
- (4) The decision was invalid, because
 - (a) no reasons were given,
 - (b) nor did it disclose what considerations prevailed with the Board in arriving at its decision;
- (5) Classification on the basis of gross revenue was illegal and unauthorised by the Act.
- (6) Grouping into chains or multiple units was unauthorised by the Act.
- (7) The Board was not authorised by the Act to fix the salaries of journalists except in relation to a particular industrial establishment and not on an All-India basis of all newspapers taken together;
- (8) The decision was bad as it did not disclose that the capacity to pay of any particular establishment was ever taken into consideration.

(9) The Board had no authority to render a decision which was retrospective in operation.

(10) The Board had no authority to fix scales of pay for a period of 3 years (subject to review by the Government, by appointing another wage board at the end of these 3 years) and

(11) The Board was handicapped for want of cost of living index.

The position in law is that the decision would be illegal on any of the following three grounds, viz.,

(A) Because the Act under which it was made was *ultra vires*; (See *Mohammad Yasin v. Town Area Committee, Jalalabad & Another*, [1952] S.C.R. 572, 578, and *Himmatlal Harilal Mehta v. State of Madhya Pradesh* [1954] S.C.R. 1122, 1127).

(B) Because the decision itself infringed the fundamental rights of the petitioners. (See *Bidi Supply Co. v. Union of India & Others*, [1956] S.C.R. 267).

(C) Because the decision was *ultra vires* the Act. (See *Pandit Ram Narain v. State of Uttar Pradesh & Others*, [1956] S.C.R. 664).

The decision of the Wage Board before us cannot be challenged on the grounds that the impugned Act under which the decision is made is *ultra vires* or that the decision itself infringes the fundamental rights of the petitioners. In the circumstances, the challenge must be confined only to the third ground, viz., that the decision is *ultra vires* the Act itself.

Re: 1. The first ground of attack is based on the circumstance that Shri K. P. Kesava Menon who was originally appointed a member of the Wage Board resigned on or about 21st June, 1956, which resignation was accepted by the Central Government by a notification dated 14th July, 1956, and by the same notification the Central Government appointed in his place Shri K. M. Cherian and thus reconstituted the Wage Board. There was no provision in the Act for the resignation of any member from his membership or for the filling in of the vacancy which thus arose in the membership of the Board. A provision in this behalf was incorporated only in the Working Journalists Wage Board Rules, 1956, which were published by a notification in the Gazette of India, Part II, Section 3, on date 31st July, 1956. It was, therefore, contended that such re-constitution of the Board by the appointment of Shri K. M. Cherian in place of Shri K. P. Kesava Menon was unauthorised by the Act as it then stood and the Board which actually published the decision in question was, therefore, not properly constituted.

It is necessary to remember in this connection that section 8 of the Act empowered the Central Government by notification in the Official Gazette to constitute a Wage Board. This power of constituting the

Wage Board must be construed having regard to section 14 of the General Clauses Act, 1897, which says that where by any Central Act or Regulation made after the commencement of the Act, any power is conferred then, unless a different intention appears that power may be exercised from time to time as occasion arises. If this is the true position there was nothing objectionable in the Central Government reconstituting the Board on the resignation of Shri K. P. Keshava Menon being accepted by it. The Wage Board can in any event be deemed to have been constituted as on that date, viz., 14th July, 1956, when all the 5 members within the contemplation of section 8(2) of the Act were in a position to function. Shri K. P. Keshava Menon had not attended the preliminary meeting of the Board which had been held on 26th May, 1956, and the real work of the Wage Board was done after the appointment of Shri K. M. Cherian in his place and stead and it was only after 14th July, 1956, that the Wage Board as a whole constituted as it was on that date really functioned as such. The objection urged by the petitioners in this behalf is too technical to make any substantial difference in regard to the constitution of the Wage Board and its functioning.

Re: 2. This ground ignores the fact that the Working Journalists Wage Board Rules, 1956, which were published on July 31, 1956, were made by the Central Government in exercise of the power conferred upon it by section 20 of the Act. That section empowered the Central Government to make rules to carry out the purposes of the Act, in particular to provide for the procedure to be followed by the Board in fixing rates of wages. Rule 8 provided that every question considered at a meeting of the Board was to be decided by a majority of the votes of the members present and voting. In the event of equality of votes the Chairman was to have a casting vote.....This rule, therefore, prescribed that the decision of the Board could be reached by a majority and this was the rule which was followed by the Board in arriving at its decision. The rule was framed by the Central Government by virtue of the authority vested in it under section 20 of the Act and was a piece of delegated legislation which if the rules were laid before both the Houses of Parliament in accordance with section 20(3) of the Act acquired the force of law. After the publication of these rules, they became a part of the Act itself and any decision thereafter reached by the Wage Board by a majority as prescribed therein was, therefore, lawful and could not be impeached in the manner suggested.

