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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Reserved on : 22nd May, 2018*
Date of decision : 4th August, 2018

\+ **W.P.(C) 8125/2016 & CM No.3362/2016**
FEDERATION OF OKHLA INDUSTRIAL ASSOCIATION (REGD.) .... Petitioner
versus
LT GOVERNOR OF DELHI AND ANR ..... Respondents

\+ **W.P.(C) 12088/2016 & CM Nos.9316/2017, 10386/2017 & 14678/2017**
APEX CHAMBER OF COMMERCE AND INDUSTRY OF NCT DELHI ..... Petitioner
versus
LT. GOVERNOR OF DELHI & ANR ..... Respondents

\+ **W.P.(C) 2658/2017 & CM No.11560/2017**
DELHI FACTORY OWNERS' FEDERATION .... Petitioner
versus
LT. GOVERNOR OF DELHI & ANR. .... Respondents

\+ **W.P.(C) 3360/2017 & CM No.14703/2017**
AUTOMOBILE TRADERS ASSOCIATION OF DELHI ..... Petitioner
versus
LT GOVERNOR OF DELHI AND ANR ..... Respondents

\+ **W.P.(C) 3385/2017 & CM No.14800/2017**
COLORWHEEL ..... Petitioner
versus
LIEUTENANT GOVERNOR & ANR .... Respondents

\+ **W.P.(C) 3684/2017 & CM No.16236/2017**
SEVEN SEAS HOSPITALITY PVT LTD ..... Petitioner
versus

LT GOVERNER OF DELHI AND ANR ..... Respondents

\+ **W.P.(C) 3792/2017 & CM No.16681/2017**
DMA NURSING HOME AND MEDICAL ESTABLISHMENT FORUM ... Petitioner
versus
LT GOVERNER OF DELHI AND ORS ..... Respondents

\+ **W.P.(C) 3987/2017 & CM No.17543/2017**
MALHOTRA CABLES PVT. LTD ... Petitioner
versus
LT GOVERNER OF DELHI AND ORS ..... Respondents

\+ **W.P.(C) 4007/2017 & CM No.17632/2017**
FEDERATION OF PUBLISHERS & BOOKSELLERS ASSOCIATION IN INDIA & ORS ..... Petitioners
versus
LT. GOVERNOR OF DELHI & ANR ..... Respondents

\+ **W.P.(C) 4080/2017, CM Nos.17912/2017 & 20168/2017**
DELHI VOLUNTARY HOSPITAL FORUM & ANR.
…….Petitioners
versus
LT. GOVERNOR OF DELHI & ANR ..... Respondents

\+ **W.P.(C) 4102/2017 & CM No.17996/2017**
NEW DELHI TRADERS ASSOCIATION ..... Petitioner
versus
LT. GOVERNOR OF DELHI & ANR ..... Respondents

\+ **W.P.(C) 4103/2017 & CM No.17998/2017**
SOUTH EXTENSION TRADERS ASSOCIATION .... Petitioner
versus
LT. GOVERNOR OF DELHI & ANR ..... Respondents

\+ **W.P.(C) 4106/2017 & CM No.18004/2017**
NATIONAL RESTAURANT ASSO. OF INDIA...Petitioner
versus

LT. GOVERNOR OF DELHI & ANR ..... Respondents

\+ **W.P.(C) 4446/2017 & CM No.19413/2017**
FOOTWEAR WHOLESALERS ASSO. (REGD).. Petitioner
versus
LT GOVERNOR OF DELHI AND ANR ..... Respondents

\+ **W.P.(C) 4493/2017 & CM No.19640/2017**
FEDERATION OF DELHI TEXTILE MERCHANTS
..Petitioner
versus
LT GOVERNOR OF NCT OF DELHI & ANR
..... Respondents

\+ **W.P.(C) 4867/2017 & CM No.21093/2017**
METRO CASH AND CARRY INDIA PVT. LTD
...Petitioner
versus
LT. GOVERNOR OF DELHI & ANR .... Respondents

\+ **W.P.(C) 4934/2017 & CM No.21336/2017**
M/S ACE FACILITIES MANAGEMENT
SERVICES & ANR. .....Petitioner
versus
LT GOVERNOR OF DELHI AND ANR .....Respondents

\+ **W.P.(C) 4998/2017& CM No.21608/2017**
DELHI HINDUSTANI MERCANTILE
ASSO.(REGD) .....Petitioner
versus
LT. GOVERNOR OF NCT OF DELHI & ANR
….. Respondents

\+ **W.P.(C) 5013/2017& CM No.21650/2017**
RAJVAIDYA SHITAL PRASAD & SONS ..... Petitioners
versus
LT GOVERNOR OF DELHI AND ANR .... Respondents

\+ **W.P.(C) 5026/2017& CM No.21663/2017**
ASSOCIATION OF GOLD LAON
COMPAINIES INDIA ..... Petitioner

versus

LT GOVERNOR OF DELHI AND ANR .... Respondents

\+ **W.P.(C) 5199/2017& CM No.22137/2017**

ECOM EXPRESS PVT LTD .... Petitioner

versus

LT GOVERNOR OF DELHI AND ANR ..... Respondents

\+ **W.P.(C) 5200/2017& CM No.22139/2017**

INDIAN SPINAL INJURIES CENTRE ..... Petitioner

versus

LT GOVERNOR OF DELHI AND ANR ..... Respondents

\+ **W.P.(C) 5214/2017& CM No.22167/2017**

THOMSON PRESS (INDIA) LTD ..... Petitioner

versus

LT GOVERNOR OF DELHI AND ANR ..... Respondents

\+ **W.P.(C) 5217/2017& CM No.22172/2017**

FLT LT RAJAN DHALL CHARITABLE TRUST & ORS ..... Petitioners

versus

LT GOVERNOR OF DELHI AND ANR .... Respondents

\+ **W.P.(C) 5218/2017& CM No.22173/2017**

CONNER INSTITUTE OF HEALTHCARE AND RESEARCH CENTRE P LTD AND ANR ..... Petitioners

versus

LT GOVERNOR OF DELHI AND ANR ..... Respondents

\+ **W.P.(C) 5753/2017& CM No.23956/2017**

DEEPAK GUPTA MEMORIAL FOUNDATION ..... Petitioner

versus

LT. GOVERNOR OF DELHI & ANR ..... Respondents

\+ **W.P.(C) 5779/2017**

SOCIAL JURIST A CIVIL RIGHTS GROUP ..... Petitioner

versus

GOVT OF NCT OF DELHI ..... Respondent

\+ **W.P.(C) 5933/2017 and CM No.24668/2017**
ARTEMIS MEDICARE SERVICES LIMITED.... Petitioner
versus
GOVT OF NCT OF DELHI ..... Respondent

\+ **W.P.(C) 6078/2017 and CM No.25247/2017**
AIRPORT SERVICE PROVIDERS ASSON .... Petitioner
versus
LT GOVERNOR OF THE NATIONAL CAPITAL TERRITORY OF DELHI & ANR .... Respondents

\+ **W.P.(C) 6155/2017& CM No.25609/2017**
RETAILERS ASSOCIATION OF INDIA ..... Petitioner
versus
LT. GOVERNOR OF DELHI & ANR. .... Respondents

\+ **W.P.(C) 6794/2017& CM No.28326/2017**
TENON FACILITIES MANAGEMENT INDIAPVTLTD ..... Petitioner
versus
LT GOVERNOR OF DELHI AND ANR .... Respondents

\+ **W.P.(C) 6815/2017& CM No.28372/2017**

RARE HOSPITALITY AND SERVICES PVT LTD
... Petitioner
versus
LT GOVERNOR OF DELHI AND ORS ..... Respondents

\+ **W.P.(C) 6841/2017& CM No.28472/2017**
M/S SECURITRANS INDIA PVT LTD ..... Petitioner
versus
LT GOVERNOR OF DELHI AND ANR ..... Respondents

\+ **W.P.(C) 6990/2017& CM No.28997/2017**
WRITER SAFEGUAD PVT. LTD. ..... Petitioner

versus

LIEUTENANT GOVERNOR OF DELHI & ANR

…. Respondents

\+ **W.P.(C) 7012/2017& CM No.29106/2017**

CMS INFO SYSTEMS LIMITED .... Petitioner

versus

LT GOVERNOR OF DELHI AND ANR .... Respondents

\+ **W.P.(C) 7141/2017**

VULCAN EXPRESS PRIVATE LIMITED ..... Petitioner

versus

LT. GOVERNOR OF DELHI & ANR .... Respondents

\+ **W.P.(C) 7760/2017& CM No.32053/2017**

THE LEELA PALACE, NEW DELHI ..... Petitioner

versus

LT. GOVERNOR OF DELHI & ANR .... Respondents

\+ **W.P.(C) 8229/2017& CM No.33833/2017**

JW MARRIOT HOTEL AEROCITY AND ANR . Petitioner

versus

LT. GOVERNOR OF DELHI & ANR .... Respondents

\+ **W.P.(C) 8622/2017& CM No.35424/2017**

JAYPEE VASANT CONTINENTAL ..... Petitioner

versus

LT. GOVERNOR OF DELHI & ANR .... Respondents

\+ **W.P.(C) 9099/2017& CM No.37207/2017**

JONES LANG LASALLE PROPERTY CONSULTANTS (INDIA) PVT. LTD. ..... Petitioner

versus

LT. GOVERNOR OF DELHI & ANR .... Respondents

\+ **W.P.(C) 9187/2017& CM No.37556/2017**

JAYPEE SIDDHARTH ..... Petitioner

versus

LT. GOVERNOR OF DELHI & ANR .... Respondents

\+ **W.P.(C) 9221/2017& CM No.37681/2017**
INDRAPRASTHA MEDICAL CORPORATION LIMITED
..... Petitioner
versus
LT. GOVERNOR OF DELHI & ANR .... Respondents

\+ **W.P.(C) 9446/2017& CM No.38428/2017**
EIH LTD. ..... Petitioner
versus
LT. GOVERNOR OF DELHI & ANR .... Respondents

\+ **W.P.(C) 7495/2017& CM No.30926/2017**
DARCL LOGISTICS LTD. ..... Petitioner
versus
LT. GOVERNOR OF DELHI & ANR ... Respondents

For the petitioners

Mr. Gaurav Bahl, Adv. for petitioners in W.P(C) 8125/2016

Mr. S.K. Dubey and Mr. Rajmangal Kumar, Advs. for the petitioner in W.P (C) nos.12088/2016, 4493/2017, 4998/2017

Mr. Bhuvnesh Sehjal and Mr. Anubhav Bhasin, Advs. in W.P (C) nos.2658/2017, 4446/2017

Mr. Dhruv Mehta, Sr. Adv. with Mr. Vipin Singhania, Adv. for petitioner in W.P (C) no.3360/2017

Mr. Vaibhav Arora, Adv. for the petitioners in W.P (C) no.4007/2017

Mr. Sandeep Vishnu and Mr. Anil Kr. Gupta, Advs. for petitioners in W.P (C) no.4080/2017.

Mr. Ankit Jain, Adv. with Mr. Sarvesh Rai, Adv. for the petitioner in W.P (C) nos.4102/2017, 4103/2017, 4106/2017

Mr. Dhruv Mehta, Sr. Adv. with Mr. Vikas Dutta, Mr. Siddharth Silwal and Ms Priyanka Nayyar, Advs. for the petitioner in W.P (C) no.4867/2017

Mr. Puneet Saini and Mr. Kapil Hans, Advs. for petitioner in W.P.(C)No. 4934/2017.

Mr. Harvinder Singh, Mr. K.K. Mukhija, Mr. Sandeep Sharma, Mr. S.C. Dhingra, Ms. Reeta Yagnik and Ms. Deepti Singh Sodhi, Advs. for petitioners in W.P.(C)Nos.5013/2017, 5026/2017, 5199/2017, 5200/2017, 5214/2017, 5217/2017, 5218/2017 and 5253/2017.

Mr. Neeraj Malhotra Sr. Adv. with Mr. Arijit Mazumdar, Adv. in W.P.(C)Nos.5217/2017, 5218/2017, 5753/2017, 5779/2017 and 25247/2017.

Mr. Ashok Agarwal and Ms. Slomita Rai, Advs. for petitioner in W.P.(C) 5779/2017.

Mr. Rishi Agrawala and Ms. Niyati Kohli, Advs. for petitioner in W.P.(C) 6155/2017.

Mr. Vivek Kishore, Adv. for the petitioner in W.P.(C) 6794/2017.

Ms. Fareha Ahmad Khan, Adv. for petitioner in W.P.(C) 6815/2017

Mr. Amit Seth, Adv. for petitioner in W.P.(C) 6990/2017

Mr. Alok Bhasin and Ms. Poonam Das, Advs. for petitioner in W.P.(C)Nos.6841/2017 and 7012/2017

Mr. Vikram Dhokalia and Mr. Sahil Bakshi, Advs. for petitioner in W.P.(C) 7141/2017.

Mr. Manu Bera, Adv. for petitioner in W.P.(C) 7495/2017.

For the respondents

Mr. Ramesh Singh, Standing Counsel with Mr. Sandeepan Pathak, Adv. for respondents in W.P.(C) 6155/2017
Mr. Sanjay Ghose ASC for GNCTD with Mr. Rishabh Jaitley and Ms. Urvi Mohan, Advs. in W.P (C) nos.12088/2016 , 2658/2017,

3360/2017, 3684/2017, 4080/2017, 4102/2017, 4934/2017, 4998/2017, 5013/2017, 5199/2017, 5200/2017, 5214/2017, 5217/2017, 5218/2017, 5779/2017, 25247/2017, 6794/2017, 6815/2017, 6841/2017, 6990/2017, 7012/2017, 7141/2017, 7495/2017, 7760/2017.

Mr. Santosh Kumar Tripathi, ASC for GNCTD in W.P.(C)Nos.4446/2017, 4867/2017 and 5753/2017

Mr. Devesh Singh, ASC (Civil) GNCTD with Ms. Neelam Kholiya, Adv. for respondent no.1 in W.P.(C) 5026/2017

Mr. Siddharth Dutta, Adv. for respondent in W.P.(C) 5013/2017

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT

GITA MITTAL, ACTING CHIEF JUSTICE

"The hurrier I go, the behinder I get"
-Lewis Caroll

1. This quote, from the classic literary work *Alice in Wonderland* from the year 1865, appropriately manifests the manner in which the hurried actions of the respondents would set back the entire work force of the city.

2. An attempt to constitute a Minimum Wage Advisory Committee by an order dated 12th April, 2016, had already disrupted the course of wage revision once. Alas, even though the revision is sorely needed, the hurried attempt again, *inter alia* failing to comport with binding the statutory requirements, without relevant material and contravening principles of Natural Justice has unfortunately disrupted this course, yet again.

3. This batch of writ petitions, lays a challenge to the constitutionality of the Notification bearing no. ***F-13(16)/MW/1/2008/Lab/ 1859*** dated 15th September, 2016 issued by the Lt. Governor of Delhi in exercise of powers conferred by Section 5(1) of the Minimum Wages Act, 1948 (*hereafter referred to as 'the Act'*). By this notification, the respondents re-constituted the Minimum Wages Advisory Committee for all scheduled employments.

4. These petitions also challenge the constitutional validity of the Notification bearing no. ***F.Addl.LC/Lab/MW/2016*** dated 3rd of March 2017 published in the Official Gazette on 4th March, 2017, again issued by the respondents, in exercise of power conferred by Section 5(2) of the enactment. By this Notification, minimum rates of wages for all classes of workmen/employees in all scheduled employments stand revised *w.e.f.* the date of the notification in the official gazette. The challenge rests, *inter alia,* on the plea of the petitioners that both these notifications are *ultra vires* the provisions of the enactment itself and that the respondents also violated the principles of natural justice in issuance of the notifications.

5. Flt Lt. Rajan Dhall Charitable Trust, a society registered under the provisions Society Registration Act, claims that it has not been established for the purposes of profit and that it is running a hospital by the name of Fortis Flt Lt. Rajan Dhall Hospital in Vasant Kunj, Delhi. This Trust as *petitioner no. 1*, has filed

W.P.(C)No.5217/17. The petitioner nos.2 to 8 in this writ petition are either companies incorporated under the provisions of the Companies Act or societies under the Society Registration Act, all of whom claim that they are either running hospitals or providing medical facilities.

6. All other connected writ petitions lay a similar challenge. As such W.P.(C)No.5217/2017 was directed to be treated as the lead case in this batch of matters.

7. We set down hereunder the headings under which we have considered the matter :

I. ***Statutory provisions*** *(paras 8 to 12)*

II. ***Factual narration*** *(paras 13 to 15)*

III. ***Relevant Notifications under the Minimum Wages Act, 1948*** *(paras 16 to 26)*

IV. ***Challenge to the notification dated 15th September, 2016 by way of W.P.(C) 10146/2016*** *(paras 27 to 29)*

V. ***Proceedings of the Committee appointed under Sec 5 (1) (a) of the Minimum Wages Act, 1948 by notification dated 15th September, 2016*** *(paras 30 to 54)*

VI. ***Petitioners' contentions*** *(paras 55 to 90)*

VII. ***Respondents' contentions*** *(paras 91 to96)*

VIII. ***Scope of interference by the High Courts in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India*** *(paras 97 to 101)*

XIX. ***<u>Impact of irregularities in constitution of Committee under Section 5 of MW Act, procedure followed by it and bindingness of advice tendered by it</u>***
(paras 266 to 295)

XX. ***<u>Objection that no local association of any scheduled employment in Delhi made member of Committee and therefore, the "employers" were given no representation therein at all – if so impact thereof</u>*** *(paras 296 to 327)*

XXI. ***<u>Observance of principles of natural justice was mandatory for exercising power under Section 5(1) of the MW Act, 1948</u>*** *(paras 328 to 364)*

XXII. ***<u>Conclusions</u>***

XXIII. ***<u>Result</u>*** *(paras 365 to 369)*

We now propose to discuss the above issues in *seriatim*.

I. ***<u>Statutory provisions</u>***

8. Before considering the questions pressed before us, it would be useful to set out the provisions of the Minimum Wages Act, 1948 ('*the Act*' hereafter) relevant for the purposes of consideration in these writ petitions. Our attention stands drawn to Sections 2(b),(e),(g), (i) as well as Sections 3, 5, 9, 12 and 27 of the Act. For expediency, we extract the same hereunder:

> *"**2. Interpretation.-***
>
> ***(b)-<u>appropriate Government"</u>*** *means-—*
>
> *(i) in relation to any **<u>scheduled employment</u>** carried on by or **<u>under the authority of the Central Government or a railway administration</u>**, or in*

relation to a mine, oil-field or major port, or any corporation established by [a Central Act], the ***Central Government****, and*

(ii) ***in relation to any other scheduled employment, the State Government****;*

xxx xxx xxx

*(e) "****employer****" means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, and includes, except in sub-section (3) of section 26, -*

(i) in a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person named under [clause (f) of sub- section (1) of section 7 of the Factories Act, 1948 (63 of 1948)], as manager of the factory;

(ii) in any scheduled employment under the control of any Government in India in respect of which minimum rates of wages have been fixed under this Act, the person or authority appointed by such Government for the supervision and control of employees or where no person or authority is so appointed, the head of the department;

(iii) in any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act, the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority;

(iv) in any other case where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person

responsible to the owner for the supervision and control of the employees or for the payment of wages;

xxx *xxx* *xxx*

*(g)'**scheduled employment**'' means an **employment specified in Schedule, or any process or branch of work forming part of such employment**;*

xxx *xxx* *xxx*

*(i) "**employee**" means **any person** who is employed for hire or reward to do **any work, skilled or unskilled, manual or clerical**, in a **scheduled employment** in respect of which minimum rates of wages have been fixed; and includes an out-worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of the Armed Forces of the Union.*

xxx *xxx* *xxx*

***3. Fixing of minimum rates of wages.-** (1) The **appropriate Government shall**, in the manner hereinafter provided,--*

*(a) **fix the minimum rates of wages** payable to **employees** employed in an **employment specified** in Part I or Part II of the **Schedule** and in an employment added to either Part by notification under section 27:*

*Provided that the appropriate Government may, in respect of employees employed in an employment specified in Part II of the Schedule, instead of fixing minimum rates of wages under this clause for the whole State, **fix such***

rates for a part of the State or for any specified class or classes of such employment in the whole State or part thereof;

(b) ***review*** *at* ***such intervals*** *as it* ***may think fit****, such* ***intervals not exceeding five years****, the minimum rates of wages so fixed and* ***revise the minimum rates****, if necessary:*

Provided that where for any reason the appropriate Government has ***not reviewed the minimum rates of wages fixed*** *by it in respect of any scheduled employment within any interval of five years,* ***nothing*** *contained in this clause shall be deemed to* ***prevent it from reviewing the minimum rates after the expiry of the said period of five years and revising them****, if necessary, and* ***until they are so revised the minimum rates in force immediately before the expiry of the said period of five years shall continue in force.***

(1A) Notwithstanding anything contained in sub-section (1), the appropriate Government ***may refrain from fixing*** *minimum rates of wages* ***in respect of any scheduled employment*** *in which there are* ***in the whole State less than one thousand employees engaged in such employment****, but if at any time, the appropriate Government comes to a finding after such inquiry as it may make or cause to be made in this behalf that the number of employees in any scheduled employment in respect of which it has refrained from fixing minimum rates of wages has risen to one thousand or more, it shall fix minimum rates of wages payable to employees in such employment as soon as may be after such finding.*

(2) The appropriate Government ***may fix****,--*

(a) a minimum rate of ***wages for time work*** *(hereinafter referred to as "a minimum time rate");*

(b) a minimum rate of ***wages for piece work*** *(hereinafter referred to as "a minimum piece rate");*

(c) a minimum rate of remuneration to apply in the case of employees employed on piece work for the purpose of ***securing*** *to such employees a minimum rate of wages on a* ***time work basis*** *(hereinafter referred to as "****a guaranteed time rate****");*

(d) a minimum rate (whether ***a time rate or a piece rate****) to* ***apply in substitution*** *for the minimum rate which would otherwise be applicable,* ***in respect of overtime work done*** *by employees (hereinafter referred to as "overtime rate").) a minimum rate of wages for time work (hereinafter referred to as "a minimum time rate");*

(2A) Where in respect of an industrial dispute relating to the rates of wages payable to any of the employees employed in a scheduled employment, any proceeding is pending before a Tribunal or National Tribunal under the Industrial Disputes Act, 1947 (14 of 1947.) or before any like authority under any other law for the time being in force, or an award made by any Tribunal, National Tribunal or such authority is in operation, and a notification fixing or revising the minimum rates of wages in respect of the scheduled employment is issued during the pendency of such proceeding or the operation of the award, then, notwithstanding anything contained in this Act, the minimum rates of wages so fixed or so revised shall not apply to those employees during the period in which the proceeding is pending and the award made therein is in operation or, as the case may be, where the notification is issued during the period of operation of an award, during that period; and where such proceeding or award relates to the rates of wages payable to all the employees in the scheduled employment, no minimum rates of wages shall be fixed or revised in respect of that employment during the said period.