Re: 3. This ground has reference to the alleged violation by the Wage Board of the principles of natural justice. It is urged that the procedure established under the Industrial Disputes Act was not in

terms prescribed for the Wage Board, the Board having been given under section 11 of the Act the discretion for the purpose of fixing rates of wages to exercise the same powers and follow the same procedure as an Industrial Tribunal constituted under the Industrial Disputes Act, 1947, while adjudicating upon an industrial dispute referred to it. On two distinct occasions, however, the Wage Board definitely expressed itself that it had the powers of an Industrial Tribunal constituted under the Industrial Disputes Act. The first occasion was when the Questionnaire was issued by the Wage Board and in the Questionnaire it mentioned that it had such powers under section 11 of the Act. The second occasion arose when a number of newspapers and journals to whom the Questionnaire was addressed failed to send their replies to the same and the Wage Board at its meeting held on 17th August, 1956, reiterated the position and decided to issue a Press Note requesting the newspapers and journals to send their replies as soon as possible, inviting their attention to the fact that the Board had powers of an Industrial Tribunal under the Act and if newspapers failed to send their replies, the Board would be compelled to take further steps in the matter. This is clearly indicative of the fact that the Wage Board did seek to exercise the powers under the terms of section 11 of the Act. Even though, the exercise of such powers was discretionary with the Board, the Board itself assumed these powers and assimilated its position to that of an Industrial Tribunal constituted under the Industrial Disputes Act, 1947. If, then, it assumed those powers, it only followed that it was also bound to follow the procedure which an Industrial Tribunal so constituted was bound to follow.

It is further urged that in the whole of the Questionnaire which was addressed by the Wage Board to the newspaper establishments, there was no concrete proposal which was submitted by the Wage Board to them for their consideration. The only question which was addressed in this behalf was the Question No. 4 in Part "A" which asked the newspaper establishments whether the basic minimum wage, dearness allowance and metropolitan allowance suggested by the Press Commission were acceptable to them and if not, what variations would they suggest and why. The question as framed would not necessarily focus the attention of the newspaper establishments to any proposal except the one which was the subject-matter of that question, viz., the proposal of the Press Commission in that behalf and the newspaper establishments to whom the Questionnaire was addressed would certainly not have before them any indication at all as to what was the wage structure which was going to be adopted by the Wage Board. Even though the Wage Board came to the conclusion, as a result of its having

collected the requisite data and gathered sufficient materials, after receiving the answers to the Questionnaire and examining the witnesses, that certain wage structure was a proper one in its opinion, it was necessary for the Wage Board to communicate the proposals in that regard to the various newspaper establishments concerned and invite them to make their representations, if any, within a specified period. It was only after such representations were received from the interested parties that the Wage Board should have finalized its proposals and published its decision. If this procedure had been adopted the decision of the Wage Board could not have been challenged on the score of its being contrary to the principles of natural justice.

It would have been no doubt more prudent for the Wage Board to have followed the procedure outlined above. The ground No. 8 is, in our opinion, sufficiently determinative of the question as to the *ultra vires* character of the Wage Board decision and in view of the conclusion reached by us in regard to the same, we refrain from expressing any opinion on this ground of attack urged by the petitioners.

Re: 4. This ground is urged because no reasons were given by the Wage Board for its decision. As a matter of fact, the Wage Board at its meeting dated 22nd April, 1957, agreed that reasons need not be given for each of the decisions and it was only sufficient to record the same and accordingly it did not give any reasons for the decision which it published. In the absence of any such reasons, however, it was difficult to divine what considerations, if any, prevailed with the Wage Board in arriving at its decision on the various points involved therein. It was no doubt not incumbent on the Wage Board to give any reasons for its decision. The Act made no provision in this behalf and the Board was perfectly within its rights if it chose not to give any reasons for its decision. Prudence should, however, have dictated that it gave reasons for the decision which it ultimately reached, because, if it had done so, we would have been spared the necessity of trying to probe into its mind and find out whether any particular circumstance received due consideration at its hands in arriving at its decision. The fact that no reasons are thus given, however, would not vitiate the decision in any manner and we may at once say that even though no reasons are given in the form of a regular judgment, we have sufficient indication of the Chairman's mind in the note which he made on 30th April, 1956, which is a contemporaneous record explaining the reasons for the decision of the majority. This note of the Chairman is very revealing and throws considerable light on the question whether particular circumstances were at all taken into consideration by the Wage Board before it arrived at its decision.

Re: 5. This ground concerns the classification of newspaper establishments on the basis of gross revenue. Such classification was challenged as illegal and unauthorised by the Act. The Act certainly says nothing about classification and could not be expected to do so. What the Act authorized it to do was to fix the rates of wages for working journalists having regard to the principles laid down in section 9(1) of the Act. In fixing the wage structure the Wage Board constituted under the Act was perfectly at liberty if it thought necessary to classify the newspaper establishments in any manner it thought proper provided of course that such classification was not irrational. If the newspaper establishments all over the country had got to be considered in regard to fixing of rates of wages of working journalists employed therein it was inevitable that some sort of classification should be made having regard to the size and capacity of newspaper establishments. Various criteria could be adopted for the purpose of such classification, viz., circulation of the newspaper, advertisement revenue, gross revenue, capital invested in the business, etc., etc. Even though the proportion of advertisement revenue to the gross revenue of newspaper establishments may be a relevant consideration for the purpose of classification, we are not prepared to say that the Wage Board was not justified in adopting this mode of classification on the basis of gross revenue. It was perfectly within its competence to do so and if it adopted that as the proper basis for classification it cannot be said that the basis which it adopted was radically wrong or was such as to vitiate its decision. If the need for classification is accepted, as it should be, having regard to the various sizes and capacities of newspaper establishments all over the country it was certainly necessary to adopt a workable test for such classification and if the Wage Board had adopted classification on the basis of the gross revenue, we do not see any reason why that decision of its was in any manner whatever unwarranted.

It may be remembered in this connection that the Newspaper Industry Inquiry Committee in U. P. had suggested in its report dated March 31, 1949, classification of newspapers in the manner following:—

"A" Class—Papers with

- (1) a circulation of 10,000 copies or above or
- (2) an invested capital of rupees 3 lakhs or more or
- (3) an annual income of rupees 3 lakhs or more;

"B" Class—Papers with

- (1) a circulation below 10,000 but above 5,000 copies or
- (2) an invested capital between rupees one lakh and 3 lakhs or
- (3) an annual income between rupees one lakh and 3 lakhs;

"C" Class—Papers with

(1) a circulation below 5000 copies or (2) an invested capital below rupees one lakh or (3) an annual income below rupees one lakh.

The classification on the basis of gross revenue was attacked by the petitioners on the ground that in the gross revenue which is earned by the newspaper establishments, advertisement revenue ordinarily forms a large bulk of such revenue and the revenue earned by circulation of newspapers forms more often than not a small part of the same, though in regard to language newspapers the position may be somewhat different. Unless, therefore, the proportion of advertisement revenue in the gross revenue of newspaper establishments were taken into consideration, it would not be possible to form a correct estimate of the financial status of that newspaper establishment with a view to its classification. The petitioners on the other hand suggested that the profit and loss of the newspaper establishments should be adopted as the proper test and if that were adopted a different picture altogether would be drawn. The balance-sheets and the profit and loss accounts of the several newspaper establishments would require to be considered and it was contended that even if the gross revenue of a particular newspaper establishment were so large as to justify its inclusion on the basis of gross revenue in Class "A" or Class "B" it might be working at a loss and its classification as such would not be justified.

We have already referred in the earlier part of this judgment to the unsatisfactory nature of the profit and loss test. Even though the profit and loss accounts and the balance-sheets of the several limited companies may have been audited by their auditors and may also have been accepted by the income-tax authorities, they would not afford a satisfactory basis for classification of these newspaper establishments for the reasons already set out above.

As a matter of fact, even before us attempts were made by the respondent, the Indian Federation of Working Journalists to demonstrate that the profit and loss accounts and the balance-sheets of several petitioners were manipulated and unreliable. We are not called upon to decide whether the profit and loss test is one which should be accepted; it is sufficient for our purpose to say that if such a test was not accepted by the Wage Board, the Wage Board was certainly far from wrong in doing so.

Re: 6. This ground relates to grouping into chains or multiple units and the ground of attack is that such grouping is unauthorised by the Act.