(3) In ***fixing or revising minimum rates of wages*** *under this section,--*

(a) ***different minimum rates of wages may be fixed*** *for—*

(i) ***different scheduled employments****;*

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

(iii) ***adults, adolescents, children and apprentices****;*

(iv) ***different localities****;*

(b) minimum rates of wages may be fixed by any one or more of the ***following wage periods****, namely:--*

(i) by the hour,

(ii) by the day,

(iii) by the month, or

(iv) by such other larger wage-period as may be prescribed; and where such rates are fixed by the day or by the month, ***the manner of calculating wages for a month*** *or for a day, as the case may be, may be indicated:*

Provided that where any wage-periods have been fixed under section 4 of the Payment of Wages Act, 1936 (4 of 1936), minimum wages shall be fixed in accordance therewith.

xxx *xxx* *xxx*

5. Procedure for fixing and revising minimum wages.-

(1) In fixing minimum rates of wages in respect of any scheduled employment for the first time under this Act or in ***revising minimum rates of wages so fixed, the appropriate Government shall either****—*

(a) ***appoint as many committees and sub-committees as it considers necessary*** *to hold* ***enquiries***

and advise *it in respect of such fixation or revision, as the case may be, or*

(b) by notification in the Official Gazette, ***publish its proposals for the information of persons likely to be affected*** *thereby and specify a date, not less than two months from the date of the notification, on which the proposals will be taken into consideration.*

(2) ***After considering the advice of the committee or committees*** *appointed under clause (a) of sub-section (1), or as the case may be,* ***all representations received by it*** *before the date specified in the notification under clause (b) of that sub-section,* ***the appropriate Government shall, by notification*** *in the Official Gazette, fix, or,* ***as the case may be, revise the minimum rates of wages in respect of each scheduled employment****, and unless such notification otherwise provides, it* ***shall come into force on the expiry of three months from the date of its issue****: Provided that where the appropriate Government proposes to revise the minimum rates of wages by the mode specified in* ***clause (b) of sub- section (1), the appropriate Government shall consult the Advisory Board also****."*

xxx *xxx* *xxx*

7. <u>Advisory Board.</u>

For the purpose of ***co-ordinating*** *the work of [****committees and sub-committees appointed under section 5****] and* ***advising*** *the appropriate Government generally in the matter of fixing and revising minimum rates of wages, the appropriate Government shall appoint an Advisory Board.*

xxx *xxx* *xxx*

9. <u>Composition of committees, etc.-</u>

Each of the committees, sub- committees and the Advisory Board shall consist of persons *to be* ***<u>nominated</u>***

by the appropriate Government ***representing employers and employees in the scheduled employments****, who* ***shall be equal in number, and independent persons not exceeding one-third of*** ***its total number of members****; one of such independent persons shall be appointed the* ***Chairman*** *by the appropriate Government.*

xxx *xxx* *xxx*

12. Payment of minimum rates of wages.-

(1) Where in respect of any scheduled employment a notification under section 5 is in force, ***the employer shall pay to every employee*** *engaged in a* ***scheduled employment under him wages at a rate not less than the minimum rate of wages*** *fixed by such notification for that class of employees in that employment without any deductions except as may be authorized within such time and subject to such conditions as may be prescribed.*

(2) Nothing contained in this section shall affect the provisions of the Payment of Wages Act, 1936 (4 of 1936).

xxx *xxx* *xxx*

27. Power of State Government to add to Schedule.-

The ***appropriate Government, after giving by notification*** *in the Official Gazette* ***not less than three months' notice of its intention so to do****, may, by like notification,* ***add to either Part of the Schedule any employment*** *in respect of which it is of opinion that minimum rates of wages should be fixed under this Act, and thereupon the Schedule shall in its application to the State be deemed to be amended accordingly."*

(Emphasis supplied)

9. The writ petitioners have drawn our attention the ***Minimum Wages (Central) Rules, 1950***. Chapter IV in the Rules is entitled *"****Computation of Payment of Wages, Hours of Work and***

Holidays*"*. We may extract Rule 20 therein, which provides guidance as to the mode in which computation of the wages is to be effected. The same reads as follows:

> *"**20. Mode of computation of the cash value of wages** : The **retail prices at the nearest market shall be taken into account** in **computing the cash value of wages paid in kind and of essential commodities supplied at concessional rates**. This computation shall be made in accordance with such directions as may be issued by the Central Government from time to time."*
>
> *(Emphasis by us)*

10. It is manifest from above that the legislature postulates a regular periodic review of minimum wages at intervals which ought not to exceed five years. Section 3 confers the discretion on the appropriate government to *inter alia* fix differential minimum wages premised on different rates and basis having regard to the nature of the scheduled employment, class of work and groupings thereof; age groups and composition of the work force; location of the scheduled employment.

11. Section 5(1) mandates the procedure which has to be followed by the appropriate Government in fixing or revising the minimum wages. Clause (a) of sub-section 1 of Section 5 of the Act empowers the appropriate government to appoint "*as many Committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of fixation/revision of minimum wages*".

12. The constitution of such Committees is provided for in Section 9 of the Act which stipulates that such Committees shall be representative bodies, consisting of persons to be nominated by the appropriate Government "*representing employers and employees in scheduled employment*" who shall be "*equal in number*" and independent persons not exceeding "*one-third of its total number of members*". It further mandates that "*one of such independent members shall be nominated as the Chairman*" of the Committee by the appropriate government. The legislative intent obviously is to ensure a fair representation of all stakeholders to place an independent assessment before the Government for its consideration.

II. Factual narration

13. The facts giving rise to the present writ petition are within a narrow compass and to the extent necessary, are set down hereafter. We also note that there is no dispute to the facts relevant for adjudication of the questions raised herein.

14. By virtue of the impugned notification dated 3rd March 2017, twenty nine employments in the National Capital Territory of Delhi stand notified by the GNCTD as *scheduled employments*.

15. Inasmuch as the challenge rests on legal issues and also having regard to the fact that all the petitioners admit that they are running such industries which are covered under the Schedule to the Minimum Wages Act, 1948 as also the fact that the

Government of NCT of Delhi is the appropriate government, it is not necessary to delve into the individual factual matrix so far as the nature of the business of each of the petitioners is concerned. It is noted however, that the employments are disparate, involving varied skills, need differential qualifications of themselves as also require ensuring diverse facilities to their employees.

III. Relevant Notifications under the Minimum Wages Act, 1948

16. It is apposite to reproduce notification No. S.O 530 dated 6th February, 1967 issued by the Ministry of Home Affairs, Government of India conferring powers on the Administrators of Delhi to exercise powers and functions of the appropriate government in Delhi in the following terms:

> *"MINISTRY OF HOME AFFAIRS*
>
> *New Delhi, the 6th February, 1967.*
>
> *S.O. 530. – In pursuance of clause (1) of article 239 of the Constitution and in partial supersession of the notification of the Government of India in the late Ministry of Labour No. LP. 24(1), dated the 16th March, 1949, and also in supersession of all previous notifications of the said Ministry and of the Ministry of Home Affairs relating to the exercise of powers and discharge of functions in the Union Territory of Delhi under the Minimum Wages Act, 1948 (11 of 1948) (hereinafter referred to as the said Act),* ***the President hereby directs that the Administrator of the Union Territory of Delhi, shall, subject to the control of the President and until further orders****,*

(i) ***exercise the powers and discharge the functions of a State Government in relation to any scheduled employment in the said Union Territory, for which the appropriate government is the State Government in terms of the sub-clause (ii) of clause (b) of section 2 of the said Act,***

(ii) ***discharge of the functions of the Central Government in so far as such functions relate to the fixation, review and revision of minimum rates of wages*** *payable to employees employed in stone breaking or stone crushing operations carried on in any quarry in the said Union Territory, and*

(iii) *exercise the said powers and discharge the functions of the Central Government under the provisions of the said Act other than section 8, 28 and 29, in relation to-*

(a) the employment under the Delhi Municipal Corporation, established by the Delhi Municipal Corporation Act, 1957 (66 of 1957)

(b) the employment under the New Delhi Municipal Committee,

xx established under the Punjab Municipal Act, 1911 (3 of 1911), as in force in the said Union Territory.

[No. F.2/9/66-UTL]"

(Emphasis supplied)

17. The minimum rates of wages were fixed in Delhi vide a notification no. ***F-12(15)/92/MW/Lab/136*** dated 15th February,

1994 in the scheduled employments "*in shops and other establishments covered by the Delhi Shops and Establishments Act, 1954*".

18. We are informed that, minimum rate of wages had been completely revised thereafter in the National Capital Territory of Delhi w.e.f. 1st April, 2011 vide the notification dated 26th July, 2011 pertaining to different classes of scheduled employments.

19. The wages fixed by the above notification of 1994 were revised by the notification bearing no. ***F-12(22)/142/11/ MW/Lab/2040*** dated 26th November, 2011 in scheduled employments to the extent they relate only to *"shops and other establishments covered by the Delhi Shops and Establishments Act, 1954*".

20. By a separate notification bearing no. ***F-12/15/152/11/MW/Lab/2033***, also dated 26th November, 2011, after considering the recommendations of the Minimum Wages Advisory Committee and the advice of the Government, the GNCTD revised the minimum rates of wages in the scheduled employment in "*clubs*" in the National Capital Territory of Delhi which had been earlier fixed vide notification bearing no. ***F-12(15)/92/MW/Lab/136*** dated 15th February, 1994.

21. The respondent no.2 - GNCTD had thereafter, been notifying twice in a year, i.e., in April and October, the revised minimum rates of wages on the basis of "*increase in dearness*

allowance". This increase in the dearness allowance was based on the rise of the consumer price index denoting the rate of inflation of the relevant consumer items.

22. Vide a notification No.***F.13(16)/MW/1/2008/Lab/129*** dated 12th April, 2016, in exercise of powers under Section 5(1)(a) of the Act, the respondents had constituted the following Minimum Wages Committee of 13 members to look into the revision of minimum rate of wages.

"MEMBERS OF THE COMMITTEE

Independent Persons

1. ***Secretary(Labour),*** *Govt. of NCT of Delhi* - *Ex.Officio Chairman*
2. ***Addl.Secretary(Labour)/Addl. Labour Commissioner****, Govt. of NCT of Delhi* - *Ex.Officio Member Chairman*
3. ***Director(Economic & Statistics) and Planning Department****, Govt. of NCT of Delhi* - *Ex. Officio*

Representing Employees

1. *Sh. Krishna Kumar Yadav* - *Representative of* ***Shaarmik Vikas Sanghthan (SVS)***
2. *Sh. Ramendra Kumar* - *Representative of* ***Delhi Shramik Sanghthan (DSS)***
3. *Sh. Subhash Bhatnagar* - *Representative of* ***NMPS****, Delhi*
4. *Sh. Anurag Saxena* - *Representative of* ***CITU****, Delhi*

State Commission

*5. Sh. V.K.S. Gautam - Representative of **AICCTU**, Delhi*

Representing Employers

*1. Mrs. Alka Kaul - Representative of **CII***

*2. Sh. B.P. Pant - Representative of **FICCI***

*3. Addl. General Manager(HR) - Representative of **DMRC***

*4. Engineer in Chief, PWD - Representative of **PWD***

*5. Sh. G.P. Srivastava - Representative of **ASSOCHAM***"

(Emphasis by us)

23. This Committee made a recommendation to the Govt. of NCT of Delhi for revision of wages. The petitioners submit that in August, 2016, the Delhi Cabinet had accepted this proposal of the Labour Department to hike the minimum rate of wages of all employees in the scheduled employments in the NCT of Delhi.

24. However, the Lt. Governor of Delhi did not approve such proposal for increase in the minimum rate of wages inasmuch as the Committee had not been constituted with the approval of the Lt. Governor of Delhi.

25. Consequently, the Government of NCT of Delhi has issued the notification bearing no.F-***13(16)/MW/1/2008/Lab/1859*** dated 15th September, 2016 reconstituted the Committee after taking approval from the Lt. Governor or Delhi, which was duly notified under Section 5(1) of the Act.

26. We extract hereunder the constitution of the Committee in terms of the notification dated 15th September, 2016 which consisted of the following :

"MEMBERS OF THE COMMITTEE

Independent Persons

1.	***Secretary(Labour),*** *Govt. of NCT of Delhi*	*- Ex.Officio Chairman*
2.	***Addl.Secretary(Labour)/Addl. Labour Commissioner****, Govt. of NCT of Delhi*	*- Ex.Officio Member Chairman*
3.	***Director(Economic & Statistics) and Planning Department****, Govt. of NCT of Delhi*	*- Ex. Officio*

Representing Employees

1.	*Sh. Krishna Kumar Yadav*	*- Representative of* ***Shaarmik Vikas Sanghthan (SVS)***
2.	*Sh. Ramendra Kumar*	*- Representative of* ***Delhi Shramik Sanghthan (DSS)***

3. *Sh. Subhash Bhatnagar* - *Representative of **NMPS**, Delhi*

4. *Sh. Anurag Saxena* - *Representative of **CITU**, Delhi State Commission*

5. *Sh. V.K.S. Gautam* - *Representative of **AICCTU**, Delhi*

Representing Employers

1. *Mrs. Alka Kaul* - *Representative of **CII***

2. *Sh. B.P. Pant* - *Representative of **FICCI***

3. *Addl. General Manager(HR)* - *Representative of **DMRC***

4. *Engineer in Chief, PWD* - *Representative of **PWD***

5. *Sh. G.P. Srivastava* - *Representative of **ASSOCHAM***"

(Emphasis by us)

IV. Challenge to the notification dated 15th September, 2016 by way of W.P.(C) 10146/2016

27. It appears that this notification dated 15th September, 2016 was assailed by way of ***W.P.(C)No. 10146/2016*** in this court by the ***Delhi Factory Owners Federation*** which represented employers, small scale; medium scale and large scale manufacturers and employers who claimed that they were not represented in the

category of '*employers' representatives*' in the Committee constituted by the notification dated 15th September, 2016.

28. This writ petition was opposed on behalf of the respondents on the submission that it was premature because the Committee was yet to make a report and that the report would be first considered by the Government of NCT of Delhi and only thereafter its decision sent for approval. The writ petition was disposed of on 2nd November, 2016 with the following directions by the ld. Single Judge :

> *"The Court is of the view that since the process of determination of minimum wages has already been initiated, it would be appropriate not to disturb the process at this stage.* ***However, the petitioner's may be accorded an opportunity to make a representation to the Committee so that their*** *concerns are taken into consideration and specifically addressed. Accordingly, the petitioner* ***may file their representation by 8th November, 2016*** *before the Committee, which shall duly consider the same. Should the Committee so deem it necessary, it* ***may grant an opportunity of hearing to the petitioners****."*
>
> *(Emphasis by us)*

29. In the present batch of writ petitions, the ***Delhi Factory Owners Federation*** is also a petitioner, having filed W.P.(C)No.2658/2017. It is urged by this Federation that in terms of the above directions, it had submitted its representation dated 8th November, 2016 before the Committee constituted vide the Notification dated 15th September, 2016, raising various objections

therein *inter alia* regarding the composition of the Committee as well as the increase in the minimum rates of wages. The Federation also informs us that it had also appeared before the Committee and made oral submissions in terms of its representations.

V. Proceedings of the Committee appointed under Sec 5 (1) (a) of the Minimum Wages Act, 1948 by notification dated 15th September, 2016

30. Mr. Sanjoy Ghose, learned ASC has submitted that the Committee appointed under Section 5(1)(a) of the MW Act 1948, made extensive deliberations in the aforesaid nine meetings before sending its recommendations. This Committee constituted as noted above by the Notification dated 15th September, 2016 is stated to have held its meetings on 23rd September, 2016; 14th October, 2016; 25th October, 2016; 7th November, 2016; 17th November, 2016; 8th December, 2016; 27th December, 2016; 21st January, 2017 and 15th February, 2017.

31. The minutes of these meetings have been placed by Mr. Ghose before us. The first meeting of the Committee, which was an introductory meeting, was held on 23rd September, 2016, wherein a broad discussion regarding the formula and the relevant factors regarding fixation of minimum wages took place. In the second meeting, on 14th October, 2016, the Committee agreed to adopt and be guided by modalities, processes and formula for determination of minimum wages. We are further informed that

two teams were constituted among the committee members from employers' and employees' representatives to undertake a market survey of food items in industrial cluster areas like – *Mangolpuri*, *Wazirpur*, *Narela*, *Naraina*, *Okhla* and *Jhilmil* where workers were located.

32. In the third meeting on 25th October, 2016, the 2731 kilo calories per day as the minimum requirement for a person to perform moderate activity prescribed by the National Institute of Nutrition, Hyderabad, stated to be an autonomous body established by the Indian Council of Medial Research (ICMR), Ministry of Health, Government of India was considered. The said Institute had also prescribed food items which are to be consumed in a day as well as their quantity which yields/provides 2731 kilo calories to the person (ILC – 1957 recommendations). The dicta of the judgment of the Supreme Court reported at ***AIR 1992 SC 504 : 1992 (1) SCC 290***, ***Workmen vs. the Management of Reptakos Brett & Co. Ltd. & Anr.*** was also suggested as the basis for determination of minimum wages.

33. In the deliberations of the Committee, the divergence of views between the representatives was sharp and steep. The members of the Team A and Team B informed that the prices of essential food items prescribed by as aforestated have been obtained from private outlets.

The Additional Labour Commissioner informed that the Committee had also obtained prices of clothing from *Khadi Gram*

Udyog and prices of food items from various private outlets and *Kendriya Bhandar*.

34. The FICCI representatives stated that the price cost of food items from the PDS should form the basis and that the intake of 2731 kilo calories should be considered only for working adult members whereas non-working members of the worker's family and children would require a lesser calorie intake.

This was disputed by CITU representatives.

35. The CII representatives pointed out the inconsistency between the earlier format and the new format; did not agree with the calculation of the minimum wages on the basis of the prescription by the National Institute of Nutrition, Hyderabad; submitted that the market prices which had been obtained, were on the higher side and should be lesser than the present skilled minimum wages. Further information was sought regarding revision of the wages from the year 1994. The CII representatives also informed that they had given the name of the organization which should be called as a special invitee to the deliberations.

36. The ASSOCHAM representative had stated that minimum wages, with a comparative statement of the wage structure of all states especially in Northern India, be examined and compared in order to assess the wage structure in Delhi.

37. The representatives of the employees supported the enhancement

38. The representatives from the Delhi Metro Rail Corporation (DMRC); Public Works Department (PWD) and Director of the Economics and Statistics unfortunately did not give any specific inputs.

39. The fourth meeting of the Minimum Wages Advisory Committee was held on 7th November, 2016. In this meeting, the Chair called upon the members to forward the names of the organization who needed to be invited as special invitee by the Committee. The Additional Labour Commissioner reiterated the payments or yardsticks as well as the price structure as had been obtained from the *Khadi Bhandar*.

The CII representative reiterated the earlier objection; while the FICCI representative pointed out that several social protections in the nature of mid day meals, public distribution system for food, right to education etc. were being provided to the under privileged classes, which should be kept in mind while taking a final decision.

The representatives of the DMRC and the PWD required that the earlier decision should be adhered to and the fair prices of the *Kendriya Bhandar* only should be considered for calculation.

40. The petitioners complain that despite the Chair having called for names of organizations to be invited as special invitees, no other association of employers of the scheduled employments in NCT of Delhi were invited to make submissions before the Committee.

41. So far as compliance with the directions made by this court dated 2nd November, 2016 in *WP(C) No. 10146/2016* is concerned,

Mr. Sanjoy Ghose, ld. ASC has informed this court that in the fifth meeting of the Committee held on the 17th of November, 2016, the representatives of the Delhi Factory Owners Federation were invited. This organization was represented by Shri Sameer Nayyar, Hony. Secretary; Shri Rajan Sharma, Senior Vice President and Shri Dalip Jolly, Executive Committee Members, who were invited to give their views and suggestions. The Committee was informed that this was the oldest apex organization of micro, small and medium enterprises established in the year 1931 and that it represented the interests of the real trade and industry in Delhi.

42. The Delhi Factory Owners Federation (*petitioner in W.P.(C)No.10146/2016*) itself consists of first and second generation entrepreneurs who provided employment and income to large number of workers as well as revenue to the government. This Federation made the following suggestions :

> "(*i) There were 29 scheduled employments for which minimum wages had to be prescribed. The decision of the Committee was going to affect all scheduled employments and therefore, there* ***should be maximum representations from all employers.***
> *(ii) The paying capacity of the employers should be kept in mind while deciding the minimum wages.*
> *(iii) The existing minimum wages in Delhi were already higher than the neighbouring States. It is 86% higher than the Rajasthan minimum wage; 51% higher than those in Uttarakhand; 35% higher than those fixed in U.P. and 25% higher than the minimum wage in Haryana.*
> *(iv) The large number of amenities stood provided by the Delhi Government on subsidized rates, for instance, 20,000 litre of free water every month; rebate on domestic*

consumption of electricity, subsidized ration from Public Distribution System (PDS) shops etc. which factors required to be taken into consideration before arriving at a final decision by the Committee.

(v) The impact of recent demonetization having affected the business adversely.

(vi) Small traders/shopkeepers were unable to pay the existing minimum wages but were still providing employment to several people.

(vii) Upon increase of minimum wages in Delhi, there would be influx of people from neighbouring States seeking employment in Delhi.

(viii) In every six months, dearness allowance is notified by the Government which enhanced the wages further."

(Underlining by us)

43. It is pertinent to note that after the hearing on 17th November, 2016, the Delhi Factory Owners Federation made a request on 21st November, 2016, in writing, for the minutes of the meeting and a reminder thereof on 7th December, 2016 was also sent. Before us, it is complained that no response thereto was received by the Federation.

44. The fifth meeting of the Committee was held on 17th November, 2016 when the Chair called upon the members to put forth the final calculations based on the modalities, processes and formula discussed and finalized for determination of minimum wages in the earlier meeting. The representatives of the CII stated that they wanted to seek a legal opinion on the applicability of the ***Reptakos Brett*** judgment and ILC – 1957 regarding the formula pertaining to fixation of minimum rates of wages. The Secretary – cum – Commissioner (Labour) reiterated that any judgment which

overrode the ***Reptakos Brett*** judgment should be placed for consideration and examination.

45. In the sixth meeting on 8th December, 2016, the Chair called upon the members from the employer and employee representatives to put forth the calculation for determination of minimum wages.

Team A, through the CII representative, tabled the calculations based on lowest rates of various food items from private shops. These calculations based on the ILC – 1957 standards clarified that they were yet to get legal opinion on the ***Reptakos Brett*** judgment.

Team B, comprising of representatives from the employers and the employees, tabled the calculations in respect of food items based on the *Kendriya Bhandar* prices submitting that this is was Government outlet where prices of food items were controlled by the government with consistency of quality and standards essentially required for health of workers.

46. The seventh meeting of the Committee was held on 27th December, 2016 when the Chairperson called upon the members to put forth their views and suggestions on the aforesaid calculations pointing out that the dearness allowance neutralization was only a mathematical exercise to neutralize the market inflation primarily for food components without taking care of inflation on housing, education, entertainment, social commitment, etc.

47. Nothing material took place in the eighth meeting which was held on 21st January, 2017 wherein FICCI informed that it had

obtained an oral opinion of the fact that ***Reptakos Brett*** judgment was not mandatorily required to be adopted in working out the minimum wages.

48. The ninth meeting held on 15th February, 2017 was the last meeting of the Committee when the following calculations were placed before the Committee by the employers as well as workers' representatives :

"Employers:

i)	*Proposed Wages of Unskilled Category*	*Rs. 8,525.25/- per month*
ii)	*Proposed Wages of Semi-Skilled Category*	*Rs. 9,377.78/-per month*
iii)	*Proposed Wages of Skilled Category*	*Rs. 10,315.55/- per month*

Workers Representatives:

i)	*Proposed Wages of Unskilled Category*	*Rs. 16,200.29/- per month*
ii)	*Proposed Wages of Semi-Skilled Category*	*Rs. 17,836.51/-per month*
iii)	*Proposed Wages of Skilled Category*	*Rs. 19,637.99/- per month"*

49. The above tabulations show that there was a wide variation amongst the calculations submitted by the two sets of representatives. Additionally lacunae were pointed out. According

to the respondents, for this reason, the Labour Department of the Govt of NCT of Delhi had stepped in and prescribed the minimum rate of wages before the Minimum Wages Advisory Committee in its meeting on 5th February, 2017. Basing its calculations on ICL – 1957; the ***Reptakos Brett*** judgment; adopting the *Kendriya Bhandar* rates of food items for 2731 kilo calories intake as provided by the National Institute of Nutrition; the rates of clothing from *Khadi Gramudyog*, the Labour Department proposed the following calculations :

By Labour Department, Government of NCT of Delhi

1)	*Proposed Wages of Unskilled Category*	*Rs.13,350.00 /- per month*
2)	*Proposed Wages of Semi-Skilled Category*	*Rs.14,698.00 /- per month*
3)	*Proposed Wages of Skilled Category*	*Rs. 16,182.00/- per month*

50. The FICCI representatives still objected that the employers and the employees as well as Government of Delhi are equal stakeholders; that large amount of revenue for the Government expenditure comes from VAT paid by the traders; that the paying-capacity of the employer must be kept in mind before arriving at any decision. The FICCI representative objected to the *Kendriya Bhandar* rates and stated that the lowest rates from the open market should be taken. Objection was taken to the inclusion of non-vegetarian items in the food basket as well as adding sugar twice.

The ASSOCHAM representative supported the above objection of the CII and the FICCI representative. Varying suggestions were made by the other participants in the meeting.

51. No consensus could be reached between both the parties. The Chairperson put the above proposal of the Labour Department to vote amongst the members. Out of 10 members of the Committee, nine members were present in the meeting. Only six of the members who were present in the meeting agreed to the calculation proposed by the Labour Department while the three member representatives from the employers side did not agree with the calculation. One member representing the trade union was not present in the meeting as he was out of station. The calculations proposed by the Labour Department were recommended to the Government as the majority view of the Minimum Wages Advisory Committee.

52. It is pointed out that the Committee made recommendations only with regard to the three categories of employees i.e. unskilled, semi-skilled and skilled employees based upon a claimed majority of six members approving the calculations made by the Labour Department.

53. The recommendations of the Committee were put up as a Cabinet Note which was approved by the Cabinet of the GNCTD vide its decision No.2466 on 25th February, 2017. The proposal regarding the approval of the minimum wages was submitted and approved by the Lieutenant Governor of Delhi. Thereafter, the impugned notification No. ***F.Addl.LC/Lab.MW/2016/4859*** dated

3rd March, 2017, revising the minimum rate of wages with effect from the date of notification in the Official Gazette, was issued prescribing as follows :

Schedule of Employments	***Category of Workmen / Employees***	***Minimum rates of wages in Rupees***	
		Per month	***Per day***
All Schedule employments	*Unskilled*	*13,350/-*	*513/-*
	Semi-skilled	*14,698/-*	*565/-*
	Skilled	*16,182/-*	*622/-*
	Clerical and supervisory staff		
	Non Matriculate	*14,698/-*	*565/-*
	Matriculate but not Graduate	*16,182/-*	*622/-*
	Graduate and above	*17,604/-*	*677/-*

54. In these circumstances, the impugned notification dated 3rd of March 2017 revising minimum rates of wages under Section 5 came to be issued which was made applicable *w.e.f.* the date of notification as above noted.

VI. Petitioners' contentions

55. The petitioners have challenged the very constitution of the Committee, the procedure adopted by it, as also the final recommendations made by the Committee.

56. It is submitted that the Government of NCT of Delhi had not appointed the committee in terms of the procedure prescribed under Section 5(1)(a) of the Act. The petitioners have complained that the required categories were not represented. It is staunchly complained that the scheduled employments from Delhi were not represented at all. It has been complained that there were no *independent* member in the Committee. The submission is that the Committee was not properly constituted, that in fact the respondents have failed to comport to the mandate of Section 5 of the Minimum Wages Act, 1948, rendering the entire exercise unsustainable. The respondents on the other hand, have strongly defended the constitution of the Committee contending that it was appropriately constituted.

57. It is the petitioners' contention that the respondents have completely violated the statutory provisions so far as constitution of the Committee under Section 9 of the Act is concerned, it is further submitted that process adopted by such illegally constituted committee was completely unfair. The submission therefore, is that so far as recommendations of such a committee are concerned, it would be no answer to say that the result achieved was fair.

58. Before us the petitioners submit that the timing of the respondents to revise the minimum wages was not motivated by any concern for the labour but for the reason that the elections of the three municipal corporations were due and the respondents proposed to notify the revised increased minimum wages in order to influence the voting and the outcome of the elections.

59. Yet another submission has been pressed by Mr. Harvinder Singh, learned counsel for the petitioner in support of the plea that the respondents were moving in a pre-determined manner. It has been pointed out that by the notification dated 15th September, 2016, it had been prescribed that the ***"Committee would be guided by the law laid down under Minimum Wages Act, 1948 and policy laid down by the Government"***.

It is urged that the Government had pre-decided the steep upward revision in the minimum wages, to enable the Government to declare that minimum wages in Delhi would be the highest in the country. Reference is made to several media reports in this regard and public statements made by the Chief Minister of Delhi and the Labour Minister. We note that though, in the oral submissions, this fact is disputed by the respondents, however, it is admitted in the counter affidavit that there are publications to this effect.

60. In this regard, it has also been submitted by Mr. Dhruv Mehta, learned Senior Counsel for the petitioner at length that declared intentions of the Government coupled with the

constitution of the Committee by the respondent no.1 vide the notification dated 15th September, 2016 were completely opposed to not only the spirit, intendment and object of the Act but also to specific statutory provisions.

61. Mr. Harvinder Singh, ld. counsel for the petitioner points out that initially, by the notification No. ***F.13(16)/MW/1/2008/Lab/129*** dated 12th April, 2016, an earlier Minimum Wages Advisory Committee was constituted by the Government of NCT of Delhi. This Committee had already taken a view recommending increase of minimum wages by 50% of the existing scales. This proposal was approved by the Cabinet of Delhi in August, 2016. However, since the notification dated 12th April, 2016 was not approved by the Lt. Governor of Delhi, the Minimum Wages Advisory Committee had to be reconstituted vide the notification No.***F13(16)/MW/1/2008/Lab/1859*** dated 15th September, 2016, approved by the Lt. Governor, on 2nd September, 2016.

62. The submission is that this reconstituted committee was identical to the earlier committee which had already given its mind and was biased in favor of not only increasing the wages but the extent thereof. It is urged that this Committee has also acted in a completely pre-determined manner recommending increase by 37% of the minimum wages over the existing scale.

63. The submission is that it was to obtain a view on the lines of the declared intention of the Government, that representatives of DMRC, PWD - departments of the Government of NCT of Delhi –

were nominated as employer's representative members of the Committee. The constitution of the Committee is stated to be deeply flawed inasmuch as the DMRC is not even a Scheduled employer as it has been held to be a railway.

64. Furthermore, the submission is that the Government of NCT of Delhi is itself actively involved in the Schedule employments; that the officers of the Labour Department of the Government of NCT of Delhi are deeply interested in the working of labour and as such cannot be expected to take an independent view on the issue of fixation of minimum wages. Therefore, the nomination of the Secretary (Labour), Government of NCT of Delhi as the *Ex-Officio* Chairman; Additional Secretary (Labour); Additional Labour Commissioner, GNCT of Delhi as the *Ex-Officio* Secretary; Director (Economics and Statistics) and Planning Department, GNCT of Delhi as member cannot be considered as nominations of *'independent persons'* to the Minimum Wages Advisory Committee as required by the statute.

Mr. Harvinder Singh, learned counsel for the petitioner has submitted that subordinate officers of the Government of NCT of Delhi had again been appointed to the Committee only to toe the line so as to ensure that the object of the declared policy of the Government was achieved and that they were not really independent persons.

65. In this regard our attention has been drawn to the minute of the third meeting of the Committee held on 25th October, 2016.

66. Mr. Dhruv Mehta, learned Senior Counsel as well as Mr. Harvinder Singh, and Mr. S.K. Dubey, learned counsels for the petitioners have also extensively dwelt on the minutes of the ***ninth*** and last meeting of the reconstituted Minimum Wages Advisory Committee which was held on 15th February, 2017. The minutes record the objections taken by the CII, FICCI as well as ASSOCHAM to the calculations.

67. Mr. Mehta has contended that the manner in which the officials of the Labour Department conducted the meetings manifests that they did not conduct themselves as "*independent person*". In this regard, the petitioners emphasize to the failure to join the organization pointed out by the CII and the refusal to undertake the open-market evaluation of the price structure and complete refusal to join local associations of employers of the Schedule employment in the NCT of Delhi enjoined under the Rules was deliberate and establishes that the respondents were proceeding in a pre-determined manner.

68. Strong exception is taken to the fact that it was a proposal made by the Labour Department which was put to vote and forwarded to the Government as recommendations of the Minimum Wages Advisory Committee and not an independent assessment by the Committee.

69. The contention is that the Committee acted in haste without application of mind in making the recommendations to the Government of NCT of Delhi.

70. It is submitted that this haste was motivated by the fact that the elections to the three Municipal Corporations in Delhi were imminent and were expected to be announced by the Election Commission of India any day, which would have led to imposition of the Model Code of Conduct preventing the GNCTD from issuing any notification under Section 5(2) of the Minimum Wages Act after imposition of the Code which coincides with the announcement of the elections.

71. It has been urged that the decision of the Cabinet of the Government of NCT of Delhi based thereon was also mechanical and without application of mind.

72. It has been urged by Mr. Harvinder Singh, learned counsel for the petitioner that the Chairman and the Secretary of the Committee were also present in the meeting of the Cabinet of the Government of NCT of Delhi, which mechanically accepted the recommendation of the committee without application of mind, as is reflected in the Notification dated 3rd March, 2017.

73. It has been contended that in the Minimum Wages Advisory Committee constituted under the Minimum Wages Act by the Delhi Government, prior to the year 2011, for considering and recommending any revision of the minimum rate of wages under the Act, the representatives on behalf of the local employers of the scheduled employments in Delhi such as the *Delhi Mercantile Association*, *New Trade Association* and *PHD Chamber of Commerce and Industry* used to be invited. Objection in this regard was specifically taken by the Delhi Factory Owners

Federation in the hearing on 2nd February 2016, as noted above. However, in the notification dated 15th September, 2016, no local association of any schedule employment in the National Capital Territory of Delhi were made members of the Committee.

74. It is objected that instead, Confederation of India Industry (*CII*); Federation of Indian Chambers of Commerce and Industry (*FICCI*) and Associated Chambers of Commerce and Industry of India (*ASSOCHAM*) who do not have any significant number of employers of schedule employments in Delhi as their members, were nominated. It is contended that as against this, the respondents have appointed five representatives from various trade unions, tilting the decision making power of the committee in their favour.

These bodies are All India Association of Employers of large establishments situated in different parts of India, who represent Indian employers in international forums such as the International Labour Organization (ILO).

75. In the third meeting held on 25th October, 2016, the CII representatives had informed that he had given names of the organizations who should be called by the Committee as a special invitee. Yet in the fourth meeting of 7th November, 2016, this was ignored and in the meeting, the Chairperson wrongly noted in the Minutes that the Chair asked the members to forward the names of the organization but not to be invited as a special invitee by the Committee. The constitution of the Committee was therefore,

vitiated as no local association of employers of the schedule employment in the NCT of Delhi was invited as the member of the Committee to join in the Committee.

76. Mr. Harvinder Singh has urged that clubbing of dissimilar scheduled employments for fixing one minimum rate of wages for all of them would amount to individuous discrimination which is violative of Article 14 of the Constitution.

77. It is argued that while revising minimum wages in 2011, the respondents had issued a separate notification for each schedule employment. The petitioners submit that all the 29 schedule employment have been treated as same without drawing any differences premised on differential condition of service. It is therefore submitted that the notification is *ultra vires* Section 9 of the Act.

78. It is further contended that the notification makes no distinction between the various scheduled employments and does not take into consideration the fact that certain facilities are provided in some of the employments.

79. The petitioners also point out that significantly, in the notifications dated 26th July, 2011, in some of the scheduled employments as clubs, where lodging was provided or where only meals twice a day were provided or where both meals as well as lodging were provided, the minimum rates of wages were required to be suitably and proportionately reduced. The petitioners have painstakingly pointed out that this notification also made a

differential prescription for unskilled, semi-skilled and skilled employees.

80. The petitioners point out that as per the statutory scheme, the appropriate Government has to fix rates differentially with regard to different scheduled employments taking into consideration different classes of work in the same scheduled employments; differences in the abilities and requirements of adults; adolescents; children; differences in the abilities of apprentices and experienced employees. It is submitted that Section 3 of the Act enables even differences in localities (*as the prices of food and other commodities would vary between different localities*) to be factored into prescription of minimum wages or revising them before making a valid recommendation for revision of minimum wages.

81. It is submitted that there was no application of mind in effecting the revision, inasmuch as the respondents have clubbed all scheduled industries irrespective of factors such as nature of industry or its localities in which they were to be applied; the time when they were to be effective; fixation of time rate, price rate, or guaranteed time rate; basic rates of wage; special allowances; economic climate of the locality; the necessity to prevent exploitation of the labour having regard to the absence of organization amongst the workers; general economic condition of the industrial development in the area; adequacy of wages paid and earnings in other comparable employments as well as other relevant matters.

82. Strong exception is taken to adoption of the rate list of the *Khadi Gramudyog* and *Kendriya Bhandar* adopted by the Committee while recommending the revision to the minimum wages. The submission is that the employees had agreed on the rates of nine commodities, yet in their calculations, the labour department has ignored the agreement and taken the rates of five of the commodities on the higher side.

83. The petitioners challenge the neutralization of the dearness allowance in as much as in the impugned notification dated 3rd of March 2017, it is prescribed that even if there is a decline in All India Consumer Price Index (*as a result of which the dearness allowance apparently decreases*), it would not have any impact on the notified minimum rates of wages. Further a clarification stands incorporated regarding the Employees Insurance Act, 1948 and the Employees Provident Fund and Miscellaneous Provisions Act 1952 even though they have no connection with the Minimum Wages Act.

84. The petitioners also submit that by the impugned notification, the respondents have notified minimum wages for '*supervisors'* even though they do not fall under the definition of *'employees'* under Section 2(i) of the Act.

85. A strong challenge is pressed for the reason that the notification fails to take into consideration the paying capacity and the liability with which they would be saddled in the form of

payment of the wages as well as other liabilities such as increased contribution to Provident Fund, etc by the impugned notification.

86. The petitioners have claimed that they are, within their "*limited resources*", paying wages to the employees on rates not less than the minimum wages notified by the GNCTD from time to time and that they do not have the sufficient resources to bear the extra financial burden which would be caused to them in case they are compelled to pay wages to their employees at the revised minimum rates of wages notified by way of the impugned notification dated 3rd of March 2017 issued under Section 5(2) of the Act.

87. Before us, it is vehemently contended by Mr. Anubhav Bhasin, ld. counsel for the Delhi Factory Owners' Federation that, none of the objections urged by the Delhi Factory Owners Federation were considered, let alone, addressed. Even their request for provision of the extant rules which was required to be reviewed as per the notification were never provided to them. The submission is that relevant material placed by the Delhi Factory Owners Federation was given no heed to, by the respondents. There is no reference at all in the minutes as to what transpired in the hearing given to the representatives of the Delhi Factory Owners Federation.

88. The petitioners submit that even before the issuance of the impugned notification dated 3rd March, 2017, the rates of minimum

wages were the highest in Delhi, in comparison to the immediate neighbouring States of Haryana, Uttar Pradesh and Rajasthan.

89. To illustrate this submission, in W.P.(C)No.5217/2017, the petitioners make the following disclosure of the minimum wages in various States and Union Territories as on 19th April, 2016 :

S.No.	***State/ UT***	***Minimum Wages***		
		Un-skilled (Worker)	***Semi-skilled (Worker)***	***Skilled (Worker)***
	STATE			
1.	*Uttar Pradesh*	*7107.64*	*7818.40*	*8757.85*
2.	*Uttarakhand*	*6330.00*	*6616.00*	*8890.00*
3.	*Jammu & Kashmir*	*4500.00*	*5250.00*	*6750.00*
4.	*Assam*	*7200.00*	*8400.00*	*10500.00*
5.	*West Bengal*	*7230.00*	*7954.00*	*8750.00*
6.	*Jharkhand*	*4628.00*	*4827.42*	*5909.54*
7.	*Manipur*	*2919.80*	*3379.22*	*3447.60*
8.	*Meghalaya*	*4420.00*	*4706.00*	*4966.00*
9.	*Mizoram*	*4310.00*	*4729.00*	*5288.00*
10.	*Nagaland*	*2080.00*	*2340.00*	*2600.00*
11.	*Odisha*	*5200.00*	*5720.00*	*6240.00*
12.	*Arunachal Pradesh*	*2340.00*	*2470.00*	*2600.00*
13.	*Bihar*	*5122.00*	*5356.00*	*6526.00*
14.	*Sikkim*	*5720.00*	*6292.00*	*7150.00*
15.	*Tripura*	*4184.00*	*4590.00*	*5133.00*
16.	*Rajasthan*	*5122.00*	*5382.00*	*5642.00*
17.	*Punjab*	*6945.38*	*7725.38*	*8622.38*
18.	*Haryana*	*7600.00*	*7979.92*	*8797.88*
19.	*H.P.*	*4680.00*	*4900.22*	*5828.42*
20.	*Kerala*	*4374.50*	*4447.30*	*4524.52*
21.	*Andhra Pradesh*	*6777.65*	*7997.25*	*9817.50*
22.	*Tamilnadu*	*8541.78*	*8541.78*	*8541.78*
23.	*Telangana*	*8028.02*	*9414.08*	*10697.96*
24.	*Karnataka*	*6518.28*	*6677.32*	*6949.02*
25.	*Gujarat*	*7443.80*	*7651.80*	*7885.80*
26.	*Maharashtra*	*5668.00*	*5768.00*	*5868.00*
27.	*Chhatisgarh*	*5859.88*	*6041.88*	*6301.88*
28.	*Madhya Pradesh*	*6775.00*	*7432.00*	*8810.00*
29.	*Goa*	*7384.00*	*7930.00*	*8710.00*
	U.T.			
1.	*Lakshadweep*	*5200.00*	*5850.00*	*6500.00*
2.	*Andman & Nicobar*	*7332.00*	*7644.00*	*7982.00*
3.	*Daman & Diu*	*6973.20*	*7181.20*	*7389.20*
4.	*Dadar Nagar Haveli*	*6973.20*	*7181.20*	*7389.20*

5.	*Chandigarh*	*8219.00*	*8372.00*	*8669.96*
6.	*Pondicherry*	*4160.00*	*0.00*	*0.00*

90. The petitioners thus challenge the validity of the actions of the respondents; the procedure adopted, the consideration and recommendations of the Committee as well as the notifications on grounds of being violative of the rights of the petitioners under Part III of the Constitution of India; contrary to statutory provisions and violative of principles of natural justice.

VII. Respondents' contentions

91. On the other hand, appearing for the respondents, Mr. Ramesh Singh, Standing Counsel and Mr. Sanjoy Ghose, Additional Standing Counsel for GNCTD have staunchly defended the constitution of the Committee, the procedure adopted by it and its recommendations. It is urged that the consideration of the Cabinet and the resultant notification also cannot be faulted. Extensive submissions have been made on the impermissibility to go into the issues of constitution of a Committee under Section 5 of Minimum Wages Act as well as its recommendations. Placing reliance on judicial precedents on the issue, which we consider in detail when we discuss these submissions, it is submitted that the recommendations of such Committee are not binding on the appropriate Government and hence not justifiable.

92. It has been urged at great length by Mr. Sanjoy Ghose, ld. Additional Standing Counsel for GNCTD that during the meetings of the Committee, detailed discussions and deliberations were held

regarding the modalities of the revision of the rates of minimum wages taking into account important legal parameters to be taken into consideration, as enunciated by the judgment of the Supreme Court in the case of ***(1992) SCC 1 290, Workmen Represented by Secretary v. Management of Reptakos Brett & Co. & Anr.*** as well as the calorie intake value of 2713 kilo calories for moderate activities as prescribed by the National Institute of Nutrition, Hyderabad. Mr. Ghose would submit that a detailed examination of the prices of various food and clothing items stands undertaken.

93. Mr. Sanjoy Ghose, ld. ASC for GNCTD would point out that representatives of the trade unions had calculated minimum wages of Rs.16,200.29 per month for the unskilled category whereas the representatives of the employers calculated minimum wages of Rs.8,525.25 per month for the same category, taking into consideration minimum rates of food items from private shopkeepers/open market. It is submitted that the minimum wages, as suggested by the employers representatives, were lesser than even the existing rate of minimum wages i.e. Rs.9,724 per month for the same category of employees and could not be accepted.

94. It is further contended by Mr. Sanjoy Ghose, ld. ASC for the GNCTD that in view of the huge divergence of opinion between the representatives of the employers and employees on the Committee, the proposal of calculation of the revision of minimum wages was put to vote.

95. Mr. Ghose points out that the Committee, which comprised of 13 members, included three independent persons who did not exercise voting rights as their role was primarily that of '*facilitators*'. This left the remainder of ten members of the Committee (*five each on the employers and employees sides*), of which nine members were present in the meeting (*one member being out of station*). Out of these, six members agreed with the calculation of the department, while three members who were the employers' representatives, did not agree with the calculations.

96. Great emphasis is placed by Mr. Ghose ld. Additional Standing Counsel on the fact that the minimum wages had not been revised in Delhi for a considerable period and that it was absolutely imperative to undertake the exercise to ensure bare minimum to the workers in Delhi especially keeping in view the prevalent living conditions in the city. We are strongly called upon to reject the challenge in these writ petitions.

VIII. Scope of interference by the High Courts in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India

97. Before we examine the matter on merits, we deem it essential to first and foremost to consider the objection of the respondents with regard to maintainability of these writ petitions. It has been contended that the challenge by these petitioners is beyond the scope of permissible judicial review. In this regard, we may usefully refer to the judicial pronouncement in ***(2008) 5 SCC 428, Manipal Academy of Higher Education v. Provident Fund***

Commissioner. So far as scope of interference in a notification fixing the minimum wage is concerned, in paras 14 and 15 of the judgment, the court held as follows :

> *"14. A **notification fixing minimum wages**, in a country like ours where wages are already minimal **should not be interfered with under Article 226 except on the most substantial of grounds. The Act is a social welfare legislation undertaken to further the Directive Principles of State Policy and action taken pursuant to it cannot be struck down on mere technicalities such as some irregularities in constitution of, or in procedure followed by, the committee** appointed under Sections 5(1)(a) and 9. In **Sree Kalyanarama Co. Mine v. Government of India (1980) 56 FJR 79**, the minimum wages notification was impugned, inter alia, on the ground that the increase in the minimum wages fixed by that notification as compared to the earlier one was disproportionate and highly unreasonable. Rejecting that plea, a **Division Bench of this Court** observed:*
>
> > *"...It is **not competent for this Court to go into and say as to what is the minimum wages vis-a-vis a particular industry or for that matter, vis-a-vis a particular category of employees**. It is well-settled that it is **perfectly competent** for the **concerned authorities to fix the minimum wage if it is in compliance with statutory requirements**."*
>
> *15. The **fixation of minimum rates of wages** in respect of any Scheduled employment by the appropriate Government is an **administrative act which is final and not subject to judicial review on the question of the quantum of wages fixed on humanitarian ground. The notification fixing the minimum wages can be interfered by the Court only where the fixation of minimum wages by the appropriate Government is ultra vires the Act**.*
>
> *(Emphasis by us)*

98. It has been emphasized therefore, that the Minimum Wages Act, 1948 is a social welfare legislation undertaken to further the Directive Principles of State Policy. Any fixation/revision of minimum wages thereunder cannot be struck down on mere "*technicalities*" such as "*some irregularities"* in constitution of or in the procedure followed by the Committee. The same can be interfered with only where the fixation of minimum wages is *"ultra vires"* the Act.

99. The contours of the jurisdiction of the High Court under Article 226 of the Constitution of India to interfere with an exercise of the appropriate Government to fix revise minimum wages under the Minimum Wages Act, 1948 was also opined upon by the Supreme Court in the judgment reported at ***(1985) 3 SCC 594 Ministry of Labour and Rehabilitation and Anr. vs. Tiffin's Barytes Asbestos and Paints Limited & Anr***. in the following terms :

> *"3. .... **We also wish to emphasise that notifications fixing minimum wages are not to be lightly interfered with under Article 226 of the Constitution on the ground of some irregularities in the constitution of the committee or in the procedure adopted by the committee. It must be remembered that the committee acts only as a recommendatory body and the final notification fixing minimum wages has to be made by the Government. A notification fixing minimum wages, in a country where wages are already minimal should not be interfered with under Article 226 of the Constitution except on the most substantial of grounds. The legislation is a social welfare legislation undertaken to further the Directive Principles***

<u>of State Policy and action taken pursuant to it cannot be struck down on mere technicalities</u>.