The short answer to this contention is that if such grouping into chains or multiple units was justified having regard to the conditions of

the newspaper industry in the country, there was nothing in the Act which militated against such grouping. The Wage Board was authorised to fix the wage structure for working journalists, who were employed in various newspaper establishments all over the country. If the chains or multiple units existed in the country the newspaper establishments which formed such chains or multiple units were well within the purview of the inquiry before the Wage Board and if the Wage Board thus chose to group them together in that manner such grouping by itself could not be open to attack. The Act could not have expressly authorized the Wage Board to adopt such grouping. It was up to the Wage Board to consider whether such grouping was justified under the circumstances or not and unless we find something in the Act which prohibits the Wage Board from doing so, we would not deem any such grouping as unauthorised. The real difficulty, however, in the matter of grouping into chains or multiple units arises in connection with the capacity of the industry to pay, a topic which we shall discuss hereafter while discussing the ground in connection therewith.

Re: 7. This ground is based on the definition of "newspaper establishments" found in section 2(d) of the Act. "Newspaper establishment" is there defined as "an establishment under the control of any person or body of persons, whether incorporated or not, for the production or publication of one or more newspapers or for conducting any news agency or syndicate." So, the contention put forward is that "an establishment" can only mean "an establishment" and not a group of them, even though such an individual establishment may produce or publish one or more newspapers. The definition may comprise within its scope chains or multiple units, but even so, the establishment should be one individual establishment producing or publishing a chain of newspapers or multiple units of newspapers. If such chains or multiple units were, though belonging to some person or body of persons whether incorporated or not, produced or published by separate newspaper establishments, common control would not render the constitution of several newspaper establishments as one establishment for the purpose of this definition, they would none the less be separate newspaper establishments though under common control.

Reliance was placed in support of this contention on a decision of the Calcutta High Court in *Pravat Kumar Kar v. W.T.C. Parker*, [1949] 1 F.J.R. 245, where the expression which came up for construction before the Court was "employed in an industrial establishment" and it was observed that:—

"Employed in an industrial establishment" must mean employed in some particular place, that place being the place used for manufacture or an activity amounting to industry, as that term is used in the Act."

A similar interpretation was put on the expression "industrial establishment" by the Madras High Court in *S.R.V. Service Ltd. v. State of Madras*, [1955] 9 F. J. R. 160, where it was observed at page 173:

"They referred only a dispute between the workers and the management of one industrial establishment, the Kumbakonam branch of the S. R. V. S. Ltd. I find it a little difficult to accept the contention of the learned counsel for the Madras Union, that the Kumbakonam branch of the S. R. V. S. Ltd., is not an industrial establishment as that expression has been used in the several sections of the Act..... I need refer only to section 3 of the Act to negative the contention of the learned counsel for the Madras Union, that the S. R. V. S. Ltd., with all its branches should be taken as one industrial establishment."

These decisions lend support to the contention that a newspaper establishment like an industrial establishment should be located in one place, even though it may be carrying on its activities of production or publication of more newspapers than one. If these activities are carried on in different places, e.g., in different towns or cities of different States, the newspaper establishments producing or publishing such newspapers cannot be treated as one individual establishment but should be treated as separate newspaper establishments for the purpose of working out the relations between themselves and their employees. There would be no justification for including these different newspaper establishments into one chain or multiple unit and treating them, as if they were one newspaper establishment. Here again, the petitioners are faced with this difficulty that there is nothing in the Act to prohibit such a grouping. If a classification on the basis of gross revenue could be legitimately adopted by the Wage Board then the grouping into chains or multiple units could also be made by it. There is nothing in the Act to prohibit the treating of several newspaper establishments producing or publishing one or more newspapers though in different parts of the country as one newspaper establishment for the purpose of fixing the rates of wages. It would not be illegitimate to expect the same standard of employment and conditions of service in several newspaper establishments under the control of any person or body of persons, whether incorporated or not; for an employer to think of employing one

set of persons on higher scales of wages and another set of workers on lower scales of wages would by itself be inequitable, though it would be quite legitimate to expect the difference in scales having regard to the quality of the work required to be done, the conditions of labour in different regions of the country, the standard of living in those regions and other cognate factors.

All these considerations would necessarily have to be borne in mind by the Wage Board in arriving at its decision in regard to the wage structure though the relative importance to be attached to one circumstance or the other may vary in accordance with the conditions in different areas or regions where the newspaper establishments are located.