(Emphasis by us)

100. The Supreme Court has therefore, fixed a high threshold for a successful challenge that it must rest on "*the most substantial grounds*". The spirit, intendment and laudatory object of the Minimum Wages Act, 1948 as a social welfare legislation enabling fixation of minimum wages for the workmen, a first step to carry out the directive principles of State policy under Article 43 of the Constitution of India, to prevent exploitation of labour must be reinforced and action taken thereunder cannot be highly interfered with or displaced.

101. In our present consideration, we are bound by these well established principles reinforced by binding judicial precedents.

IX. <u>Minimum Wages Act, 1948, the social welfare legislation – court should adopt the beneficent rule of construction</u>

102. It has been urged by Mr Sanjay Ghose, ld. Additional Standing Counsel at length that Minimum Wages Act, 1948 is a social welfare legislation and that, it is well settled that the court should adopt the beneficial rule of construction and uphold the notification on such construction.

103. It has been urged by Mr. Dhruv Mehta that the statutory provisions have to be strictly followed. It is contended that there can be no beneficial construction contrary to the specific words in

the statutory provision and such construction can be adopted only when the statute is obscure and there are two methods of construction.

104. Mr. Dhruv Mehta, ld Senior Counsel, has placed reliance on the judgment of the Supreme Court reported at ***(1984) 4 SCC 356, Jeewan Lal Ltd. and Ors v. Appellate Authority***. In this case, the question as to whether the words *"fifteen days' wages"* occurring in section 4(2) of the Payment of Gratuity Act 1972 in the case of monthly rated employees, would only mean half of the monthly wages i.e. wages which they would have earned in a consecutive period of 15 days or in 13 working days. Having regard to the nature of the legislation, it was emphasized that the court should adopt a beneficial rule of construction in the following terms :

> ***"11.*** *In construing a social welfare legislation, the court should adopt a* ***beneficent rule of construction****; and if a* ***section is capable of two constructions****, that* ***construction should be preferred which fulfils the policy of the Act, and is more beneficial to the persons in whose interest the Act has been passed****. When, however, the language is plain and unambiguous, the Court* ***must give effect to it whatever may be the consequence,*** *for, in that case, the words of the statute speak the intention of the Legislature. When the language is explicit, its consequences are for the Legislature and not for the courts to consider. The argument of inconvenience and hardship is a dangerous one and is only admissible in construction where the meaning of the statute is obscure and there are two methods of construction. In their anxiety to advance beneficent purpose of legislation, the courts must not yield to the temptation of seeking ambiguity when there is none."*
>
> *(Emphasis by us)*

105. On this very issue Mr. Harvinder Singh has placed reliance on a pronouncement of Supreme Court reported at ***(2008) 5 SCC 428, Manipal Academy of Higher Education v. Provident Fund Commissioner*** wherein the court was concerned with the question as to whether the amount received by encashing the earned leave is a part of *"basic wage"* under Section 2(b) of the Employees' Provident Funds and Miscellaneous Provisions Act 1952 requiring *pro rata* employers contributions. In this pronouncement, the Supreme Court has reiterated the well-settled principle that even though the statute in question was a beneficial one, the concept of beneficial interpretation of a legislation becomes relevant only when two views are possible.

106. So far as the Minimum Wages Act, 1948 is concerned, its provisions are clear and unambiguous, and the stipulations are specific. Even the object and intendment of the enactment is clear. Therefore, the applicability of the beneficent rule of interpretation is completely unnecessary.

X. Fixation/revision of minimum wages – object thereof - financial capacity of and hardship to employer – relevance?

107. Before us, it is contended that the revision of the minimum wage is so steep that the employers would be unable to bear the resultant financial burden and hardship therefrom. It has been submitted that this tantamounted to being an unreasonable interference with the rights of the employer under Article 19(1)(g)

of the Constitution and was *ipso facto* reason enough to strike down the impugned notification.

108. It is also pointed out to us that some of these scheduled employments are extremely backward, so much so, that if compelled to comply with the impugned notifications, many of these employments would have to close their business or shift to neighboring states where minimum wages are substantially lower.

109. The submission therefore is that as a result the very notification issued for the benefit of the workers would in fact adversely impact those employees who would be rendered unemployed.

110. It is also the submission of the petitioners that as a consequence of such shifting of the industry, the Government of NCT of Delhi would lose valuable revenue while consumers will be compelled to pay higher prices of goods as the increase in minimum wages would have to be passed to them.

111. This objection stands considered by the Supreme Court as back in the year 1955 in ***AIR 1955 SC 33 Bijoy Cotton Mills Ltd & Others v. State of Ajmer***. It was contended that the restrictions put by the Act were altogether unreasonable and even oppressive with regard to one class of employers, who for purely economic reasons, were not able to pay the minimum wages but who had no intention whatsoever to exploit the labour at all. On these arguments, it was

urged that the provisions of the Act had no reasonable relation to the object which it sought to achieve.

112. The object of the Act was considered by the court in para 4 of the judgment in the following terms :

> *"4. It can scarcely be disputed that* ***securing of living wages to labourers which ensure not only bare physical subsistence but also the maintenance of health and decency, is conducive to the general interest of the public****. This is one of the Directive Principles of State Policy embodied in Article 43 of our Constitution.* ***It is well known that in 1928 there was a Minimum Wages Fixing Machinery Convention held at Geneva*** *and the resolutions passed in that convention were embodied in the* ***International Labour Code. The Minimum Wages Act is said to have been passed with a view to give effect to these resolutions*** *[Vide SI Est etc. v. State of Madras, (1954) 1 MLJ 518 at page 521] .*
>
> ***If the labourers are to be secured in the enjoyment of minimum wages and they are to be protected against exploitation by their employers, it is absolutely necessary that restraints should be imposed upon their freedom of contract and such restrictions cannot in any sense be said to be unreasonable. On the other hand, the employers cannot be heard to complain if they are compelled to pay minimum wages to their labourers even though the labourers, on account of their poverty and helplessness are willing to work on lesser wages."***
>
> *(Emphasis by us)*

113. The Supreme Court thereafter repelled the challenged premised on financial hardship of the employers holding as follows:

> "*5.* ***We could not really appreciate the argument of Mr Seervai that the provisions of the Act are bound to affect harshly and even oppressively a particular class of employers who for purely economic reasons are unable to pay the minimum wages*** *fixed by the authorities but have absolutely no dishonest intention of exploiting their labourers.* ***If it is in the interest of the general public that the labourers should be secured adequate living wages, the intentions of the employers whether good or bad are really irrelevant. Individual employers might find it difficult to carry on the business on the basis of the minimum wages fixed under the Act but this must be due entirely to the economic conditions of these particular employers. That cannot be a reason for the striking down the law itself as unreasonable****."*
>
> *(Emphasis by us)*

The Supreme Court thus affirmatively rejected the argument based on the employers' inability to meet the burden of the minimum wage rates.

114. We find that in ***Bijoy Cotton Mills***, the Supreme Court also clearly declared that the labourers' willingness to work on lesser wages on account of their poverty and helplessness cannot impact the liability to pay the minimum wages. Thus, even the willingness of employees to work at wages below minimum wages cannot absolve the liability and responsibility of employers to pay minimum wages.

115. These very submissions were placed before the Constitution Bench of the Supreme Court in the judgment reported at ***AIR 1962 SC 12 Unichoyi & Ors. vs. State of Kerala.*** The Supreme Court reiterated its earlier decision in the judgments reported at *AIR 1955*

SC 25 Edward Mills Co. Limited vs. State of Ajmer, and *AIR 1955 SC 33, Bijoy Cotton Mills Limited & Ors. vs. State of Ajmer* unequivocally declaring that in fixing the minimum wage rate as contemplated by the Minimum Wages Act, the hardship caused to the individual employers or their inability to meet the burden has no relevance.

116. In this case (***Unichoyi***), the Government of Kerala had exercised its power under Section 5(1)(a) of the Minimum Wages Act, 1948 and on 14th August, 1957, nominated eight persons to constitute a committee under Section 9 of the Act to hold the inquiry to advise the government in fixing the minimum wage rate in respect of employment in the tile industry. After considering the report submitted only on 30th March, 1958, the Government of Kerala issued a notification on 12th May, 1958 prescribing the minimum rate of wages specified in the schedule annexed thereto which were to come into effect from 26th May, 1958.

Nine petitioners representing tile factories challenged the validity of the notification contending that the minimum wage rate fixed was much above the level of what may be properly regarded as minimum wage; that what in effect was fixed was in the nature of fair wages and therefore, the employer's capacity to bear the additional burden should have been considered before the impugned wage rate were prescribed as the burden imposed by the notification were beyond the financial capacity of the industry in general and their individual capacity in particular.

117. The statute was also challenged on the ground that it did not define what minimum wage is to comprise of or to comprehend and that it arbitrarily confers authority on the appropriate Governments to impose unreasonable restrictions on the employers and was violative of Article 19(1)(g) of the Constitution; it does not lay down any reasonable procedure in the imposition of restrictions by fixation of minimum wage and so authorizes any procedure to be adopted which may even be violative of the principles of natural justice; the Act was discriminatory in effect as it submits some industries to an arbitrary procedure in the matter of fixation of minimum wages and leaves other industries to the more orderly and regulated procedure under the Industrial Disputes Act, 1947. The notification was impugned on these very grounds as well.

118. The Supreme Court considered the constitution of the Committee and the procedure adopted by it in para 5 of the judgment in ***Unichoyi*** and also the basis for the recommendations by the committee in para 6. It was noted in para 7 that the Committee has accepted the observation of the Fair Wages Committee that the minimum wage "*must provide not merely for the bare subsistence of life but for the preservation of the efficiency of the workers*". The court noted that the Committee had examined the food requirements of the employee on the basis of three consumption units recognised in *Dr Aykroyd's* formula and then adopted the assessment made by the Planning Commission in

regard to the requirements of the employees in cotton textiles; it took into account the requirement of housing and held that the additional requirements of workers for fuel, lighting and additional miscellaneous items of expenditure should generally be fixed at 20% of the total wage in cases where the actual percentage has not been found out by a family budget enquiry.

119. In para 11 of ***Unichoyi,*** the Supreme Court concluded as follows :

> *"11. .... It would, thus, be seen* ***that these two decisions have firmly established the validity of the Act, and there can no longer be any doubt that in fixing the minimum wage rates as contemplated by the Act the hardship caused to individual employers or their inability to meet the burden has no relevance****. ...."*
>
> *(Emphasis by us)*

120. In support of the submission on behalf of the petitioners that capacity of the employer must be considered, reliance stands also placed on the pronouncement reported at ***1959 SCR 12*** : ***AIR 1958 SC 57), Express Newspaper (Private) Limited vs. Union of India***. This case was concerned with the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955, Section 9 whereof required that in fixing rates of wages in respect of working journalists, the Board had to 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 circumstance which the Board may deem relevant.

The specific contention that the capacity of the employer to bear the burden of the wage structure must be considered was rejected

121. In para 15 of the pronouncement in ***Unichoyi***, we find that the court discussed the facts of the judgment rendered by *Bhagwati, J.* in ***Express Newspaper,*** and held that the minimum wages has to be higher than the bare subsistence observing as follows :

> *"15. In the course of his judgment Bhagwati, J., who spoke for the Court, has elaborately considered several aspects of the concept of wage structure including the concept of minimum wage. The conclusion of the Fair Wage Committee as to the content of the minimum wage has been cited with approval (p. 83). Then a distinction has been drawn between a bare subsistence or minimum wage and a statutory minimum wage, and it is observed that the* ***statutory minimum wage 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*** *(p. 84). This observation is followed by a discussion about the concept of fair wage; and in dealing with the said topic, the Minimum Wages Act has also been referred to and it is stated that the Act was intended 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 as contemplated by Section 3(3). Then it is stated 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. Mr Nambiar contends that the last part of the observation refers to the minimum wage prescribed by the Act and it requires that before prescribing the said wage the capacity of the industry must be considered. We do not think that this argument is well founded. It would be noticed that in considering the distinction drawn between the minimum wage fixed by industrial adjudication and the minimum wage prescribed by a statute which is called statutory minimum, it has been made clear that the latter can be higher than the bare subsistence or minimum wage and as such is different in kind from the industrial minimum wage. We do not think that the observation in question was intended to lay down the principle that whereas a minimum wage can be laid down by an industrial adjudication without reference to an employer's capacity to pay the same, it cannot be fixed by a statute without considering the employer's capacity to pay. Such a conclusion would be plainly illogical and unreasonable. The observations on which Mr. Nambiar relies do not support the assumption made by him and were not intended to lay down any such rule. Cases are not unknown where statutes prescribe a minimum and it is plain from the relevant statutory provisions themselves that the minimum thus prescribed, is not the economic or industrial minimum but contains several components which take the statutorily prescribed minimum near the level of the fair wage, and when that is the effect of the statutory provision capacity to pay, may no doubt have to be considered. It was a statutory wage structure of this kind with which the Court was dealing in the case of Express Newspapers (Private) Ltd. [(1959) SCR 12] because Section 9 authorised the imposition of a wage structure very much above the level of the minimum wage and it is obvious that the observations made in the

judgment cannot, and should not be divorced from the context of the provisions with respect to which it was pronounced. ***Therefore, we feel no hesitation in rejecting the argument that because the Act prescribes minimum wage rates, it is necessary that the capacity of the employer to bear the burden of the said wage structure must be considered. The attack against the validity of the notification made on this ground must therefore fail."***

(Emphasis supplied)

122. In ***Unichoyi's*** case also, the court considered the policy of the enactment and rejected the permissibility of payment of wages lower than minimum wages because the employees consented to receive a lower wage in para 12 of the judgment in the following terms :

"12. We have already seen what ***the Act purports to achieve is to prevent exploitation of labour and for that purpose authorises the appropriate Government to take steps to proscribe minimum rates of wages*** *in the scheduled industries. In an* ***under developed country which faces the problem of unemployment on a very large scale, it is not unlikely that labour may offer to work even on starvation wages. The policy of the Act is to prevent the employment of such sweated labour in the interest of general public and so in prescribing the minimum wage rates, the capacity of the employer, need not be considered****. What is being prescribed is minimum wage rates which a welfare state assumes every employer must pay before he employs labour. This principle is not disputed (Vide: Crown Aluminium Works v. Workmen [(1958) SCR 651]."*

(Emphasis supplied)

123. The principle that the financial capacity of the employer does not enter into the scale in fixation of the bare minimum wages was also rejected by the Supreme Court in the judgment reported at (***1974) 3 SCC 318, Woolcombers of India Limited vs. Woolcombers Union & Anr***., the relevant portion whereof reads as follows :

> *"9. ....* ***We have already pointed out that the referring order of the West Bengal Government did not ask the Tribunal to fix the bare minimum wage. It is also necessary to point out at this stage that apart from the aforesaid passage in the award there is no reference at any other place therein that the bare minimum wage was being granted to the workmen. <u>The financial capacity of an employer does not enter into the scale in the fixation of a bare minimum wage. But in fixing the basic wages the Tribunal has admittedly considered the financial capacity of the Woolcombers.</u>"***
>
> *(Emphasis by us)*

124. It is noteworthy that the judgment of the Supreme Court reported at ***AIR 1992 SC 504 : 1992 (1) SCC 290***, ***Workmen vs. the Management of Reptakos Brett & Co. Ltd. & Anr.*** reiterates the same extremely important principle. It also considered the question as to whether the management can revise the wage structure to the prejudice to the workmen in a case where due to financial stringency the employer was unable to bear the burden of an '*existing wage*' as distinguished from the '*minimum wage*'. On this issue, in para 28 of the judgment, the Supreme Court held as follows :

> *"28. The ratio which emerges from the judgments of this Court is that the management can revise the wage structure to the prejudice of the workmen in a case where due to financial stringency it is unable to bear the burden of the existing wage.* ***But in an industry or employment where the wage structure is at the level of minimum wage, no such revision at all, is permissible not even on the ground of financial stringency****. It is, therefore, for the management which is seeking restructuring of DA scheme to the disadvantage of the workmen to prove to the satisfaction of the tribunal that the wage structure in the industry concerned is well above minimum level and the management is financially not in a position to bear the burden of the existing wage structure."*
>
> *(Underlining by us)*

Therefore, it is open to the management to revise the wage structure to the prejudice to the workmen only if the existing wage structure which is above the minimum level and the management is financially not in a position to bear this burden.

125. In ***2003 Lab IC 1326, Andhra Pradesh Hotel Association, Hyderabad v. Government of Andhra Pradesh*** also, the court repelled the contention that the workers were willing to work at less than the minimum wages :

> *"10. .... The* ***employers cannot be heard to complain if they are compelled to pay minimum wages, even though the labourers, on account of their poverty and helplessness or disabilities, are willing to work on lesser wages.*** *According to the Universal Declaration of Human Rights everyone as a member of society has the right to social security and is entitled to realization, through national efforts and international cooperation and in accordance with the organization and resources of*

each State, of ***economic, social and cultural rights indispensable for one's dignity and the free development of one's personality****. Likewise everyone has the* ***right to a standard of living, adequate for the health and well-being of oneself, including food, clothing, housing and medical care and necessary social services*** *and the* ***right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood or circumstances beyond one's control****."*

(Emphasis by us)

126. It is therefore, well settled that the purport and object of the Act in fixing the minimum wage rate is clearly to prevent exploitation of labour. The hardship caused to individual employers or their inability to meet the burden of minimum wages or its upward revision, has no relevance. The minimum wages which are prescribed "*provide not merely for the bare subsistence of life but for the preservation of the efficiency of the workers*".

XI. Norms for fixation of 'minimum wages'

127. Before we undertake an examination of the grounds of challenge urged by the petitioners, it would be useful to briefly examine the principles on which fixation/revision of minimum wages must rest.

128. We find that wage structures consist of three categories : (i) *minimum wage*, (ii) *fair wage* and (iii) *living wage*. So what constitutes these three and what is the differentiation between them?

129. It appears that the Govt. of India had constituted a Fair Wages Committee in the year 1949, which had submitted a Report defining these three categories of wages. This Fair Wage Committee Report has been broadly approved by the Supreme Court in the judgment reported at ***1959 1 SCR 12*** : ***AIR 1958 SC 578 Express Newspaper (Private) Limited vs. Union of India***.

130. Thereafter in the judgment reported at ***1962 SC 12, Unichoyi & Ors. vs. State of Kerala,*** the court also considered the question as to what would be the minimum component of minimum wages in the context of the Act in para 13 in the following terms :

> *"13.* ***It is, therefore, necessary to consider what are the components of a minimum wage in the context of the Act****. The evidence led before the Committee on Fair Wages showed that some witnesses were inclined to take the view that the minimum wage is that wage which is essential to cover the bare physical needs of a worker and his family, whereas the overwhelming majority of witnesses agreed that a minimum wage should also provide for some other essential requirements such as a minimum of education, medical facilities and other amenities.* ***The Committee came to the conclusion that a minimum wage must provide not merely for the bare subsistence of life but for the preservation of the efficiency of the worker****, and so it* ***must also provide for some measure of education, medical requirements and amenities.*** ***The concept about the components of the minimum wage thus enunciated by the Committee have been generally accepted by industrial adjudication*** *in this country. Sometimes the minimum wage is described as a* ***bare minimum wage*** *in order to* ***distinguish*** *it from the wage structure which is '****subsistence plus'*** *or* ***fair wage****, but too much emphasis on the adjective "bare" in*

relation to the minimum wage is apt to lead to the erroneous assumption that the maintenance wage is a wage which enables the worker to cover his bare physical needs and keep himself just above starvation. That clearly is not intended by the concept of minimum wage. ***On the other hand, since the capacity of the employer to pay is treated as irrelevant, it is but right that no addition should be made to the components of the minimum wage which would take the minimum wage near the lower level of the fair wage, but the contents of this concept must ensure for the employee not only his sustenance and that of his family but must also preserve his efficiency as a worker. The Act contemplates that minimum wage rates should be fixed in the scheduled industries with the dual object of providing sustenance and maintenance of the worker and his family and preserving his efficiency as a worker.****"*

(Emphasis supplied)

131. Interestingly the irrelevancy of the paying capacity of the employer has assumed importance as an important consideration for arriving at the optimum minimum wage.

132. In the judgment reported at ***AIR 1992 SC 504 Workmen Represented by Secretary v. Management of Reptakos Brett. & Co. Limited & Anr***. also, the Supreme Court has considered this report in para 9 and affirmatively declared the norms which must be followed while determining the minimum wages in the following terms :

*"9. Before the points are dealt with, we may have a fresh look into various concepts of wage structure in the industry. Broadly, the wage structure can be divided into three categories — the basic "****minimum wage****" which provides bare subsistence and is at poverty line level, a*

*little above is the "**fair wage**" and finally the "**living wage**" which comes at a comfort level. It is not possible to demarcate these levels of wage structure with any precision. There are, however, **well accepted norms** which broadly distinguish one category of pay structure from another. The **Fair Wages Committee,** in its report published by the Government of India, Ministry of Labour, **in 1949**, defined the "**living wage**" as under:*

> *"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.**"*

*The Committee's view regarding "**minimum wage**" was as under:*

> *"**the 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.**"*
>
> *(Emphasis by us)*

133. Having determined the constituents of minimum wages, it is necessary to consider what should be the norms for fixation? This aspect is also no longer *res integra* and has been the subject matter of consideration by not only the authorities including the Committee (as extracted above) but has also been authoritatively laid down in the pronouncement of the Supreme Court in ***Reptakos***

Brett's case. In this case the court referred to the recommendations given in the year 1957 of the Tripartite Committee of the Indian Labour Conference on what would be the optimum wage and it was laid down as follows :

> *"**11. The Tripartite Committee of the Indian Labour Conference held in New Delhi in 1957 declared the wage policy which was to be followed during the Second Five Year Plan. The Committee accepted the following five norms for the fixation of 'minimum wage':***
>
> > ***"(i) In calculating the minimum wage, the standard working class family should be taken to consist of 3 consumption units for one earner; the earnings of women, children and adolescents should be disregarded.***
> > ***(ii) Minimum food requirement should be calculated on the basis of a net intake of calories, as recommended by Dr Aykroyd for an average Indian adult of moderate activity.***
> > ***(iii) Clothing requirements should be estimated at per capita consumption of 18 yards per annum which would give for the average workers' family of four, a total of 72 yards.***
> > ***(iv) In respect of housing, the rent corresponding to the minimum area provided for under Government's Industrial Housing Scheme should be taken into consideration in fixing the minimum wage.***
> > ***(v) Fuel, lighting and other 'miscellaneous' items of expenditure should constitute 20 per cent of the total minimum wage.***
> > ***(vi) children's education, medical requirement minimum recreation including festivals/ceremonies and provision for old age marriages etc. should further constitute 25 per cent of the total minimum wage."***

12. ***This Court in Standard Vacuum Refining Company case [(1961) 3 SCR 536 : AIR 1961 SC 895 : (1961) 2 LLJ 227] has referred to the above norms with approval****.*

13. The ***concept of 'minimum wage' i****s no longer the same as it was in 1936. Even 1957 is way behind. A* ***worker's wage is no longer a contract between an employer and an employee. It has the force of collective bargaining under the labour laws. Each category of the wage structure has to be tested at the anvil of social justice which is the live-fibre of our society today. Keeping in view the socio-economic aspect of the wage structure, we are of the view that it is necessary to add the following additional component as a guide for fixing the minimum wage in the industry:***

14. ***The wage structure which approximately answers the above six components is nothing more than a minimum wage at subsistence level. The employees are entitled to the minimum wage at all times and under all circumstances. An employer who cannot pay the minimum wage has no right to engage labour and no justification to run the industry.***

15. A living wage has been promised to the workers under the Constitution. A 'socialist' framework to enable the working people a decent standard of life, has further been promised by the 42nd Amendment. The workers are hopefully looking forward to achieve the said ideal. The promises are piling up but the day of fulfilment is nowhere in sight. Industrial wage — looked at as a whole has not yet risen higher than the level of minimum wage.

(Emphasis supplied)

134. In the judgment of the Andhra Pradesh High Court reported at ***2003 Lab IC 1326 Andhra Pradesh Hotel Association, Hyderabad v. Government of Andhra Pradesh***, the court unequivocally declared the principle that minimum wages have to necessarily increase with the progress of society, that they would differ from one employment to another and that minimum wages cannot be static but are a dynamic concept in the following terms :

> *"11. The **concept of a minimum wage is a wage which is somewhat intermediate to a wage which is just sufficient for bare sustenance and a fair wage**. The concept of minimum wage **includes not only the wage sufficient to meet the bare sustenance of an employee and his family.** It also **includes expenses necessary for his other primary needs such as medical expenses and education for his children etc**. The concept of minimum wage is a **dynamic concept** and, therefore, is likely to undergo a change with the growth and development of economy and also with the change in the standard of living. It is not a static concept. Therefore **its concomitants must necessarily increase with the progress of the society**. It is likely to **differ from place to place and from industry to industry**. That is clear from the provisions of the Act itself and is inherent in the very concept of minimum wage."*

135. Again emphasizing the irrelevance of the employer's capacity to pay, so far as constituents of the minimum wages are concerned, in ***Andhra Pradesh Hotel Association***, it was observed thus :

"21. It is well-settled that ***minimum wage*** *must* ***provide not merely for the bare subsistence of life*** *but for the* ***preservation of the efficiency of the worker*** *and so it must also* ***provide for some measure of education, medical requirements and amenities of himself and his family****. While fixing the minimum wages, the* ***capacity of the employer to pay is treated as irrelevant*** *and the Act contemplates that rates of minimum wage should be* ***fixed*** *in scheduled industries with a* ***dual object of providing sustenance and maintenance for the worker and his family and preserving his efficiency as a worker. So it is required to take into consideration the cost of bare subsistence of life and preservation of efficiency of the workers and for some measure of education, medical requirements and amenities****. This cost is likely to vary* ***depending upon the cost prevailing in the market of various items****. If there are* ***inflationary conditions*** *prevailing in the country, then minimum wages fixed at a particular point of time would not serve the purpose. Therefore, Section 4 contemplates that minimum wages fixed at a particular point of time should be* ***revised from time to time****. Section 4 postulates that minimum wage fixed or revised by the appropriate Government under Section 3 may consist of basic rates of wages and special allowance at a rate to be adjusted at such intervals in such manner as the appropriate Government may direct to accord* ***as nearly as practicable with a variation in the cost of living index number applicable to such workers; alternatively, it permits the fixation of basic rate of wages with or without the cost of living allowance*** *and the* ***cash value of the concessions in respect of supplies of essential commodities at concessional rates*** *where so authorised; or in the* ***alternative****, it permits an* ***all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of concessions, if any****.*

*22. The object of Section 4 is to see that minimum wage can be **linked with increase in cost of living** so that increase in cost of living can be neutralized or all inclusive rates of minimum wages can be fixed. From the combined reading of **Sections 3 and 4**, it becomes clear that **what is fixed is total remuneration which should be paid to the employees covered by the Schedule and not for payment of costs of different components which are taken into consideration for fixation of minimum rates of wages**. The **concept of minimum wages does take** in the factor of the **prevailing cost of essential commodities whenever such minimum wage is to be fixed**. The idea of fixing such wage in the light of the cost of living at a particular juncture of time and of neutralising the rising prices of essential commodities by linking up scales of minimum wages with the cost of living index is provided for in **Section 4**. The term **"cost of living index number" is defined under Section 2(d) of the Act**. It is defined as follows :*

> *"2 (d). Cost of Living Index number" in relation to employees in **any scheduled employment** in respect of which minimum rates of wages have been fixed means the index number, ascertained and declared by the competent authority by notification in the Official Gazette to be the cost of living index number applicable to employees in such employment;"*

The consumer price index numbers are also known as cost of living index numbers which are generally intended to represent the average change over time in the prices paid by the ultimate consumer of a specified basket of goods and services. The need for constructing consumer price index numbers arises because the general index numbers fail to give an exact idea of the effect of change in the general price level on the cost of living of different

classes of people since a given change in the prices affect different classes in different manners."

(Emphasis supplied)

136. It is amply clear therefore, that the wage structure must take into consideration the norms and components so succinctly set out above that we would only state that we reiterate the same without any further repetition. What is unquestionable is that minimum wages have to be more than wages at the subsistence level, have to take into consideration all relevant factors and prescriptions made after due application of mind.

XII. Whether an employee of the appropriate Government can be considered an independent person for the purposes of Section 9 of the Minimum Wages Act?

137. Section 9 of the Minimum Wages Act, 1948 prescribes the composition of Committee, Sub-Committee and the Advisory Body. It mandates that these shall consist of persons nominated by the appropriate government representing employers and the employees in the scheduled employments who shall be equal in number. Additionally, the appropriate government is required to nominate "*independent persons*" not exceeding one-third of its total number of members, and that one of such independent persons shall be appointed as the Chairman.

138. In the instant case, apart from nominations of representatives of the employees and employers, the Government of NCT of Delhi has nominated the following persons as "*independent members*" :

1.	*Secretary(Labour), Govt. of NCT of Delhi* -	*Ex.Officio Chairman*
2.	*Addl.Secretary(Labour)/Addl. Labour Commissioner, Govt. of NCT of Delhi* -	*Ex.Officio Member Chairman*
3.	*Director(Economic & Statistics) and Planning Department, Govt. of NCT of Delhi* -	*Ex. Officio*

The petitioners object that all three of these persons are employees of the respondent Government and do not qualify as "*independent members*".

139. The objection to their nomination rests to a very large extent also on the fact that the Government of NCT of Delhi is involved in a whole bunch of scheduled employments. The submission is that in view of the already declared intention of the Govt. of NCT of Delhi of increasing the minimum wages of the employees in Delhi, the government officials stood disabled from being appointed as independent persons on the Committee and in taking an independent view in the matter.

140. The objection of the petitioners to the appointment of Government employees as independent persons as made in the present case has been raised in a plethora of judgments. We propose to briefly consider the same hereafter.

141. In order to adjudicate on this objection, it is necessary to consider the definition of an "*independent member of the committee*". On this aspect, in the judgment reported at ***(1971) 12GLR 221 Shantilal Jethala Vyas & Ors. vs. State of Gujarat & Anr***., the High Court of Gujarat has observed as follows : -

> *"3. As regards the first* ***submission*** *of Mr. Vakharia, it may be pointed out that under Section 9 of the Act, it has been provided that each of the* ***committees, sub-committees as if the Advisory Board shall*** *consist of* ***persons to be nominated by the appropriate Government representing employers and employees*** *in the scheduled employments, who shall be* ***equal*** *in number,* ***and independent persons*** ***not exceeding one-third of its total number of members****; one of such independent persons shall be appointed the Chairman by the appropriate Government. Madhavlal Shah, who was appointed the* ***Chairman of this Committee was****, according to the averments in the petition an active Congress Worker and was a* ***supporter of the party in power in the Gujarat State and, therefore, he could not be said to be an independent person, who could be appointed the Chairman of the Committee****, which was appointed to make recommendations regarding the minimum wages. This point is now covered by a decision of a* ***Division Bench*** *of this Court in* ***Digvijaysinhji Salt Works v. State XI G.L.R. 342****. There the* ***Division Bench*** *of which I was a member,* ***held*** *after considering the different authorities on the point and also on examining the scheme of Section 9:*
>
> > *There should be* ***equal number of members representing employers and employees*** *in the scheduled employments and further* ***independent persons not exceeding one third*** *of the total number of members of the committee etc. are also appointed and the* ***Chairman of the Committee or the Advisory Board as the case may be, has to be***

> ***one of such independent persons***. ***An independent person in this context means a person who is neither an employer nor an employee in the scheduled employments*** *and it is in that sense that the words "independent persons" have been used by the Legislature in Section 9. The* ***true meaning of the word's 'independent person in Section 9 of the Act is that those persons must be independent of the other two classes****, namely, persons representing employers and persons representing employees. The* ***word 'independent' in that context cannot mean independent in the ordinary and wider acceptation of that arm as meaning not belonging to any party or group whatsoever; not being under obligation to anybody.***
>
> *In view of this decision, it is clear that Madhavlal Shah, who was appointed as the* ***Chairman****,* ***was an independent*** *person in the sense that he was* ***neither an employer nor an employee*** *in the* ***scheduled employment in question****; and the affidavit-in-reply points out that Madhaval Shah was* ***not connected with either the employers or the employees in the scheduled employment in question****. Under these circumstances, the first ground of challenge to the Notification must fail."*
>
> *(Emphasis supplied)*

So far as expression '*independent*' is concerned, therefore, the objection has to be examined from the perspective as to whether the independent person was connected with either the employers and employees in the scheduled employments in question or not. He would be an independent person only if he was not so connected.

142. Mr. Sanjoy Ghose, ld. ASC has placed before us the pronouncement of the Division Bench of the Bombay High Court reported at ***AIR 1964 Bom. 54 Ramkrishna Ramnath vs. State of Maharashtra*** in support of the validity of the nomination of the above independent members**.** This case was concerned with constitution of Advisory Board under Section 7 of the Act. The appropriate government had nominated an Assistant Commissioner of the Labour Department, Bombay as a member of the Advisory Board. The Government had explained that he was only a Secretary to the Board and the appointment was purely on an administrative arrangement and not a statutory requirement without his having voice in the deliberations of the Board nor any right to vote. The petitioners had objected to his appointment on the ground that he was a government servant. This was rejected by the Bombay High Court with important observations made in para 23 of the judgment which reads as follows :

> *"23. But even assuming that we are not right in the view that we have taken, we do not think that the provisions of the Minimum Wages Act prescribe that a Government servant cannot be a member of the Advisory Board or that if he is a member he cannot be considered to be an "independent person" within the meaning of s. 9."*

143. Mr. Harvinder Singh, learned counsel on the side of the petitioners, has submitted that in the judgment relied upon by Mr. Sanjoy Ghose, learned Additional Standing Counsel for Government of NCT of Delhi reported as ***AIR 1964 Bom 51 Ram***

Krishna Ramnath vs. State of Maharashtra, in para 19, the court noted the following objections to the notification :

> *"**19.** The **argument attacking the impugned notification** founded upon these provisions of law is **as follows**: **The State Government under s. 5 was bound to consult the Advisory Board, but in this case the Advisory Board was not legally and validly constituted as required by law. Therefore, a consultation with such a Board would be no consultation at all and so the revision of rates by the impugned notification would be bad and ultra vires of the powers of Government.** The reason why it is **urged** that the composition and constitution of the Advisory Board in the instant case was bad was that the **two members** Messrs Dhutiya and Bakhale **who were ostensibly appointed as independent members were not "independent persons" as contemplated by s. 9 of the Act. They were not independent because they were servants of Government. It was argued that by "independent persons" is meant truly and genuinely independent within the ordinary acceptation of that word; whereas since they were servants of Government they were not independent at least so far as Government itself was concerned.**"*
>
> *(Emphasis by us)*

144. Another contention against the membership of Shri Dhutiya was noted in para 10 that he had originally been appointed by Government to make a certain preliminary inquiry and his proposals had been considered by Government before appointing the Advisory Board. It was, therefore, urged that he being the initiator of the move for fixation of minimum wages and one whose proposals were forwarded to the Advisory Board, he lost his

qualification as an "*independent person*" and could not be appointed a member of the Advisory Board as an "*independent*" member. Objection was also made to the appointment of Shri Bakhale on the ground that he was also not "*independent*".

145. So far as Shri Bakhale is concerned, this contention was found factually incorrect and not justified. It was observed that Shri Bakhale (*who was made the Chairman of the Advisory Board*), stood retired from service as far back as April 17, 1952 and was not a Government servant at all in August, 1956 when the Advisory Board was constituted by the former Government of Bombay.

146. On the other hand, Shri G.K. Dhutiya had been appointed to make a preliminary inquiry which proposal had been considered by the Government before appointing the Advisory Board. He was therefore, the initiator of the move for fixing of minimum wages and the one whose proposals were forwarded to the Advisory Board. As such, Mr. Dhutiya could not be considered independent and could not have been appointed as an independent member of the Advisory Board.

147. The court therefore, rejected the challenge to the appointment of Mr. Bakhale. However, so far as appointment of Shri Dhutiya was concerned, the court observed as follows :

> ***"25.*** *So far as Shri Dhutiya is concerned, the position is somewhat different. He was undoubtedly at the material time the Assistant Commissioner of Labour, Bombay, and therefore in the employ of the State Government. But*

what has been ***disputed on*** *the part of Government as well as the other respondent is* ***that he was a "member" of the Advisory Board. It is the case of Government that he was merely the Secretary of the Advisory Board and*** *the arrangement was* ***purely an administrative arrangement. He had no voice in the deliberations of the Board nor any right to vote****. This* ***position*** *which Government have taken up is also* ***supported by a consideration of the rules*** *under which the Secretary of the Advisory Board is to be appointed. The relevant rule is r. 6 of the Bombay Minimum Wages Rules, 1951. The rule deals with the* ***staff*** *of the Advisory Board and the other Committees. Rules 3 and 4* ***in contradistinction deal with the terms of office of the members of the Committees and the Board.*** *There is, therefore, a clear distinction drawn between the staff of the Board and the members of the Board."*

(Emphasis by us)

In these circumstances, the objection to the constitution of the Board so far as independent members is concerned was therefore, rejected.

148. In para 24, the Court considered the intention of the legislature while including an independent person under Section 9 of the enactment and observed as follows :

"24. xxx xxx xxx

The intention behind these provisions is very clear. Government has the duty to consult the Advisory Board. That duty is enjoined upon it in the exercise of its privilege to fix, review or revise minimum wages. Obviously Government cannot fix, review and revise minimum wages without consulting the representatives of employees and employers but it is not always that representatives of employees and employers can see eye

to eye. In fact, experience tells us that in our country the occasions when they do agree are the exception. Therefore, it was essential to have a third body of members who hold the balance and that is the body which is categorized as "independent persons". The expression "independent persons" therefore is, in our opinion, used in contradistinction with persons representing employers and persons representing employees and it is in that context, therefore, that we must understand the expression "independent persons". In the context in which it is used the expression "independent persons" is used in contradistinction with "persons representing employers and persons representing employees". The true meaning, therefore, of the words "independent persons" in s. 9 of the Act is that those persons must be independent of the other two classes, namely, persons representing employers and persons representing employees. In other words, it seems to us that the plain meaning of the section is that the third category of persons must be persons who are not representing employers or employees. The word "independent" in that context cannot mean independent in the ordinary and wider acceptation of that term as meaning "not belonging to any party or group whatsoever; not being under obligation to anybody". If that shade of meaning were to be given to the word "independent", it seems to us that it will be practically impossible to find "independent persons" where a major industry is concerned, for it will always be possible to find or at least to allege some connection or other with the industry against most persons."

(Emphasis supplied)

149. In support of their objection, the petitioners have placed reliance on the pronouncement reported at ***(1980) 4 SCC 329, Champak Lal H. Thakkar & Ors. v. State of Gujarat & Anr.***

150. Nomination of a Labour Commissioner as an independent member of the committee under Section 9 of the Minimum Wages Act was the subject matter of challenge before the Calcutta High Court in the judgment reported at ***AIR 1964 Cal 519 Bengal Motion Pictures Employees Union, Calcutta vs. Kohinoor Pictures Private Limited & Ors***. the relevant portion whereof reads as follow :

> *"9. The meaning of the word' "**Independent**" as given in the Oxford Dictionary is:*
>
> > *"not dependent on authority; not dependent on others for forming opinion or for guidance of conduct etc., not in a position of subordination, self-governing, autonomous and free; not subject to external control; not influenced or biased by opinion of others; thinking or disposed to think for oneself."*
>
> *But the actual words occurring In Section 9 of the Minimum Wages Act, 1948 have received judicial interpretation in different High Courts in India. The earliest in point of time which has been brought to our notice is a decision of a single Judge of the **Punjab High Court** reported in Jaswant Rai v. State of Punjab, AIR 1958 P&H 425. In this case one of the points which was taken for challenging the constitution of the Advisory Committee which was constituted by the Government, was that the **Labour Commissioner** who was **nominated** a member of the Committee and was appointed a Chairman thereof **was not an independent person as he was an official of the Government**. In repelling this contention Sishan Narain, J. observed:*

> *"The **Labour Commissioner is an official** though not under this Act. **It is however not laid down anywhere In the Act or elsewhere that an official of the Government cannot be nominated as a member of the Committee or that only a nonofficial can be considered to be an independent person**.*

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

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

xxx xxx xxx

*11. The latest decision to which our attention has been drawn is a decision of the **Kerala High Court** reported in AIR 1963 Kerala 115 : (1963)I LLJ 176Ker , D. M. S. Rao v. State of Kerala. In this case the **person who was appointed as an independent member** in the Advisory Committee and who **was also made a Chairman** of the Committee was one Sri Menon who was a **Professor of Economics, Maharaja's College, Ernahulam.** It was the appointment of this Chairman who was a **Government Official** that was challenged. Vaidialingam J. agreed with*

the view expressed by the Punjab High Court in the case already referred to and expressed his dissent from the decision of the Madhya Pradesh High Court and observed:-

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

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

(Emphasis by us)

151. After noting that the object with which the Minimum Wages Act, 1948 was enacted has been very clearly brought out in some of the decisions of the Supreme Court, the Calcutta High Court observed thus :

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

the Deputy Labour Commissioner are not independent persons within the meaning of Section 9 of the Act is erroneous and cannot be sustained."

(Emphasis by us)

152. The question as to whether a Secretary in the Labour Department and the Commissioner of Labour could be independent persons therein was also considered by the Karnataka High Court in ***(1969) ILJ 97 : (1968) 1 Mys LJ24 Chandra Bhavan (Boarding and Lodging), Bangalore and Ors. v. State of Mysore and Ors.,*** when it was observed as follows :

"16. ..... The more substantial question raised by Sri Narasimhamurthi was whether the Secretary to the Government in the Labour Department and the Commissioner of Labour can be said to be independent persons within the meaning of S. 9. Sri Narasimhamurthi argued that the Government is interested in enforcing the provisions of the Minimum Wages Act, that the Government makes the notification proposing certain rates of minimum wages and hence officers of the Government in the Labour Department are interested persons and cannot be said to be independent persons.

On this question there is ***divergence of judicial opinion****. In Narottamdas v. Gowarikar (P. B.) (Inspector, Minimum Wages Act) and others AIR 1961 MP 182, a Bench of the* ***Madhya Pradesh High Court did not accept the stand taken on behalf of the State*** *that the expression "independent persons" as used in S. 9, means persons who are independent of employers and employees in the scheduled employment. Their lordships took the view that having regard to the directive principles contained in Arts. 42 and 43 of the Constitution, the* ***State is actively interested in wage-earners and in the matter of fixation***

of minimum wages in any scheduled employment and that if the State is thus an interested party, a Government official cannot be said to be an independent person *for the purpose of S. 9. Another reason given by their lordships is that the* ***Government itself often controls or runs some scheduled employment or the other and hence is clearly an employer within the definition given in S. 2(e)(ii)***.

In ***Kohinoor Pictures (Private), Ltd. v. State of West Bengal*** *and others 1962 (1) CLJ 92; 65 CWN 1253 : (1961) 1 ILJ 741 Cal, the reasoning given by Sinha, J., for holding the* ***Government officials cannot be regarded as "independent persons" is that neither labour nor capital should have the remotest ground for thinking that the Government can shape the advice which seeks to get from the advisory board by exerting influence on official members of the board***.
In Bansilal S. Patel and others v. State of Andhra Pradesh (by Secretary, Home Department, Hyderabad) and others 1965 II L.L.J. 28, a Bench of ***Andhra Pradesh High Court followed the decisions of Madhya Pradesh and Calcutta High Courts.***
A contrary view has been taken by the High Courts of Punjab Kerala and Bombay - vide Jaswant Rai v. State of Punjab AIR 1958 P&H 425; D. M. S. Rao and others v. State of Kerala AIR 1963 Kerala 115 and Ramkrishna Ramnath v. State of Maharashtra 1963 I ILJ 548 Bom. According to them, the fact that the Government in a larger sense is interested in fixing minimum rates of wages, by itself will not mean that an official of the State Government cannot be said to be an independent person.

In ***Unichoyi (U.)*** *and others v. State of Kerala AIR 1962 SC 12, the Supreme Court noticed that the District Labour Officer was nominated as one of the independent members of the advisory board, but did not state anything as to*

whether he could not be appointed as an independent member.

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

xxx xxx xxx

*Following this decision a Bench of the **Bombay High Court** held in **Ramkrishna Ramnath** v. State of Maharashtra 1963 I ILJ 548 Bom (vide supra) that **even if an officer of the Government appointed to the advisory committee as an independent person, cannot be so considered, the irregularity in the constitution of the advisory board is of a minor character when there are other independent persons whose qualification is not in doubt and such irregularity cannot vitiate the fixation of minimum wages.** We are in respectful agreement with the view taken by the Bombay High Court.*

The petitioners' contention against the validity of the minimum wages fixed, on the ground of defect in the constitution of the advisory board must fail."

(Emphasis supplied)

153. We may note that the Kerala High Court Rules specifically permitted government officials to be member of the advisory board. When an objection was raised on their independence, in the judgment reported at ***AIR 1968 Ker 218 P. Gangadharan Pillai vs. State of Kerala & Ors***., the ld. Single Judge of the Kerala High Court observed as follows :

> *"6. Giving the matter my careful attention,* ***I do not think that Section 9 was intended or meant to rule out Government servants from being members of the Advisory Board. T cannot subscribe to the view, that Government servants in general can be branded as lacking in independence of thought and outlook*** *I respectfully agree with the observations of Vaidialingam J. in the Kerala case. As has been noticed in some of the decisions referred to, apart form the context and juxtaposition of the words the indications available from Rule 4 (3) of the Central and the Kerala Rules are to the* ***effect that Government Officials can be members of the Advisory Board****. The vires of the Rule has not been challenged. I therefore hold that there was* ***no infringement of Section 9 of the Act by the nomination of Government Officials to be "independent" members of the Advisory Board.***
>
> *(Emphasis supplied)*

154. In the judgment reported at ***AIR 1971 Guj 14, The Digvijay Singh ji Salt Works Pvt. Limited & Ors. vs. The State of Gujarat***, the Gujarat High Court observed as follows : -

> *"3… An* ***independent person*** *in this context means, in our opinion,* ***a person who is neither an employer nor an employee in the scheduled employments****; and it is in that sense that the words "independent persons" have been used by the Legislature under Section 9. The Legislature*

has provided in this section that the membership of the different committees, sub-committees and the Advisory Boards contemplated by this Act should be by nomination by the appropriate Government of persons representing employers and employees in the scheduled employments and at the same time some ***persons who are neither employers nor employees in any of the scheduled employments****, and, therefore,* ***are independent either of employers or of employees****, should be appointed and the Chairman should be one of such independent persons. In this context,* ***Mr. Nanavati contended*** ***that every employee of the State Government in whatever department he might be functioning is dependent upon the State and, therefore, he is not an independent person within the meaning of Section 9. On the interpretation of Section 9, which we have just now set out****,* ***this contention of Mr. Nanavati must fail.****"*

(Emphasis supplied)

155. In the judgment reported at ***ILR 1985 Karnataka 688 Aspinwal and Co. Limited & Ors. v. State of Karnataka,*** the Karnataka High Court reiterated the above pointing out that it was essential for the person objecting to show that the Government official so nominated suffered from bias in order to sustain an objection to the nomination as member of the committee under Section 9.