Re: 8. We now come to the most important ground, viz., that the decision of the Wage Board has not taken into consideration the capacity to pay of any particular newspaper establishment. As we have already seen, the fixing of rates of wages by the Wage Board did not prescribe whether the wages which were to be fixed were minimum wages, fair wages, or living wages and it was left to the discretion of the Wage Board to determine the same. The principles for its guidance were, however, laid down and they prescribed the circumstances which were to be taken into consideration before such determination was made by the Wage Board. One of the essential considerations was the capacity of the industry to pay and that was comprised within the category "the circumstances relating to newspaper industry in different regions of the country". It remains to consider, however, whether the Wage Board really understood this category in that sense and in fact applied its mind to it. At its preliminary meeting held on May 26, 1956, the Board set up a sub-committee to draft a Questionnaire to be issued to the various journals and organisations concerned, with a view to eliciting factual data and other relevant information required for the fixation of wages. The sub-committee was requested to bear in mind the need inter alia for proper classification of the country into different areas on the basis of certain criteria like population, cost of living, etc. This was the only reference to this requirement of section 9(1) and there was no reference therein to the capacity of the industry to pay which we have held was comprised therein. The only question in the Questionnaire as finally framed which had any reference to this criterion was Question No. 7 in Part "A" under the heading "Special Circumstances" and that question was: "Are there in your regions any special conditions in respect of the newspaper industry which affect the fixing of rates of wages of working journalists? If so, specify the conditions and indicate how they affect the question of wages." But here also it is difficult to find that

the capacity of the industry to pay was really sought to be included in these special conditions. The Wage Board no doubt asked for detailed accounts of newspaper establishments and also required information which would help it in the proper evaluation of the nature and quality of work of various categories of working journalists, but the capacity of the industry to pay which was one of the essential considerations was nowhere prominently brought in issue and no information on that point was sought from the various newspaper establishments to whom the Questionnaire was going to be addressed. The answers to question No. 7 as summarized by the Wage Board, no doubt, referred in some cases to the capacity of the industry to pay but that was brought in by the newspaper establishments themselves who answered the question in an incidental manner and could not be said to be prominent in the minds of the parties concerned.

It is pertinent to observe that even before the Press Commission the figures had disclosed that out of 127 newspapers 68 had been running into loss and 59 with profits and there was an overall profit of about 1% on a capital investment of seven crores. The profit and loss accounts and the balance sheets of the various companies owning or controlling newspaper establishments were also submitted before the Wage Board but they had so far as they went a very sorry tale to tell. The profit and loss statements for the year 1954-55, revealed that while 43 of them showed profits, 40 had incurred losses. Though no scientific conclusion could be drawn from this statement it showed beyond doubt that the condition of the newspaper industry as a whole could not be considered satisfactory. Under these circumstances, it was all the more incumbent upon the Wage Board even though it discounted these profit and loss statements as not necessarily reflecting the true financial position of these newspaper establishments, to consider the question of the capacity of the industry to pay with greater vigilance.

There was again another difficulty which faced the Wage Board in that behalf and it was that out of 5,705 newspapers to whom the Questionnaire was addressed only 312 or at best 325 had responded and the Wage Board was in the dark as to what was the position in regard to other newspaper establishments. As a matter of fact, the Chairman in his note dated 30th April, 1957, himself pointed out that the Wage Board had no data before it of all the newspapers and where it had, that was in many cases not satisfactory. This aspect was again emphasised by him in his note when he reiterated that the data available to the Wage Board had not been as complete as it would have wished them to be and, therefore, recommended in the end the establishment of a standing administrative machinery which would collect from all

newspaper establishments in the country on a systematic basis detailed information and data such as those on employment, wage rates and earning, financial condition of papers, figures of circulation, etc., which may be required for the assessment of the effects of the decision of the Wage Board at the time of the review. The Wage Board, in fact, groped in the dark in the absence of sufficient data and information which would enable it to come to a proper conclusion in regard to the wage structure which it was to determine. In the absence of such data and materials the Board was not in a position to work out what would be the impact of its proposals on the capacity of the industry to pay as a whole or even region-wise and the Chairman in his note stated that it was difficult for the Board at that stage to work out with any degree of precision, the economic and other effects of its decision on the newspaper industry as a whole. Even with regard to the impact of these proposals on individual newspaper establishments the Chairman stated that the future of the Indian language newspapers was bright, having regard to increasing literacy and the growth of political consciousness of the reading public, and by rational management there was great scope for increasing the income of newspapers and even though there was no possibility of any adjustment which might satisfy all persons interested, it was hoped that no newspaper would be forced to close down as a result of its decision; but that if there was a good paper and it deserved to exist, the Government and the public would help it to continue. This was again a note of optimism which does not appear to have been justified by any evidence on the record.