156. This issue was authoritatively ruled upon by the Supreme Court in the landmark judgment reported at ***AIR 1973 SC 1307 The State of Andhra Pradesh vs. Narayana Velur Beedi Manufacturing Factory & Ors***. We may usefully extract the observations of the Supreme Court made in para 9 of the judgment which read as follows : -

"9. *In our judgment the* ***view which has prevailed with the majority of the High Courts must be sustained. The committee or the advisory board can only tender advice which is not binding on the Government while fixing the minimum wages or revising the same as the case may be.*** *Of course, the Government is expected, particularly in the present democratic set-up, to* ***take that advice seriously into consideration and act on it but it is not bound to do so. The language of Section 9 does not contain any indication whatsoever that persons in the employment of the Government would be excluded from the category of independent persons****. These words have essentially been employed in contradistinction to representatives of employer and employees. In other words, apart from the representatives of employers and employees there should be persons who should be independent of them. It does not follow that persons in the service or employ of the Government were meant to be excluded and they cannot be regarded as independent persons vis-a-vis the representatives of the employers and employees. Apart from this the* ***presence of high government officials who may have actual working knowledge about the problems of employers and employees can afford a good deal of guidance and assistance in formulating the advice which is to be tendered under Section 9*** *to the appropriate Government. It may be that in* ***certain circumstances such persons who are in the service of the Government may cease to have an independent character if the question arises of fixation of minimum wages in a scheduled employment in which the appropriate Government is directly interested****. It would, therefore,* ***depend upon the facts of each particular case whether the persons who have been appointed from out of the class of independent persons can be regarded as independent or not****. But the mere fact that they happen to be government officials or government servants will not divest them of the character of independent persons.* ***We are not impressed with the reasoning adopted that a government official will have a***

bias, or that he may favour the policy which the appropriate Government may be inclined to adopt because when he is a member of an advisory committee or board he is expected to give an impartial and independent advice and not merely carry out what the Government may be inclined to do. *Government officials* ***are responsible persons and it cannot be said that they are not capable of taking a detached and impartial view****."*
(Emphasis supplied)

157. When this objection was pressed before the Supreme Court, in the judgment reported at ***(1985) 3 SCC 594 Ministry of Labour and Rehabilitation and Anr. vs. Tiffin's Barytes Asbestos and Paints Limited & Anr***. the Supreme Court observed as follows : -

*"2. ...In our opinion****, Government employees****, who are entrusted with the task* ***of implementing the provisions*** *of the Minimum Wages Act,* ***cannot, for that reason, be dubbed as interested and not independent persons****. It may be that* ***in a case where the Government itself is the employer in the particular scheduled employment, it may be possible to urge that Government employees are not independent persons*** ***(we express no opinion on that) but in a case where the Government Itself is not an employer****,* ***we do not see any justification for holding that Government employees who are interested in the implementation of the Minimum Wages Act, for that reason only****, become 'interested persons' and cease to be independent.* ***The 'independent persons' contemplated by Section 9 of the Act are persons who belong neither to the category of employers nor to the category of employees, and there is no reason to think that Government employees whose task is merely to implement Parliamentary Legislation made pursuant to Directive Principles of State Policy and the State's social obligations in that direction are excluded. The term***

> ***'independent persons', it must be emphasised, is used in the section in contra distinction to the words' persons representing employers and employees in the scheduled employments'.*** *We disagree with the view expressed by the Madhya Pradesh High Court in Narottamdas v. Gowarikar and Ors. [1961] 1 L.L.J. 442 and Calcutta High Court in Kohinoor Pictures (Pvt.) Ltd. v. State of West Bengal [1961] 2 L.L.J. 741 and the Andhra Pradesh High Court in Bansi Lal S. Patel v. State of Andhra Pradesh [1965] 1 L.L.J. 28. We agree with the view taken by the Punjab High Court in Jaswant Rai v. State of Punjab A.l.R. 1958 Pun 425 and the Gujarat High Court in the Digvijaysingji Salt Works Ltd. v. State of Gujarat A.l.R. 1971 Guj 14. The decision of this Court in State of Rajas than v. Hari Ram Nathwani and Ors. AIR 1976 SC 277 : (1976)ILLJ1SC does not assist either party."*
>
> *(Emphasis by us)*

158. The Supreme Court of India had however drawn a word of caution with regard to appointment of a government officer on the board or committee in the judgment reported at ***AIR 1976 SCC 277 State of Rajasthan & Anr. vs. Shri Hari Ram Nathwani & Ors***. wherein it was observed as follows : -

> *"5. Section 5 of the Act provides the procedure for fixing and revising minimum wages in respect of any scheduled employment. There are two types of procedure indicated in clauses (a) and (b) of sub-section (1).*
> *xxx xxx xxx*
>
> *It would be noticed that the* ***power to fix the minimum wages is of the Government****. Under* ***clause (a)*** *of sub-section (1) the* ***Government can appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of***

such fixation or revision of minimum wages. *Section 7 of the Act says:*

xxx *xxx* *xxx*

If the procedure provided in clause (a) is followed, consultation with the Advisory Board is not required in terms but is resorted to while it is mandatory in case of procedure (b). Section 9 provides*:*

xxx *xxx* *xxx*

The question as to whether a government officer could be appointed on a committee, sub-committee or the Advisory Board as an independent person came up for consideration before the various High Courts. Majority of them took the view that it could be so. A few High Courts, however took a contrary view. In the judgment under appeal the High Court of Rajasthan has fallen in the line of the minority. But recently the point has been set at rest by a decision of this Court in State of A.P. v. Narayana Velur Beedi Manufacturing Factory *[(1973) 4 SCC 178 : 1973 SCC (L&S) 369 : (1973) 1 LLJ 476] .*

xxx *xxx* *xxx*

The learned acting Chief Justice of the High Court considered many of such decisions of the High Courts in his judgment and posed a question:

> *"Suppose, the Government is an employer in the particular scheduled employment for which wages are sought to be fixed under the Act. Could it be postulated in such a case that an officer of the Government can be properly appointed as an 'independent' person on any of the statutory bodies in question?"*

An answer in the negative was given. He then said:

> *"I need hardly add in this connection that if the Government be not an employer in any of the scheduled employments, there would be no objection to the government officers of the requisite calibre and experience being appointed as independent persons within the meaning of the section."*

But thinking that in the ***list of the scheduled employment are included***

> *"employments such as public motor transport, and construction and maintenance of roads and building operations and may be, for aught we know, in certain other employments also"*

in which the State Government is an employer and the Advisory Board constituted is meant for advising the Government in those employments also he held the constitution of the Advisory Board to be bad*. In the extract which we have given above from the decision of this Court a sentence is to be found resembling the line of thinking of the learned acting Chief Justice. This Court has said: [****SCC p. 183: SCC (L&S) p. 374, para 9****]*

> *"It may be that in* ***certain circumstances such persons who are in the service of the Government may cease to have an independent character if the question arises of fixation of minimum wages in a scheduled employment in which the appropriate Government is directly interested****."*

The question as to whether in such a situation a government officer appointed on the Board or a committee can be said to be an independent member or

not will have to be <u>cautiously considered when an appropriate occasion arises</u> for the same. After all, even in such cases the final authority fixing or revising the minimum wages in a scheduled employment is the Government. <u>Government officers can undoubtedly come on the Board or the committee as representatives of the employers. Whether</u> in such a situation more government servants can come in the <u>category of the independent members</u> is a question which is open to <u>serious debate and doubt</u>. But in the instant case on the authority of this Court it is clear that the <u>constitution of either the Wage Committee or the Advisory Board was not bad, as the Government was not an employer in the mica mines in respect of which employment only minimum wages were fixed</u> by revision in the Notification dated July 31, 1965."

(Emphasis supplied)

159. Clearly while there is no absolute prohibition on an employee of the Government being nominated as an independent member of the Committee under Section 5 of the Minimum Wages Act, an objection to such nomination has to be decided on the facts and circumstances of the case. It is only when minimum wages are under consideration for an industry in which the State may be vitally interested as an employer, that it may not be proper to nominate an official to the Committee treating him to be an independent member.

160. In the present case, by the notification dated 15th September, 2016, the Secretary (Labour), Additional Secretary (Labour) and the Director (Economic and Statistics) of the Government of NCT of Delhi were included as *ex-officio* of the members of the

committee under Section 9 as the only independent member therein. It is submitted that the Government of NCT of Delhi was itself an employer in many of the scheduled employment and consequently, these officials could not have been nominated as an independent person.

161. In the present case, the petitioners have objected that the Additional Secretary (Labour) was appointed as the *ex-officio* Member Secretary of the Committee constituted under Section 5. It is submitted that as per the judgment of the Bombay High Court in *Ramkrishna Ramnath's* case the Member Secretary could not have been an active member of the committee but only performed administrative functions, whereas he was in the present case actually leading the proceedings.

162. The respondents have staunchly defended the appointment of the Secretary (Labour), Additional Secretary (Labour) and the Director (Economics and Statistics) as the independent members in the notified Minimum Wages Committee. It has been stated that Minimum Wages Advisory Committee is a tripartite type body consisting of "*employer, employee and government representatives*". It has been submitted that these members, who played the role of facilitators/moderators, did not have any expression of interest for either of the parties. It is the submission of the respondents that these members do not exercise voting rights even in the case of consensus between the representatives of the employers and employees.

163. The Additional Secretary (Labour)/Additional Labour Commissioner, who was appointed as the *ex-officio* member-secretary could not have been appointed as a member of the committee as Rule 6 of the Rules clearly provides that the Secretary shall be the ministerial staff of the committee (***Ref: AIR 1963 Bom 51, Bombay High Court***). Not only was the appointment of the secretary, as member of the committee totally illegal, but he, played the most active role in the various meetings of the committee and subsequently himself prepared the minutes of the meetings.

164. Before us the respondents have placed no material at all to show that these three senior government officials had any working experience and expertise regarding the working conditions in the Scheduled employments, more specifically, with regard to the prescription of minimum rates of wages. Instead of appointing impartial experts actually having experience and expertise in fixation of minimum rates of wages to enable guidance and advice to the other members on this important issue, the respondent no.1 appointed committed officials so as to again further their declared objective.

165. We also find in the case in hand, the Secretary (Labour), Additional Secretary (Labour) and Director (Economics and Statistics) were integral part of the Committee who fully participated in its proceedings, not merely as administrative staff. They had already made the recommendation as part of the earlier

Committee. Could they be considered "*independent*" in these circumstances?

166. So far as the "*independence*" of these Senior Government Officials is concerned, it is to be noted that the reconstituted Committee consisted of the same persons who were part of the earlier Committee which had already formed an opinion on the increase in the minimum wages and extent thereof which had earlier already recommended 50% increase in the existing minimum rates of wages. It is the petitioner's contention that they were therefore, biased.

167. An objection premised on the number of members of the Committee was rejected in ***AIR 1955 SC 25, Edward Mills Co. Limited vs. State of Ajmer***, the Supreme Court rejected the objection that a committee with less than six members could not be appointed. It had been urged that besides the Chairman, there must be at least one other independent member and that the total number of independent member could not exceed 1/3rd of the total number of the members. It was held by the court that it would be illegal, if there was only one independent member and he was appointed as the Chairman.

168. The present case has to be examined in the factual matrix laid before us. As noted above, in the present case, while appointment of government officials as independent members of a Committee constituted under Section 5(1)(a) of the Act may be permissible. However, the respondent has appointed the very

officials as independent persons on a Committee, which had already taken a view in the matter and made recommendations as members of a Committee in the year 2016.

169. Therefore, when appointed for the second time, they were clearly close-minded and proceeded in the matter in a predetermined manner. In view of the above, though the eligibility of the officers of the Labour Department or the Director of Economics & Statistics as members of the Committee cannot be faulted, however they failed to conduct themselves dispassionately and independently.

XIII. Whether the procedure adopted by the respondents for fixation of minimum wages was ultra vires Section 5(1) of the MW Act

170. In the present case, the respondents adopted the procedure prescribed under Section 5(1)(a) appointing a Minimum Wages Committee. As per the statutory scheme, it is incumbent upon the appropriate government to consider the advice of the Committee before fixing or revising the minimum wages.

171. Mr. Dhruv Mehta, ld. Senior Counsel and Mr. Harvinder Singh, ld. counsel for the petitioner submit that not only were the employers' not represented in the Committee but also no effort was made to comply with the statutory mandate of collecting relevant information and making its recommendations. Instead calculations submitted by the Labour Department of the Government of NCT of Delhi were put forward as recommendations of the Committee.

172. Mr. Dhruv Mehta, ld. Senior Counsel would submit that two teams were illegally constituted and their proposals were put to vote evidencing the fact that there was no consensus between the members of the Committee.

173. Despite the recommendation of CII in the third meeting, giving the names of the organizations that should be called as special invitee, no organization was invited for the same. The minutes of the ninth meeting recorded that there was no consensus amongst the Committee members with respect to the calculations as proposed by the Labour Department and the tabulations show that there was a wide variation amongst the calculations submitted by the two sets of representatives so much so that the same had to be put to vote.

174. This was despite the opening statement of the Secretary cum Labour Department that *"the differences among the members of the committee should be sorted out by mutual consent so that a consensus decision may be arrived at which can be recommended by this committee."* The minutes of the meeting clearly show that there were several concerns by the members of the committee which were not addressed. In the ninth meeting the representatives from CII had submitted that *"they had never agreed for taking the Kendriya Bhandar rates and that the survey carried out from open market and lowest rates from the open market should be taken. The representatives had further stated that the minimum wages act, 1948 mention about survey and taking the concessional rates of*

food times. The concessional rates of food items has been taken as mentioned in the Act."

175. The Additional Labour Commissioner in response had informed the committee that the same was being done to keep quality of food consistent. Even the FICCI representatives had objected to the *Kendriya Bhandar* rates and stated that the lowest rates from the open market should be taken. Objection was also taken with respect to the inclusion of non-vegetarian items in the food basket as well as on counting sugar twice.

176. The most essential point which needs to be noted and stressed upon in that the Committee made recommendations only with regard to the three categories of employees i.e. unskilled, semi-skilled and skilled employees based upon a claimed majority of six members approving the calculations made by the Labour Department.

177. The petitioners have challenged the impugned notification on grounds of arbitrariness and non-application of mind contending that the Labour Department has adopted rates at a higher level than those suggested by the representatives of the employers. It is pointed out that the labour department had taken the rate of food calculated at Rs.7,986/- per month for a family of 4 members which is much higher than the rate suggested by the representatives of the employees at Rs.7,291.46/-.

178. In this regard, our attention stands drawn to para 12 of the "*Brief Synopsis of the GNCTDs Legal and Factual Submissions*" filed before us wherein it is stated as follows :

> *"12. Because of this* ***divergent calculations*** *between both parties,* ***Labour Departments had to step in and the department calculated minimum rates of wages adopting guidelines and yardsticks as prescribed by ILC-1957*** *and* ***Reptakos judgment for which rates of Kendriya Bhandar for food items and Khadi Gramoudyog for clothing were adopted. 2731 kilo calories as prescribed by NIN*** *was also adopted. Based on these parameters calculation of minimum rates of wages was arrived at which is tabulated below :*
>
> ***Cost of food intake for a family of 3 (Units) – (4-Members) and proposed wages for unskilled category :-***

1	*Food (Family of 3 - Unit – 4 members – S.C. Judgment / ILC-1957*	-	*Rs.7,986/- P.M.*
2	*Clothing (72 yards P.A. = 66 mtrs. P.A.)*	-	*Rs.423/- P.M.*
3	*Housing (10% of food cost/Subsidized Housing scheme – ILC-1957*	-	*Rs.798/- P.M.*
4	*Light & Fuel (20% of Food + Clothing + Housing – ILC-1957)*	-	*Rs.1841/- P.M.*
5	*Education (25% - Food + Clothing + Housing – S.C.)*	-	*Rs.2302/- P.M.*
	Total		*Rs.13,350/- P.M.*

> *(i) Proposed wages for unskilled category :- Rs.13,350/- P.M.*
>
> *(ii) Proposed wages for semi-skilled category :- Rs.14,698/- P.M.*
> *(10.1% extra of unskilled wages)*

(iii) Proposed wages for skilled category :- Rs.16,182/- P.M.
(10.1% extra of semi skilled wages)"

(Emphasis by us)

179. From the above, it is apparent that divergent calculations were submitted by Team A comprising of members of Trade Union and Team B comprising of members representing the employers. It was the labour department which calculated the rates of minimum wages, adopting guidelines and yardsticks as prescribed by ILC – 1957 standards and the judgment in ***Reptakos Brett*** on the basis of the rates of the *Kendriya Bhandar* for food and *Khadi Gram Udyog* for clothing.

180. In the present case, not only was the constitution of the Committee flawed but admittedly the members of the Committee could not reach a consensus with regard to the persons who had to be invited to the meeting. The members of the Committee were at divergence even on the rates which had to be adopted, that is to say, whether the market rates or the rates of the *Kendriya Bhandar* and *Khadi Gram Udyog* were to be used, no consensus could be reached on the minimum wages or the calculations.

181. The deadlock resulted in the Chairperson putting the members to a vote when the representatives from the DMRC and the PWD voted in favour of the revised calculations on the same side as the representatives of the employees.

182. It is submitted that the Committee had no jurisdiction to constitute any sub-committee under section 9 which was the function of the Appropriate Government. Team –A and Team-B constituted from members of the Committee collected information from only some of the industrial areas which was therefore, not represented. Their calculations were not accepted. Instead the calculations of the Labour Department were made the basis of the recommendation. This, it is urged, was completely impermissible, and rendered the recommendations illegal.

183. The same objection was raised and examined in the context of the procedure adopted by the Advisory Board in the pronouncement of the Supreme Court reported at ***AIR 1976 SC 277 State of Rajasthan & Anr. v. Shri Hari Ram Nathwani & Ors***. and it was held as follows :

> *"6.* ***No procedure has been prescribed in the Act as to the method which the Advisory Board is to adopt before making its recommendations to the State Government. It can devise its own procedure and collect some informations by appointment of a sub-committee consisting only of some its members as was the case in the decision of the Bombay High Court in Gulamahamed Tarasahen a Bidi Factory by its proprietors Shamrao and Ors. v. State of Bombay and Ors. AIR 1962 Bom 97 . But surely the Advisory Board has no power to appoint a rival subcommittee persons who are not members of the board, as was done in this case****. There is. therefore, no doubt that the Advisory Board committed an irregularity in taking into consideration the report of the sub-committee invalidly appointed by it. Does it necessarily follow from this that the impugned notification dated 31.7.1965 based*

upon the report of the Advisory Board which in its turn had taken into consideration not only the report of the Committee appointed by the Government but also that of the Sub-committee appointed by the Government but also that of the Sub-Committee appointed by the Board is bad? ***On a careful consideration of the matter we give our answer in the negative. The irregularity, even characterising as an illegality, committed by the Advisory Board in taking into consideration the report of the sub-committee was not such as to nullify its recommendation contained in its report, or in any event, the final decision of the Government contained in the impugned notification. It must be remembered that the procedure followed in this case was the one provided in Section 5(1)(a)*** *in which case it was not mandatory for the Government to take the opinion of the Advisory Board."*

(Emphasis supplied)

184. It has thus been unequivocally held that the Committee appointed under Section 5 has no authority to appoint a rival sub-committee. The appointment of a "*Sub-Committee*" of some of its members and consideration of its report has been termed as an illegality.

185. The labour department is assigned no role in Section 5, 7 or 9 of the MW Act, 1948. The labour department could not have intervened in the working of the advisory committee and that the Committee had to independently fixed the rates of the minimum wages. If a statute has conferred a power to do an act has to be exercised following the prescribed method. This necessarily prohibits the doing of the act in any manner other than that which has been prescribed.

186. There is therefore, substance in the petitioner's contention that, if the Government had its own proposals, it ought to have proceeded under Section 5(1)(b) and published the same for information and notice to the persons likely to be affected by it. It was not open to the respondents to initiate the process for revision of the minimum wages by appointment of a Committee under Section 5(1)(a) and then, midway, purport to apply the methodology under Section 5(1)(b) by adopting the calculations of its own labour department utilizing the shield of the Committee, that too, without complying with the mandatory procedure, laid down in either of the clauses of Section 5(1).

XIV. Adequacy of the consideration of the representations

187. The notifications fixing/revising minimum wages have been assailed on the ground that objections and representations submitted to the Committee by the employers or the employees have either not been considered either at all, or have been insufficiently dealt with.

188. In the judgment reported at ***1991 (2) Bom CR 129, Arbuda Bhuvan Tea Shop & Ors. vs. State of Maharashtra and Ors.,*** the impugned notification was a verbatim reproduction of the draft notification. This notification was challenged on the ground that there was no consideration of the objections and the representations against the draft notification. In this regard the Bombay High Court held as follows :

> *"4. .... The impugned notification was a word to word reproduction of the draft notification, showing that there had been no consideration of the objections lodged by, amongst others, the representative of the tea shop owners of Greater Bombay.* ***The impugned notification shows that all representations had been considered by the State Government. It is not necessarily for the State Government to discuss the pros and cons of points taken in representations to establish an application of mind. When the final notification recites that representations received had been considered, it will have to be accepted that such consideration had taken place and that the recital represents what really transpired****."*
>
> *(Emphasis supplied)*

189. On this aspect, the observations of the Division Bench of the Andhra Pradesh High Court in the judgment reported at ***1980 56 FHR 79 AP Sree Kalyanarama Co Mine vs. Government of India*** are illuminating and read as follows :

> *"...* ***In fact, the very purpose of issuing draft notifications calling for claims or objections from the concerned employers, is to give an opportunity to the employers to put forth their objections or claims if any, and it is only thereafter that those objections are taken into reckoning by the concerned authorities before issuing the final notification …****"*
>
> *(Emphasis supplied)*

190. In the judgment of the Division Bench of the Andhra Pradesh High Court reported at ***1978 LabIC (NOC) AP (DB) K. Sobanachalam vs. State of A.P.***, the court observed that representations received must be considered by the government but

it is not necessary to state the fact of such consideration in the notification.

191. It is always open to the Government to, after the consideration, take a decision to accept its draft proposal as its final decision fixing/revising the minimum wages and to issue a notification in terms thereof. There is no reason why it cannot do so. We also see no reason to doubt a statement in the final notification before us to the effect that the received representations have been considered. We, however, consider the question as to whether the consideration was real or cosmetic and as to whether there was application of mind to the material placed therein, at a later stage in this judgment.

XV. Whether oral hearing had to be afforded to the representatives of the association?

192. Opportunity of oral hearing through representation was repelled in the pronouncements reported at ***1977 Lab IC 1974 M/s. Town Bidi Factory and Ors. vs. State of Orissa; 1975 Lab IC 429 Malayalam Plantations Limited vs. State of Kerala*** and ***1986 69 FJR (Kant) Aspinwal & Co. Limited vs. State of Karnataka***. It was laid down in these judicial pronouncements that there was no scope to insist on oral hearing in addition to the consideration of representation by the advisory board.

193. In ***Malayalam Plantation***'s case, the court observed that having regard to the scheme of Section 5, it is evident that the statute contemplates an opportunity of hearing through

representations that enables persons who are likely to be affected, an opportunity to file representations to the government and the statutory requirement would stand satisfied.

194. In ***Aspinwal***'s case, the court observed that the board has the discretion to call the representationists to give oral evidence as a witness in support of his representation in exercise of its power under Rule 19 or by calling upon him to appear before it and make oral submissions. This judgment, however, does not say it is mandatory to do so.

195. It is trite that it is not open to a representationist to insist on an oral hearing before the Advisory Board under Section 7 or before the Committee appointed under Section 5 of the Minimum Wages Act, 1948. The procedure adopted by the Committee is not assailable so far as this assertion is concerned.

XVI. Comparative wage structure in other jurisdictions/other appropriate Governments/qua other scheduled employments whether can impact wage fixation/revisions?

196. Arbitrariness in revision is imputed also on the ground that there is a large disparity of the minimum wages as prescribed under the impugned notification even with those notified by neighbouring States. Mr. Dhruv Mehta, learned Senior Counsel has pointed out that in 2017 itself, so far as prescription of minimum wages for unskilled labour is concerned, the State of U.P. has prescribed Rs.7,214/- (*which would apply in Noida*); the State of Haryana has

notified Rs.8,280/- (*which would apply in Gurgaon*) while Rajasthan has notified Rs.5,382/-. These towns bound Delhi.

197. The notification fixing minimum wages in ***Unichoyi's*** case was also impugned on the ground that the wage rates recommended by the Committee and fixed by the notification when compared to the wage structure in other scheduled employments/comparable concerns were unduly high. In para 17, the court observed as follows :

> *"17. xxx xxx xxx*
>
> ***The determination of minimum wages must inevitably take into account several relevant factors and the decision of this question has been left by the Legislature to the Committee which has to be appointed under the Act. We have already referred to the composition of the Committee and have reviewed very briefly its report. When a Committee consisting of the representatives of the industry and the employees considers the problem and makes its recommendations and when the said recommendations are accepted by the Government, it would ordinarily not be possible for us to examine the merits of the recommendations as well as the merits of the wage structure finally notified by the Government****. The notification has accepted the recommendations of the Committee to categorise the workers and that obviously was overdue.* ***The fact that wages paid in other industries in Kerala, or in other States in comparable concerns, are lower and would have been relevant for the Committee to consider when it made its recommendations. In appreciating the effect of the prevalence of lower rates it may also be relevant to bear in mind that in some places and in some industries, labour is still employed on wages much below the***

standard of minimum rates. In fact, in its report the Committee has pointed out that in Kerala the bargaining position of the workers has all along been very weak and wages have tended to remain in a deplorably low level. Therefore, the fact that lower wages are paid in other industries or in some other places may not necessarily show that the rates prescribed by the notification are unduly high. In any event these are considerations which ordinarily cannot be entertained by us because obviously we are not sitting in appeal over the recommendations of the Committee or the notification following upon them. That is why the grievance made by Mr Nambiar on the merits of the wage structure prescribed by the notification cannot succeed.

(Emphasis supplied)

Therefore, variation of the minimum wages fixed by an impugned notification *vis-a-vis* minimum wages fixed *qua* other scheduled employments or in other places may also not be indicative of the fact that an impugned wages prescription is unreasonable or unduly high.

198. The above principles were reiterated in para 16 of the pronouncement reported at ***(1969) 3 SCC 84 Chandra Bhavan Boarding and Lodging v. State of Mysore*** wherein the Supreme Court clearly stated that the fixation of minimum wages depends on the prevailing economic conditions, the cost of living in a place, the nature of the work to be performed and the conditions in which the work is performed and that the contention that it was impermissible for the government to divide the state into several

zones was opposed to Section 3(3) as well as to the scheme of the enactment.

It is therefore, manifest that the minimum wages could vary from not only State to State but even between cities; between rural and urban areas depending upon the several conditions.

199. Therefore, the fixation of higher wages in Delhi cannot be faulted simply because they are higher than the rates fixed in the surrounding States and towns.

XVII. Permissibility of a singular notification notifying minimum wages in twenty nine scheduled employments spread over different locations in Delhi

200. It has been contented by Mr. Dhruv Mehta Learned Senior Counsel for the petitioners, that the revision of minimum wages vide notification dated 3rd March, 2017 is *ultra vires* of Section 5(2) of the enactment. It is urged by Mr. Mehta that a conjoint reading of Section 5(2) with Section 9, would show the legislative intent that different advisory committees are required to be constituted for each scheduled employment or that one Advisory Committee for more than one but similar schedule employments is required to be constituted. The contention is that these advisory committees are statutorily required to apply their mind to various factors like the conditions of labour in different industries as well as geographic spaces and thereafter advise the appropriate government regarding revision of the wages. The contention is that such exercise was not undertaken and therefore, the notification

dated 3rd March, 2017 is contrary to the stipulation under sub-section 2 of Section 5 of the enactment.

201. It has been urged by Mr. Harvinder Singh that the increase in the prescription of minimum wages is grossly disproportionate and has caused grave and serious prejudice to employers in the 29 scheduled employments constituted in various localities in the NCT of Delhi.

202. *Per contra*, emphasizing the use of the expression "*may*" while referring to fixation of different minimum rates of wages in Section 3(3)(a), it is contended by Mr. Ramesh Singh, Standing Counsel for the GNCTD that discretion is given to the competent government and that it is not mandatory that differential rates must be fixed.

203. Mr. Ramesh Singh, learned Standing Counsel has also placed instances of composite notifications issued by the State of Odisha regarding 88 establishments; State of Punjab regarding 76 establishments and the State of U.P. regarding 58 establishments.

204. This submission completely fails to consider the contention on behalf of the employers, who have contended that the respondents have failed to consider the relevant material before fixing the notification and that one important factor which illustrates this submission is the fact that the respondents have issued an omnibus notification without application of mind.

205. On this very aspect, Mr. Dhruv Mehta, ld. Senior Counsel has also placed before us the pronouncement of the Supreme Court reported at ***(1996) 4 SCC 225 Haryana Unrecognized Schools vs. State of Haryana*** wherein a challenge was laid to the notification issued by the State of Haryana adding employment in certain educational institutions in the Schedule and as well as the notification fixing minimum wages in respect of different category of employees of such institutions. Upon examination of the matter, so far as the notification related to teachers of the educational institutions is concerned, the same was struck down by the court observing as follows :

> *"5. In view of rival submissions at the Bar the* ***only question*** *that crops up for consideration is* ***whether the teachers of an educational institution can be brought within the purview of the Act*** *and the appropriate Government can fix the minimum wage of such teachers by issuing notification under the Act?*
>
> *xxx xxx xxx*
>
> *8. There cannot be any dispute with the proposition that while* ***construing the provisions of a statute like Minimum Wages Act a beneficial interpretation has to be preferred*** *which advances the object of the Act. But nevertheless it has to be borne in mind that the beneficial interpretation should relate only to those employments which are intended to be covered by the Act and not to others. xxx xxx xxx*
>
> *10. A combined reading of the aforesaid provisions as well as the object of the legislation as indicated earlier makes it explicitly clear that the* ***State Government can add to either part of the Schedule any employment*** *where persons are employed for hire or reward to do any*

work skilled or unskilled, manual or clerical. If the persons employed do not do the work of any skilled or unskilled or of a manual or clerical nature then it would not be possible for the State Government to include such an employment in the Schedule in exercise of power under Section 27 of the Act. ***Since the teachers of an educational institution are not employed to do any skilled or unskilled or manual or clerical work and therefore could not be held to be an employee under Section 2(i) of the Act, it is beyond the competence*** *of the State Government to bring them under the purview of the Act by adding the employment in educational institution in the Schedule in exercise of power under Section 27 of the Act. xxx xxx xxx"*

(Emphasis by us)

There is no dispute before us as to the power of the Government to include establishments under the purview of the Act or to issue multiple notifications with regard to different establishments.

206. Section 5 (2) mandates that the appropriate government can, by notification, revise the minimum rate of wages in respect of "*each scheduled employment".*

This legislative intent and mandate is reinforced by the prescription in Section 9 that "*each of the committees shall consist of persons representing employers and employees in scheduled employments."*

207. In the present case, by an omnibus notification dated 3rd March, 2017, minimum wages have been revised and a blanket rate

fixed in respect of 29 scheduled employments without making any distinction either in terms of industry concerned, nature of work, extent of skilling, making adjustments for facilities available, price variations on account of locality and other relevant factors. A common rate of minimum wages has thus been fixed, irrespective of the industry concerned, which the petitioners' urge, manifests complete non-application of mind to the diverse factors which were relevant and had a bearing on the matter.

208. The respondents have before us taken the surprising stand that issuing separate notifications for each scheduled employment would be a futile exercise. In this regard, we may extract the relevant para from the brief written submissions filed by the GNCT of Delhi **:**

> "*11. That the* ***MWA does not make it mandatory for the Government to constitute separate committees for separate*** *scheduled employments, or issue separate notifications for each of the scheduled employments, and* ***the constitution of these separate committees are not even feasible****. The* ***Government has the discretion*** *constitute the Committee in this regard, and the MWA gives it the discretion to not even constitute the Committee. The* ***Committee has been constituted and the notification has been issued considering all the relevant factors, including the unique topographical structure and composition of Delhi****."*
>
> *(Emphasis by us)*

209. Our attention has been drawn to the judgment of the Supreme Court with reference to the principle of *contemporeanea expositio* reported at ***(1969) 1 SCC 541, National and Grindlays***

Bank Ltd. v. The Municipal Corporation of Greater Bombay wherein the court observed as follows :

> ***"5.*** *We shall, however, assume in favour of the appellant that the* ***meaning*** *of Section 146(2) of the Act is* ***obscure*** *and that it is* ***possible to interpret*** *it as throwing the primary liability for payment of property tax upon the lessee who has constructed a building on the land. Even upon that assumption we think that the view of the law expressed by the Bombay High Court in this case ought not to be interfered with. The reason is that* ***in a case where the meaning of an enactment is obscure, the Court may resort to contemporary construction, that is the construction which the authorities have put upon it by their usage and conduct for a long period of time****. xxx xxx xxx"*

210. In para 26 of the Judgment reported at (***2001) 4 SCC 536, Gurudevdatta VKSSS Maryadit & Ors. v. State of Maharashtra & Ors.,*** the Supreme Court reiterated as follows :

> ***"26.*** *Further we wish to clarify that it is a* ***cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver. The courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature***

and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute. ….*"*
(Emphasis by us)

211. In ***2003 Lab IC 1326, Andhra Pradesh Hotel Association, Hyderabad v. Government of Andhra Pradesh,*** the court discussed the concept of the minimum wages, the object of minimum wages and the definition of minimum wages in para 9 which sheds valuable light on the objection under consideration and reads thus :

"9. With the advent of development of socio-economic culture and the concept of social justice, the basic features of wages have undergone progressive change. In the modern system of economy the ***concept of wages can never be absolute*** *and shall* ***have to be viewed comparatively****. The* ***periodical revision of minimum wages and wage structure is, therefore, absolutely necessary****. That is why the Act* ***does not define minimum wages****. While a good deal of discussion could be found in different reports on what constitutes "****subsistence wages****", "****minimum wages****", "****fair wages****", and "****living wages****", a* ***precise definition*** *of any of the terms has* ***not*** *been found* ***feasible and practicable*** *and they have to be* ***defined with reference to time and place and taking into account all relevant attendant factors and circumstances****. In other words, they* ***cannot be defined so as to applicable to all places and all times to come****. The* ***fixation of minimum wages is the first step to carry on wages to living wages, which is one of the "Directive Principles of State Policy". Article 43 of the Constitution*** *lays down that "the* ***State shall endeavour*** *to* ***secure****, by* ***suitable legislation*** *or* ***economic organization*** *or* ***in any other way****,* ***to all workers****,*

agricultural, industrial or otherwise, ***a living wage****, conditions of work ensuring a* ***decent standard of life and full enjoyment of leisure and social and cultural opportunities*** *....." It is because of this that the Act authorizes the Central and the State Governments to fix minimum rates of wages and* ***also to establish a machinery for the revision of such wages.*** *So long as the stage of a living wage is not reached it would be the duty of the Government to continue its efforts in that direction."*

(Emphasis by us)

212. In the judgment reported at ***AIR 1963 SC 806 Bhikusa Yamasa Kshatriya & Anr. vs. Sangamner Akola Taluka Bidi Kamgar Union & Ors***. the court was considering a challenge made to a notification dated 19th April, 1955 issued by the Government of Bombay in exercise of authority vested under the Minimum Wages Act, 1948 on the ground that it was "*ultra vires, void and illegal*" because the Minimum Wages Act and the notification infringe the guarantee of equal protection of the laws and affected the rights of the appellants to carry on their business. In this case, the court considered the factors which must be considered while fixing the minimum rates of wages for the localities. The Supreme Court also approved the permissibility of a distinction being drawn in differential fixation of wages for different localities having regard to special circumstances prevailing there. The following principles were laid down in paras 4 and 5 of the judgment which read as follows :

"4. xxx xxx xxx

In considering the minimum rates of wages for a locality diverse factors such as, basic rates of wage, special allowance, economic climate of the locality, necessity to prevent exploitation having regard to the absence of organisation amongst the workers, general economic condition of the industrial development in the area, adequacy of wages paid, and earnings in other comparable employments and similar other matters would have to be taken into account. Manifestly the legislature could not ascertain whether it was expedient to fix minimum wages in respect of each scheduled industry for the entire territory or for a part thereof and whether uniform or varying rates should be fixed having regard to the conditions prevailing in different localities. Again of necessity, different rates had to be fixed in respect of the work performed by adults, adolescents, children and apprentices.

5. xxx xxx xxx

Conditions of labour vary in different industries and from locality to locality, and the expediency of fixing minimum wages, and the rates thereof depends largely upon diverse factors which in their very nature are variable and can properly be ascertained by the Government which is in charge of the administration of the State. It is to carry out effectively the purpose of this enactment that power has been given to the appropriate Government to decide, with reference to local conditions, *whether it is desirable that minimum wages should be fixed in regard to any scheduled trade or industry, in any locality, and if it be deemed expedient to do so, the rates at which the wages should be fixed in respect of that industry in the locality.* ***By entrusting authority to the appropriate Government to determine the minimum wages for any industry in any locality or***

generally, the legislature has not divested itself of its authority, nor has it conferred uncontrolled power upon the State Government. The power conferred is subordinate and accessory, for carrying out the purpose and the policy of the Act. By entrusting to the State Government power to fixing minimum wages for any particular locality or localities the legislature has not stripped itself of its essential legislative power but has entrusted what is an incidental function of making a distinction having regard to the special circumstances prevailing in different localities in the matter of fixation of rates of minimum wages. Power to fix minimum rates of wages does not by itself invest the appropriate Government with authority to make unlawful discrimination between employers in different industries. Selective application of a law according to the exigencies where it is sanctioned, ordinarily results in permissible classification. Article 14 forbids class legislation but does not prohibit reasonable classification for the purpose of legislation*. If the basis of classification is indicated expressly or by implication, by delegating the function of working out the details of a scheme, according to the objects of the statute and principles inherent therein, to a body which has the means to do so at its command, the legislation will not be exposed to the attack of unconstitutionality.* ***In other words, even if the statute itself does not make a classification for the purpose of applying its provisions, and leaves it to a responsible body to select and classify persons, objects, transactions, localities or things for special treatment, and sets out the policy or principles for its guidance in the exercise of its authority in the matter of selection, the statute will not be struck down as infringing Article 14 of the Constitution. This principle is well recognized: see Kathi Raning Rawat v. State of Saurashtra [(1952) SCR 435] ."***

(Emphasis supplied)

213. The Supreme Court has actually approved the power conferred by the statute on the Committee to select, classify and account for different industries, workers and specific conditions and make recommendations of minimum wages accordingly. The law thus requires the appropriate government to make a "*reasonable classification*" taking into consideration relevant factors and differential conditions.

214. Rule 20 of the Minimum Wages (Central) Rules, 1950 mandates that *"**the retail prices at the nearest market shall be taken into account in computing the cash value of wages paid in kind** and **of essential commodities supplied at concessional rates**."* while computing the cash value of the wages.

215. Judicial notice can be taken that Delhi, though one city, has sharp variations between highly developed posh colonies (say Golf Links, Vasant Vihar, Civil Lines, etc.) to Panchsheel, Nizamuddin, Defence Colony, Greater Kailash, Model Town, Pitampura, etc. There are large areas where unplanned, unauthorized colonies like Sangam Vihar have sprung up.

At the same time, urban villages abound Delhi (Garhi, Zamrudpur, Nangloi villages). Then there are pockets of relocation colonies (say, for instance, Dakshin Puri, Jahangir Puri, etc.). Industrial and commercial areas around all over Delhi interspersing these colonies and areas. Persons working in establishments would be living in adjacent locations having access to necessities of life at disparate and steeply varying rates and prices, depending on their

location. Prices of food and clothing reflect a sharp variation between these areas. Those living in proximity to wholesale markets would stand enabled with availability of essentials at rates much lower than what could be termed even as the "*modest prices*" prevalent in other areas. Somebody working or living in South Delhi may be having to pay much more for food, board and lodging and several necessities than a person doing the same work in East Delhi or in an urban village on the outskirts of Delhi.

216. Judicial notice can also be taken that duty hours in different employments may significantly vary according to the nature of employment (*for example guards, maids, people working in hotels or restaurants; gardeners etc*). Different level of skilling may be required for different occupations.

An examination of making differential classification based on skills acquired and necessary for performing different jobs was also required to be undertaken.

217. In the pronouncement of the Karnataka High Court in para 20 of ***Aspinwal***, the court agreed that minimum wages cannot be a flat rate for all types of employees in all types of employment, irrespective of the nature and type of work, skilled or unskilled, or ministerial or non-ministerial and the conditions in which they work. In this regard, it is apposite to reproduce the observations of the court in the following terms :

"20. There is on the face of it ***marked disparity in the wages fixed for typist, unskilled workmen and others employed in the Tailoring industry compared to similar employees in other industries as pointed out by the Petitioner*** *was not and could not be disputed by the Counsel for the respondents.* ***Learned Counsel for the respondents however relied on the judgment of the Division Bench of this Court in Chandra Bhavan v. State of Mysore*** *and submitted that Section 3 empowers the Government to fix different rates of wages for different categories of employments. The relevant portion of the judgment on which they rely reads-*

> *"109. The concept of minimum wage does not imply that there should be an absolute uniform rate of wage for all workmen. There can be variation in the rate of minimum wage according to diverse factors like the nature of work, the degree of education, training and skill required for the job. The degree of responsibility and on erousness of the job the conditions under which the workman works and the hazards of the occupation, which, in addition to being relevant facts, have also a bearing on the efficiency of the workman. What may be an appropriate rate of minimum wage for an unskilled worker may not be one appropriate for a skilled worker; what may be an appropriate rate of minimum wage for a manual labourer may not be appropriate for the category of employees like Clerks, Typists, Cashiers and Store-Keepers".*

This Court in the above paragraph held that ***'minimum wages' cannot be a flat rate for all***

types of employees in all types of employments irrespective of the nature and type of work, skilled or unskilled, ministerial or non-ministerial and the conditions in which they work. It can hardly be suggested that fixation of wages must not be made having due regard to the nature and duties of a particular type of work, working condition and various other relevant factors. It is for this reason Section 3 does empower the Government to fix different rates of wages to different kinds of employments and employees and in different localities. *It must be so because by and large the nature of work in one employment differs from another, and in the same employment, nature of work, of one class of employees differ from the other. The cost of living also may vary from locality to locality. But there are certain kinds of work whose nature is similar, irrespective of the employments in which they are employed.* ***For instance, the Typists. Normally Typists do similar kind of work irrespective of the industry or establishment in which they are employed. If they are in the same locality also, minimum wages for all such Typists would have to be the same. Section 3, in my opinion, does not empower the fixation of arbitrary rates of wages for persons employed in similar kind of work, but in different industries and in the same Zone, unless some special reason exists. The view expressed by this Court in Chandra Bhavan's case[5] does not support the proposition that even in respect of similar type of work, in different employments there could be such disparity in wages as has happened in the present case.*** *The statement extracted earlier is in respect of wages fixed in Zone 1 consisting of Corporation areas. In the same zone, as pointed out earlier, while, the Tailoring industry is asked to pay Rs. 468/- per*

month to a Typist a few other industries are required to pay only Rs. 360/- per month. The wages fixed for an office boy in Tailoring industry is Rs. 416/- p.m., i.e. Rs. 56/- more than a Typist in other industries and for an office boy in other industries wages fixed is only Rs. 247/-.

Learned Counsel for the Respondents submitted that whatever be the difference in fixation of the wages, it is not a matter of interference by the Court. I am not impressed by the submission. There can be no doubt that it is competent for the Government to fix different rates of wages for, the employees employed in different employment in the same zone. In doing so it is possible that some slight disparity in the fates of wages even in respect of employees doing similar kind of work might occur. Certainly it is not open for the Court to say that the wages must be uniform for all such employees. But I am unable to agree with the extreme proposition put forward for the Respondents that even if the fixation of wages for employees doing similar work, in different establishments, in the same zone as demarcated by the Government itself for purposes of fixation of wages, there were to be great disparity, the employers or employees have no remedy and the Court has no jurisdiction to interfere. ***The power given under Section 3, it should be remembered is only to fix minimum wages and the criteria for fixing minimum wages are also well settled (See: Express News Paper's case[19]). Therefore, the power conferred under Section 3 being the power to fix statutory minimum wages the criteria for fixing such minimum wages being the same for all the employees there cannot be great disparity in respect of employees doing same kind of work in the same Zone though in different employments****.''*

218. Rule 20 of the Minimum Wages Rules mandates that the respondents have to take into consideration "*retail prices in the nearest market*". It is an admitted position that the considered prices by the respondents were not the retail prices in the nearest market. Reference can be made to the minutes of the second meetings where even though two teams were constituted among the committee members from employers' and employees' representatives to undertake a market survey of food items in industrial cluster areas like – *Mangolpuri*, *Wazirpur*, *Narela*, *Naraina*, *Okhla* and *Jhilmil*, but no effort was made to get prices from them.

219. Rule 20, in fact mandates that even the value of articles; benefits given in kind and those of essential commodities supplied at concessional rates have to be factored into while computing the cash value of wages.

220. There can be no manner of doubt that the respondents were bound to consider the factual matrix with regard to the scheduled employments and be satisfied that one notification fixing identical rates would satisfy the requirements of law. To do so, the Committee was required to scrutinize all relevant materials not only regarding the scheduled employments but also the variations in prices of commodities in different localities/districts in Delhi, economic climate, benefits and facilities created and advanced by the Government and under Government schemes as also other relevant considerations.

221. A minimum wage revision would have to take into account these realities and variations (*which could be considerable*) while making a rational assessment of minimum wages.

222. Such an exercise was admittedly not undertaken. On the other hand, there was a sharp divergence of opinion between the two groups 'A' and 'B' in the Committee. Instead of undertaking a deeper in-depth data collection, scrutiny and consideration, a third "*person*" (*which the petitioners have called an 'illegal sub-committee'*) i.e. the Labour Department of the Government was permitted to furnish figures of prices from State run units (*Kendriya Bhandars* and *Khadi Gram Udyog*) which were accepted as the basis for the recommendation.

223. The respondents have tried to contend that *Kendriya Bhandar* and *Khadi Gram Udyog* have a presence all over Delhi and supply goods at all their outlets at the same rate after effecting rationalization of the prices. While the submission on the uniformity of the rate at all outlets of these organizations may be correct, there is nothing to show that these organizations have outlets in all areas inhabitated by "*employees*". There was also no material before the Committee to establish that the rates in the outlets are lower than the rates in the local markets. Or that the rates of the *Kendriya Bhandar* and *Khadi Gram Udyog* are an average between the lowest and the highest.

224. It has been submitted by Mr. Harvinder Singh that the *Kendriya Bhandar* and *Khadi Gram Udyog* do not have branches

or presence in all the industrial/commercial areas in NCT of Delhi and that hardly any employee makes any purchase from any of these two stores. Instead, purchases are made from either wholesale markets situated nearby or the weekly bazaars held all over Delhi or local shopping markets, where the prices are much cheaper than at *Kendriya Bhandar* and *Khadi Gram Udyog*.

225. The minutes of the meetings would show that the rates brought from *Kendriya Bhandar* and *Khadi Gram Udyog* were arbitrarily put to vote in a procedure contrary to law.

226. The petitioners further complain that all requests by the employers' association were completely ignored by the respondents. In this regard, our attention is *inter alia* drawn to an email dated 16th February, 2017 addressed by the CII's representative – Mr. Rahul Chaudhary, Vice-Chairman, Delhi, CII to the Chief Secretary, GNCTD.