Even though the Wage Board classified the newspaper establishments into 5 classes from "A" to "E" on the basis of their gross revenue the proportion of the advertisement revenue to the gross revenue does not appear to have been taken into consideration nor was the essential difference which subsisted between the circulation and the paying capacity of the language newspapers as compared with newspapers in the English language taken into account. If this had been done, the basis of gross revenue which the wage board adopted would have been modified in several respects.

The grouping of the newspapers into chains or multiple units implied that the weaker units in those groups were to be treated as on a par with the stronger units and it was stated that the loss in the weaker units would be more than compensated by the profits in the more prosperous units. The impact of these proposals on groups of newspapers was only defended on principle without taking into consideration the result which they would have on the working of the weaker units. Here also the Chairman expressed the opinion that the Board was conscious

that as a result of its decision, some of the journalists in the weaker units of the same group or chain may get much more than those working in its highest income units. He, however, stated that if the principle was good and scientific, the inevitable result of its application should be judged from the stand-point of Indian Journalism as a whole and not the burden it casts on a particular establishment. It is clear, therefore that this principle which found favour with the Wage Board was sought to be worked out without taking into consideration the burden which it would impose upon the weaker units of a particular newspaper establishment.

The representatives of the employers objected to the fixation of scales of wages on the plea that fixation of rates of wages did not include the fixation of scales of wages. This contention was negatived by the representatives of the employees as also by the Chairman and the Wage Board by its majority decision accepted the position that it could, while fixing the rates of wages also fix the scales of wages. The Press Commission itself had merely suggested a basic minimum wage for the consideration of the parties concerned but had suggested that so far as the scales of wages were concerned they were to be settled by collective bargaining or by adjudication. Even though the Wage Board took upon itself the burden of fixing scales of wages as really comprised within the terms of their reference, it was incumbent upon it to consider what the impact of the scales of wages fixed by it would be on the capacity of the industry to pay. There is nothing on the record to suggest that both as regards the rates of wages and the scales of wages which it determined the wage board ever took into account as to what the impact of its decision would be on the capacity of the industry to pay either as a whole or region-wise.

There is, however, a further difficulty in upholding the decision of the Wage Board in this behalf and it is this that even as regards the fixation of the rates of wages of working journalists the Wage Board does not seem to have taken into account the other provisions of the Act which conferred upon the working journalists the benefits of retrenchment compensation, payment of gratuity, hours of work and leave. These provisions were bound to have their impact on the paying capacity of the newspaper establishments and if these had been borne in mind by the Wage Board it is highly likely that the rates of wages including the scales of wages as finally determined might have been on a lesser scale than what one finds in its decision.

This difficulty becomes all the more formidable when one considers that the working journalists only constituted at best one-fifth of the total staff employed in the various establishments. The rest of the 80%

comprised persons who may otherwise be described as factory workers who would be able to ameliorate their conditions of service by having resort to the machinery under the Industrial Disputes Act. If the conditions of service of the working journalists were to be improved by the Wage Board the other employees of newspaper establishments were bound to be restive and they would certainly, at the very earliest opportunity raise industrial disputes with a view to the betterment of their conditions of service. Even though the Industrial Courts established under the Industrial Disputes Act, 1947 might not give them relief commensurate with the relief which the Wage Board gave to the Working Journalists, there was bound to be an improvement in their conditions of service which the Industrial Court would certainly determine having regard to the benefits which the working journalists enjoyed and this would indeed impose an additional financial burden on the newspaper establishments which would substantially affect their capacity to pay. This consideration also was necessarily to be borne in mind by the Wage Board in arriving at its final decision and one does not find anything on the record which shows that it was actually taken into consideration by the Wage Board.

The retrospective operation of the decision of the Wage Board was also calculated to impose a financial burden on the newspaper establishments. Even though this may be a minor consideration as compared with the other considerations above referred to, it was none the less a circumstance which the Wage Board ought to have considered in arriving at its decision in regard to the fixing of rates of wages.

The financial burden which was imposed by the decision of the Wage Board was very vividly depicted in the statements furnished to us on behalf of the petitioners in the course of the hearing before us. These statements showed that the wage bill of these newspaper establishments was going to be considerably increased, that the retrospective operation of the decision was going to knock off a considerable sum from their reserves and that the burden imposed upon the newspaper establishments by the joint impact of the provisions of the Act in regard to retrenchment compensation, payment of gratuity, hours of work and leave as well as the decision of the Wage Board in regard to the fixing of rates of wages and the scales of wages would be such as would cripple the resources of the newspaper establishments, if not necessarily lead to their complete extinction. The statements also showed what extra burden was imposed upon the newspaper establishments, if they wanted to discharge the working journalists from their employ which burden was all the greater, if perchance, the newspaper establishments,

even though reluctantly came to a decision that it was worth their while to close down their business rather than continue the same with all these financial burdens imposed upon them.

These figures have been given by us in the earlier part of our judgment and we need not repeat the same. The conclusion, however, is inescapable that the decision of the Wage Board imposed a very heavy financial burden on the newspaper establishments, which burden was augmented by the classification on the basis of gross-revenue, fixation of scales of wages, provisions as regards the hours of work and leave, grouping of newspapers into chains or multiple units and retrospective operation given to the decision of the Wage Board as therein mentioned.

If these proposals had been circulated, before being finalised, by the Wage Board to the various newspaper establishments so that these newspaper establishments could, if they so desired, submit their opinions thereupon and their representations, if any, in regard to the same to the Wage Board for its consideration and if the Wage Board had after receiving such opinions and representations from the newspaper establishments concerned finalised its decision, this attack on the ground of the Wage Board not having taken into consideration the capacity of the industry to pay as a whole or region-wise would have lost much of its force. The Wage Board, however, did nothing of the type. Proposals were exchanged between the representatives of the employers and the representatives of the employees. The discussion that the Chairman had with each set of representatives did not bear any fruit and the Chairman himself by way of mediation, as it were, submitted to them his own proposals presumably having regard to the different points of view which had been expressed by both these parties. The decision in regard to the scales of wages, was, as we have seen before, a majority decision which was not endorsed by the representatives of the employers. The proposals of the Chairman also were not acceptable to the representatives of the employers but the representatives of the employees accepted them and they thus became the majority decision of the Wage Board. The ultimate decision of the Chairman on those points does not appear to have been the result of any consideration of the capacity of the industry to pay as a whole or region-wise, but reflects a compromise which he brought about between the diverse views but which also was generally accepted only by the representatives of the employees and not the representatives of the employers. Nowhere can we find in the instant case any genuine consideration of the capacity of the industry to pay either as a whole or region-wise. We are supported in this conclusion by the observations of the Chairman himself in the note which he made simultaneously with the publication of the decision on

30th April, 1957, that it was difficult for the Wage Board at that stage to work out with any degree of precision, the economic and other effects of the decision on the newspaper industry as a whole.

An attempt was made on behalf of the respondents in the course of the hearing before us to shew that by the conversion of the currency into naye pyse and the newspapers charging to the public higher price by reason of such conversion, the income of several newspapers had appreciably increased. These figures were, however, controverted on behalf of the petitioners and it was pointed out that whatever increase in the revenue was brought about by reason of this conversion of price into naye pyse was more than offset by the fall in circulation, ever rising price of news print and the higher commission, etc., which was payable by the newspaper establishments to their commission agents. The figures as worked out need not be described here in detail; but we are satisfied that the conversion of the price into naye pyse had certainly not the effect which was urged and did not add to the paying capacity of the newspaper establishments.

The very fact that the Wage Board thought it necessary to express a pious hope that if there is a good paper and it deserves to exist, the Government and the public will help it to continue, and also desired the interests which it felt had been hit hard by its decision not to pass judgment in haste, but to watch the effects of its decision in actual working with patience for a period of 3 to 5 years, shows that the Wage Board was not sure of its own ground and was publishing its decision merely by way of an experiment. The Chairman urged upon the Government of India the desirability of creating immediately a standing administrative machinery which could also combine in itself the functions of implementing and administering its decision and that of preparing the ground for the review and revision envisaged after 3 to 5 years. This was again a pious hope indulged in by the Wage Board. It was not incumbent on the Government to fulfil that expectation and there was no knowing whether the Government would ever review or revise the decision of the Wage Board at the expiration of such period.

We have carefully examined all the proceedings of the Wage Board and the different tables and statements prepared by them. Neither in the proceedings nor in any of the tables do we see satisfactory evidence to show that the capacity of the industry to pay was examined by the Board in fixing the wage structure. As we have already observed, it was no doubt open to the Board not to attach undue importance to the statements of profit and loss accounts submitted by various newspaper establishments, but, since these statements *prima facie* show that the trade was not making profit it was all the more necessary for the Board

to satisfy itself that the different classes of the newspaper establishments would be able to bear the burden imposed by the wage structure which the Board had decided to fix. Industrial adjudication is familiar with the method which is usually adopted to determine the capacity of the employer to pay the burden sought to be imposed on him. If the industry is divided into different classes it may not be necessary to consider the capacity of each individual unit to pay but it would certainly be necessary to consider the capacity of the respective classes to bear the burden imposed on them. A cross-section of these respective classes may have to be taken for careful examination and all relevant factors may have to be borne in mind in deciding what burden the class considered as a whole can bear. If possible, an attempt can also be made, and is often made, to project the burden of the wage structure into two or three succeeding years and determine how it affects the financial position of the employer. The whole of the record before the Board including the Chairman's note gives no indication at all that an attempt was made by the Board to consider the capacity of the industry to pay in this manner. Indeed, the proceedings show that the demands made by the representatives of the employees and the concessions made by the employers' representatives were taken as rival contentions and the Chairman did his best to arrive at his final decision on the usual basis of give and take. In adopting this course, all the members of the Board seem to have lost sight of the fact that the essential pre-requisite of deciding the wage structure was to consider the capacity of the industry to pay and this, in our opinion, introduces a fatal infirmity in the decision of the Board. If we had been satisfied that the Board had considered this aspect of the matter, we would naturally have been reluctant to accept any challenge to the validity of the decision on the ground that the capacity to pay had not been properly considered. After all, in cases of this kind where special Boards are set up to frame wage structures, this Court would normally refuse to constitute itself into a court of appeal on questions of fact; but, in the present case, an essential condition for the fixation of wage structure has been completely ignored and so there is no escape from the conclusion that the Board has contravened the mandatory requirement of section 9 and in consequence its decision is *ultra vires* the Act itself.

Re: 9. This ground, viz., that the Board had no authority to render a decision which was retrospective in operation is also untenable. The Wage Board certainly had the jurisdiction and authority to pronounce a decision which could be retrospective in effect from the date of its appointment and there was no legal flaw in the Wage Board prescribing that its decision should be retrospective in operation in the manner

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indicated by it. The retrospectivity may have its repercussions on the capacity of the industry to pay we need not say anything more in regard to the same. We have already dealt with it above.

Re: 10. Ground No. 10 talks of the authority of the Wage Board to fix scales of pay for a period of 3 years, subject to review by the Government by appointing another Wage Board at the end of that period. We are not concerned with such fixation of the period for the simple reason that the Board has not in terms done so. The only authority which it had was to fix the rates of wages and submit its decision in respect thereof to the Government. Any pious hope expressed that the decision should be subject to review or revision by the Government by appointment of another Wage Board after the lapse of 3 or 5 years was not a part of its decision and we need not pause to consider the effect of such fixation of the period, if any, because it has in fact not been done.

Re: 11. The last ground talks of the Wage Board being handicapped for want of cost of living index. This ground also cannot avail the petitioners for the simple reason that the decision of the Wage Board itself referred in clause 24 thereof to the all-India cost of living index number published by the Labour Bureau of the Government of India O Base 1944: 100 and fixed the dearness allowance in relation to the same. These statistics were available to the Wage Board and it cannot be said that the Wage Board was in any manner whatever handicapped in that respect.

On a consideration of all the grounds of attack thus levelled against the validity and the binding nature of the decision of the Wage Board, we have, therefore, come to the conclusion that the said decision cannot be sustained and must be set aside.

The petitions will, therefore, be allowed and the petitioners will be entitled to an order declaring that section 5(1)(a)(iii) of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (Act No. 45 of 1955), is *ultra vires* the Constitution of India and that the decision of the Wage Board dated April 30, 1957, is illegal and void.

As regards the costs, in view of the fact that the petitioners have failed in most of their contentions in regard to the constitutionality of the Act, the fairest order would be that each party should bear and pay its own costs of these petitions.

Civil Appeals Nos. 699-703 of 1957.

These Civil Appeals are directed against the decision of the Wage Board and seek to set aside the same as destroying the very existence of the newspaper establishments concerned and infringing their

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fundamental rights. Special leave under article 136 of the Constitution was granted by this Court in respect of each of them, subject to the question of maintainability of the appeals being open to be urged.

These appeals are also covered by the Judgment just delivered by us in petition No. 91 of 1957 & Others, and the appellants would be entitled to a declaration in each one of them that the decision of the Wage Board is *ultra vires* the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (Act No. 43 of 1955), and, therefore, void and inoperative.

In view of the conclusion thus reached, we feel it unnecessary to consider whether the appeals would be maintainable under article 136 of the Constitution. The appellants having substantially succeeded in their respective petitions under article 32 of the Constitution, the question has now become purely academic and we need not spend any time over the same.

The result, therefore, is that there will be no orders in these appeals save that all the parties thereto shall bear and pay their own costs thereof.