227. Further even though FICCI, who was representing the employers, as appointed by the respondents in the ninth meeting objected to the prices being taken from Khadi Gram Udyog and Kendriya Bhandar no measures were taken to take into account prices of local shops. For this reason, the prices taken into consideration by the respondents do not meet the test of economic climate of the locality. Therefore, the process adopted by the Committee was unknown to the statutory provisions.

228. We may remind ourselves of the principles laid down in a decision reported at ***1975 Lab IC 44; I LLJ 211 Tourist Hotel vs. State of A.P*** where the court held that :

> "*22.* ***Section 5 does not prescribe any form of advice.*** *What all it says is that the Government* ***shall seek advice*** *of the committee and* ***consider it before it takes a decision*** *to fix or revise wages. The* ***essence of consultation is the communication of genuine invitation, extended with a receptive mind,*** *to give advice.* ***If in any given case complaint is made of failure of advice, it will be for the Courts to examine the facts and circumstances of the particular case and to decide whether consultation was in fact held****. In deciding whether consultation has taken place, in our judgment, regard must always be had to the substance of the matter rather than its form. It is to be borne in mind that the advice of the committee is a step or an element in the process of taking a final decision of fixation or revision of the minimum rates of wages. That being the object of seeking the advice the Government should give full and fair opportunity to the committee to advise. The Government must also supply necessary information to the committee to enable it to tender advice. This is so held in V. Ramayya v. State of A.P. (1973) I AWR.241."*

There is nothing at all on record to show that any heed was paid to these submissions on behalf of the employers before issuing the notification.

229. It is further pointed out that over a period of time, all kinds of facilities and amenities are being provided by the respondent government which include free medical treatment; free children's

education; recreational facilities; benefits under the increased coverage of the ESI Act 1948 and medical facilities; loans for house building, marriage ceremonies, etc under the Employees Provident Fund and Miscellaneous Provisions Act 1952 amongst others. It cannot be disputed that these are vital aspects which have a critical bearing on the question of wage fixation.

230. The record placed before us shows that no effort stands made to even educate oneself regarding these facts or taking them into consideration while computing the revision in the minimum wages. It needs no elaboration that the impact of the above additional facilities, factors, especially when applied to prevent local conditions and geographic location of the employees, may require maintenance of wages or lesser increase as compared to other locations.

231. The respondents admit that there are significant changes in society and recognize provision of several benefits to the worker. In the counter affidavit, it is stated thus by the Government of NCT of Delhi :

> *"As far as* ***significant changes in the society are concerned relating to free education for children of government schools, free medical treatment in government hospitals and mohalla clinics and provision for old age pension etc., it is hereby clarified and submitted that these facilities are primarily for general public/poor persons****. The mandate of the Committee, however, was to recommend/****suggest revision in minimum rates of wages for workers****, which means who are employed and are working in various scheduled*

employments to ***give them dignified and sustainable standards of living therefore, mohala clinics and free hospitals services cannot be the criteria for considering revision of minimum wages****."*

(Emphasis by us)

These "*significant changes*" have admittedly not been taken into consideration.

232. Issues relating to the procedure adopted by the Committee have also been the subject matter of consideration in judicial pronouncements and placed before us. In the judgment of the Andhra Pradesh High Court reported at ***AIR 1969 AP 227 Basti Ram Narain Das vs. State of Andhra Pradesh & Anr***., an objection relating to procedure was rejected by the court observing as follows:

"5…According to the petitioners ***if the Government wanted to enhance the rates mentioned in the draft proposals there must be another notification and another opportunity given to the petitioners to make representations against the variation. I am unable to agree with this contention either. Draft proposals are only tentative and representations are received not merely from*** *the employers but also from the employees. In the* ***ordinary course of events the employer must expect the employees to make representations for enhanced*** *minimum wages just as the employees may expect that the employers would make representations for reduced minimum wages.* ***Any representations made by the parties must contemplate and take into account possible enhancement or reduction****. …."*

(Emphasis supplied)

233. Law mandates fixation, review and revision of minimum wages. The ***Reptakos*** judgment, recognizes long passage of time as changing the relevant circumstances/factors for revision of the minimum rates of wages.

234. It has been urged by Mr. Harvinder Singh as well as Mr. Dubey learned counsels that revision does not mean only an upward revision but that positive changes may warrant maintenance of the wages at the same level. This submission is supported by the above principles laid down by ***Reptakos*** as well as in ***Basti Ram Narain***.

235. It was incumbent upon the respondents to take into consideration all the above circumstances, apply their mind to all relevant factors and, as in the past, take into consideration benefits and facilities being provided by the employers and thereafter, if deemed appropriate to make differential prescriptions of the minimum wages keeping in view the above conditions and circumstances.

236. There is substance in the objection premised on Rule 20 which mandates that the respondents have to take into consideration "*retail prices in nearest market*". The above narration manifests that these prices have not been ascertained by the respondents. For this reason, the prices taken into consideration by the respondents do not meet the test of economic climate of the locality. Therefore, the procedure adopted by the Committee did not adhere to Section 3(8) of the statute.

237. Mr. Dubey has additionally pointed out that the rates adopted in the 9th meeting were never circulated. In fact, the CII and ASSOCHAM representatives had requested for a meeting for consultation thereof.

238. In this regard our attention has been drawn by the petitioners to the fact that in 2011, while revising the minimum wages, the respondent no.1 had issued separate notification for each scheduled employment.

239. Another significant factor is pointed out. A notification dated 31st May 2017 was issued upon consideration of the variable dearness allowance. We find that even in May 2017, the respondents have drawn a distinction between workers who are given facilities of food and meals and those who are not granted such facilities. Variable rates of minimum wages are prescribed. However, in the impugned notification dated 3rd March, 2017, no such variation is taken into consideration. There is no justification at all for not accounting for such benefits given to workers.

240. We have discussed hereinabove the object and policy of the Legislature. The spirit, intendment and purpose of the Minimum Wages Act, 1948 which applies to those industries or localities where, for several reasons including unorganized labour or absence of machinery for regulation of wages, there is exploitation of labour inasmuch as the wages paid to workers were, in the light of general and subsistence level of wages, highly inadequate.

241. The law makes a criminal offence not to pay wages at a minimum prescribed rate. We have set out hereinabove the several challenges laid to the constitutionality of the enactment *inter alia* on the ground that it interdicts the fundamental rights of the employers guaranteed under Article 19(1)(g) of the Constitution of India; and that the provisions were unreasonable and arbitrary inasmuch as the entire matter had been left to the unfettered discretion of the appropriate government. The challenges to the provisions have been primarily rejected on the ground that before fixing the wages, the appropriate government has to take into consideration the advice of the Committee, if one is appointed, or the representatives, on its proposals, made by the persons who are likely to be effected thereby.

242. We may note that the Supreme Court has observed that such consultation had been made obligatory even on all occasions of revision or re-fixations of minimum wages. Clearly, the challenge to the constitutionality stood repelled only because of the statutory compulsion of the consultation and the appointment of the Committees and Advisory bodies.

243. Yet another important reason for rejecting the challenge to the constitutionality of the Minimum Wages Act is the legislative prescription that in the Committees or Advisory Bodies, the employers and the employees have an equal number of representatives with independent members besides them who are expected to take a fair and impartial view of the matter. As far

back as in 1959, in its pronouncement in ***Bijoy Cotton Mills Limited***, the Supreme Court had observed that "*these provisions, in our opinion, constitute an adequate safeguard against any hasty or capricious decision by an appropriate government".* In view thereof, the Supreme Court had held that though the restrictions under the Act interfere to some extent with the freedom of trade or business guaranteed under Article 19(1)(g) of the Constitution of India, the restrictions are "*reasonable*" and being imposed in the interest of the general public and protected by the terms of Clause 6 of Article 19".

244. We may also note that fixing uniform minimum wages for all areas also causes prejudice to the employees inasmuch as the market prices of goods maybe different in different areas of Delhi.

245. The minimum wage structure being put in place under the provisions of the Minimum Wages Act, 1948 has necessarily to take into consideration the above variables and provide for the differentials which may arise in case of nature of occupation, location of the business, nature of the industry, location of the residence, availability of cheap markets, education facilities and medical facilities; provision of facilities by employers.

246. The respondents have, by complete non-application of mind, issued the impugned notification for all scheduled employments and treating all workers alike. The respondents have failed to make any classification at all, let alone a reasonable classification while issuing the omnibus notification, which impacts workmen in

different industries and workmen working in different scheduled employment.

247. It is a settled principle of law, that the sacrosanct protection accorded under Article 14 which prescribes that equals cannot be treated unequally, also prescribes that unequals cannot be treated equally.

248. In the authoritative pronouncement rendered by a Constitution Bench of the Supreme Court reported at (***1985) 3 SCC 398 Union of India v. Tulsiram Patel,*** the majority speaking through *D.P. Madon, J (with whom Chandrachud, CJ and Tulzapurkar and Pathak, JJ)*, in para 90, held thus :

> *"....**What Article 14 forbids is discrimination by law, that is, treating persons similarly circumstanced differently or treating those not similarly circumstanced in the same way or, as has been pithily put, treating equals as unequals and unequals as equals.** Article 14 prohibits hostile classification by law and is directed against discriminatory class legislation. The propositions deducible from decisions of this Court on this point have been set out in the form of thirteen propositions in the judgment of Chandrachud, C.J., in In re Special Courts Bill, 1978 [(1979) 1 SCC 380 : (1979) 2 SCR 476] . The first of these propositions which describes the nature of the two parts of Article 14 has been extracted earlier. We are not concerned in these appeals and writ petitions with the other propositions set out in that judgment. In early days, this Court was concerned with discriminatory and hostile class legislation and it was to this aspect of Article 14 that its attention was directed. As fresh thinking began to take place on the scope and ambit of Article 14, new dimensions to this guarantee of equality*

before the law and of the equal protection of the laws emerged and were recognized by this Court. It was realized that to treat one person differently from another when there was no rational basis for doing so would be arbitrary and thus discriminatory. ***Arbitrariness can take many forms and shapes but whatever form or shape it takes, it is nonetheless discrimination. It also became apparent that to treat a person or a class of persons unfairly would be an arbitrary act amounting to discrimination forbidden by Article 14.*** *Similarly, this Court, recognized that to treat a person in violation of the principles of natural justice would amount to arbitrary and discriminatory treatment and would violate the guarantee given by Article 14.)*

(Emphasis by us)

249. The view was taken by the Supreme Court in the pronouncement reported at ***1989 Supp (1) SCC 205 All India Sainik School Employees' Association v. Defence Minister Cum Chairman Board of Governors, Sainik Schools Society, New Delhi & Ors.,*** where *Ranganath Misra, J.*, speaking for the bench, had occasion to hold as follows :

> *".....to put unequals as equals is against the objective of Article 14; in the same way is to discriminate between equals."*

250. In ***2008 (10) SCC 139 Uttar Pradesh Power Corporation Limited v. Ayodhya Prasad Mishra & Anr.*** it was followed that *"treating of unequals as equals would as well offend the doctrine of equality enshrined in Articles 14 and 16 of the Constitution."*

251. The recommendations of the Committee and the issuane of the singular notification manifests the non-application of mind by the Committee, to the relevant material considerations, would offend the spirit and intendment of Article 14 of the Constitution of India.

252. To sum up, the Committee in making its recommendations as well as the respondents in issuing the singular notification for uniform minimum wages for all scheduled employments have therefore, completely ignored critical aspects having material bearing on the issue. The report of the Committee and the impugned notification are not based on relevant material at all suffers from non-application of mind and fails to make a reasonable classification requirement by the constitution of India and by the provisions of Minimum Wages, 1948.

XVIII. Constitutionality of the restrictions under the MW Act, 1948

253. Challenges to the validity of the provisions of the Minimum Wages Act have come up before the Supreme Court and the High Courts on several grounds. One important factor which needs to be kept in mind, while examining the challenge to the validity of a notification under the Minimum Wages Act, 1948, is the discussion on the object of the enactment. Some discussion thereon is found in the judgment of the Supreme Court placed by Mr. Sanjoy Ghose, ld. Additional Standing Counsel for the GNCTD reported at ***AIR 1963 SC 806 Bhikusa Yamasa Kshatriya & Anr. v. Sangamner***

Akola Taluka Bidi Kamgar Union & Ors. wherein it is noted as follows :

> ***"5.*** *The object and policy of the legislature appear on the face of the Act. The object of the Act is to prevent exploitation of the workers, and for that purpose it aims at fixation of minimum wages which the employers must pay. The legislature undoubtedly intended to apply the Act to those industries or localities in which by reason of causes such as unorganised labour or absence of machinery for regulation of wages, the wages paid to workers were, in the light of the general level of wages, and subsistence level, inadequate. ...."*

254. We find that the Supreme Court has observed that the legislative policy was apparent on the face of the enactment and that it aimed at statutory fixation of the minimum wages with a view to obviate chances of exploitation of labour. It was to carry out this purpose that power was given statutorily to the appropriate government to decide with reference to the local conditions, whether it was desirable that minimum wages should be fixed in regard to a particular trade or industry.

255. In ***AIR 1955 SC 33 Bijoy Cotton Mills Limited & Ors. v. State of Ajmer.***, the validity of Section 5 was assailed by the employers as well as the workers. The majority of workers were agreeable to working on the lower wages fixed by the Industrial Tribunal. An additional challenge was to the notification contending that the minimum wages fixed by the State Government were altogether prohibitory and it was not at all possible for the

Company to carry on its business on payment of such wages. However, the Company was unable to open the mills by reason of the fact that the Minimum Wages Act makes it a criminal offence not to pay the wages fixed thereunder. Both the employers and the employees challenged the constitutionality of the Minimum Wages Act, 1948 contending that material provisions thereof were illegal and *ultra vires* by reasons of their conflicting with the fundamental rights of the employers guaranteed under Article 19(1)(g) of the Constitution and that they were not saved by clause (6) of that article.

256. It was also contended that the provisions relating to fixation of minimum wages were unreasonable and arbitrary; that the whole matter had been left to the unfettered discretion of the appropriate Government and that even when a committee is appointed, its report or advice was not binding on the Government. It was also submitted that the decision of the committee was final and not open to further review or challenge in any Court of law. Extensive reference stands made to the procedure prescribed under the statute, the impact of the recommendations of the committee appointed under Section 5 and the consideration by the appropriate Government supporting the constitutionality of the law.

257. In this regard, in para 6 of the judgment, the Supreme Court held as follows :

> "*6. As regards the procedure for the fixing of minimum wages, the "**appropriate Government**" has undoubtedly*

been given very large powers. ***But it has to take into consideration, before fixing wages, the advice of the committee if one is appointed, or the representations on his proposals made by persons who are likely to be affected thereby. Consultation with advisory bodies has been made obligatory on all occasions of revision of minimum wages,*** *and Section 8 of the Act provides for the appointment of a Central Advisory Board for the purpose of advising the Central as well as the State Government both in the matter of fixing and revision of minimum wages. Such Central Advisory body is to act also as a coordinating agent for coordinating the work of the different advisory bodies.* ***In the committees or the advisory bodies the employers and the employees have an equal number of representatives*** *and there are certain* ***independent members besides them who are expected to take a fair and impartial view of the matter. These provisions, in our opinion, constitute an adequate safeguard against any hasty or capricious decision by the "appropriate Government"****.*

In suitable cases the "appropriate Government" has also been given the power of granting exemptions from the operation of the provisions of this Act. There is ***no provision undoubtedly for a further review of the decision of the "appropriate Government", but we do not think that by itself would make the provisions of the Act unreasonable****. In our opinion, the* ***restrictions, though they interfere to some extent with the freedom of trade or business guaranteed under Article 19(1)(g) of the Constitution, are reasonable and being imposed in the interest of the general public are protected by the terms of clause (6) of Article 19. The result is that the petitions are dismissed. We make no order as to costs."***

(Emphasis by us)

258. The challenge was thus negated by the court noting that before fixation of minimum wages, consultation with advisory

bodies is obligatory and the appropriate government, has to take into consideration, the advice of the Committee, if appointed or the representations to the government proposals made by persons who are likely to be affected thereby. It was further noted that this consultation with advisory bodies had been made obligatory even at all occasions of revision of minimum wages and that Section 8 of the Act provided for appointment of a Central Advisory Board for the purposes of advising the appropriate government in the matter of fixation or revising of minimum wages; that the provisions of the enactment constituted an adequate safeguard against any hasty or capricious decision by the appropriate government. The challenge to the constitutionality was repelled only because of the statutory compulsion of the consultation and the appointment of the Committees and Advisory bodies.

259. A challenge to the validity of Section 27 of the MW Act was laid and decided by the Supreme Court in 1955 in another important case. In ***(1955) 1 SCR 735, Edward Mills Co. Ltd., Beawar v. State of Ajmer***, a strong challenge stood laid to the constitutionality of Section 27 of the Act on the ground of excessive delegation. It was argued that the Act prescribed no principles; that it laid down no standards which could furnish an intelligent guidance to the administrative authorities in making selection while acting under Section 27 and that, therefore, the matter was left entirely to the discretion of the appropriate Government which could fix/revise the schedule and the minimum

wages in any way it liked. The challenge was also premised on the contention that such delegation virtually amounted to a surrender by the Legislature of its essential legislative function. Upon a detailed consideration, these contentions were rejected. The Supreme Court emphasized the important purpose of the enactment in para 17 in the following terms :

> *"17. ..... The* ***legislative policy is apparent on the face of the present enactment****. What it* ***aims*** *at is the* ***statutory fixation of minimum wages with a view to obviate the chance of exploitation of labour.*** *The Legislature undoubtedly intended to apply this Act not to all industries but to those industries only where by reason of unorganised labour or want of proper arrangement for effective regulation of wages or for other causes the wages of labourers in a particular industry were very low. It is with an eye to these facts that the list of trades has been drawn up in the schedule attached, to the Act. But the list is not an exhaustive one and it is the policy of the Legislature not to lay down at once and for all times to which industries the Act should be applied. Conditions of labour vary under different circumstances and from State to State and the expediency of including a particular trade or industry within the schedule depends upon the variety of facts which are by no means uniform and which can best be ascertained by the person, who is Placed in charge of the administration of a particular State."*
>
> *(Emphasis by us)*

260. In para 10 of ***U. Unichoyi***, reference was made in great length to the precedent in ***Edward Mills Co. Ltd. v. State of Ajmer*** and the decision therein reiterated that the Act prescribed the principles and laid down standards which furnished intelligent

guidance to the administrative authority in decision making and that the legislation did not suffer from the vice of excessive delegation.

261. In para 11 of ***Unichoyi,*** the Supreme Court noted that another attempt was made to challenge the validity of the Act in the judgment reported at ***(1955) 1 SCR 752, Bijay Cotton Mills, Ltd. v. State of Ajmer***. The Supreme Court reiterated the previous decision that the restrictions were imposed in the interest of the general public and with a view to carry out one of the directive principles of State policy as embodied in Article 43 and so the impugned sections were protected by the terms of clause (6) of Article 19.

262. In ***1969 (3) SCC 84, Chandra Bhavan (Boarding and Lodging), Bangalore & Ors. vs. State of Mysore & Ors.,*** the validity of Section 5 of the statute was challenged as being *ultra vires* Article 14 of the Constitution. It was held by the Supreme Court that the observations cited above (*relating to the purpose of the enactment and the procedure fixed by the statute*) afforded the answer to the plea that the power is an arbitrary power. Therefore, the challenge to the constitutionality on the grounds of violation of Article 14 also stood rejected.

263. Again a challenge was laid to the enactment on the ground that it impacted the rights of the employers under Article 19(1)(g) of the Constitution before the Andhra Pradesh High Court in ***2003 Lab IC 1326 Andhra Pradesh Hotel Association, Hyderabad v.***

Government of Andhra Pradesh, (*also referred to earlier*) which was rejected by the court.

264. In ***Andhra Pradesh Hotel Association's*** case, it was observed that under the constitutional scheme, economic justice had to be ensured to the people of India and the object of the minimum wages act was to provide such social justice to the workmen. The observations of the court in this regard deserves to be considered *in extenso* and reads as follows :

> *"10. The Constitution of India, inter alia, has solemnly resolved to secure economic justice to the people of India, and with that end in view has laid down certain Directive Principles to be observed in the governance of the country. The* ***object of the Act*** *is to provide social justice to the workmen employed in the scheduled employment by prescribing minimum rates of wages. The* ***minimum rates of wages*** *should* ***be fixed*** *in respect of scheduled employments* ***keeping in twin objects*** *of* ***providing sustenance and maintenance of the worker and his family and preserving his efficiency as a worker*** *in view. Though the Directive Principles of State Policy enshrined in the Constitution are not enforceable by any Court, it is the duty of the State to apply these principles in its governance which includes making laws also. According to Articles 38, 39(e), 42 and 43 of the Constitution, the State shall direct its policy towards securing that the* ***citizens have the right to an adequate means to livelihood****, that there is equal pay for equal work for both men and women and that the* ***health and strength of workers are not abused****. The preamble of the Constitution coupled with the Directive Principles constitutes the conscience of the Constitution; in other words, the constitutional policy of the Republic of India. If the* ***labourers*** *are to be* ***secured in the***

> ***enjoyment of minimum wages*** *and they are to be* ***protected against exploitation by their employers****, it is* ***absolutely necessary that restraint should be imposed on the freedom of contract and such restrictions cannot, in any sense, be said to be unreasonable. The Act, it is held, is not repugnant to the provisions of the Constitution vis—vis the fundamental right to carry on any business. The restrictions imposed under the Act are reasonable and in public interest.*** *....”*
>
> *(Emphasis by us)*

265. The above discussion would show that the Supreme Court has rejected challenges to the constitutionality of the Minimum Wages Act premised on the same interdicting constitutional rights of the employers under Article 14 as well as 19(1)(g) of the Constitution of India solely premised on the mechanism statutory provided under Section 5, 7 and 9 of the enactment. This places the requirement of the provisions thereunder on an extremely high pedestal while furthering the salutary object of the law which is to ensure sustenance and maintenance of the workers and their families as well as preserving their rights as a worker. Given these important principles, the provisions of the statute and the procedure prescribed thereunder had to be strictly adhered to by the respondents.

XIX. Impact of irregularities in constitution of Committee under Section 5 of MW Act, procedure followed by it and bindingness of advice tendered by it

266. The foremost object pressed by all ld. counsels for the petitioners is that the respondents failed to comport to the requirements under Section 5, the respondents whereby they were

statutorily enjoined to include representatives of employers as well as employees in the Committee constituted by them. The petitioners have submitted that the constitution of the Committee was completely lopsided.

267. In all these writ petitions, the petitioners make a common grievance that by the notification dated 15th September, 2016, while five representatives from various trade unions were nominated to represent the employees and their interests, so far as the employers were concerned, no local association of any Scheduled employment in the NCT of Delhi were made members of the Committee.

268. Ld. Senior Counsel has submitted that the officers of the DMRC and the PWD who were joined as employers did not represent any scheduled employment in Delhi. It is urged that both voted in favour of the revised calculations on the side of the representatives of the employees, clearly manifesting that they were acting in a pre-determined and biased manner.

269. Mr. Dhruv Mehta, ld. Senior Counsel, Mr. Harvinder Singh, Mr. S.K. Dubey as well as all other ld. counsels on behalf of the writ petitioners hence submitted that the respondents did not join any local scheduled employment or their association as employer's representatives in the Committee under Section 5 of the Act. Instead national level bodies as CII, FICCI and ASSOCHAM were nominated as employer's representatives. These organizations were representatives of the local employments, therefore, the

Committee constituted by the notification dated 15th September, 1996 actually did not have any representatives of the employers from the Scheduled employments; that their interests were completely ignored; that this was in gross violation of the requirements of Section 5(1) of the Minimum Wages Act, 1948 which rendered the fixation of minimum wages *non-est* and illegal. It has been vehemently urged that the interests of the employers have thus been gravely prejudiced.

270. In order to adjudicate upon the strong challenge on behalf of all the petitioners with regard to the constitution of the Committee by the appropriate Government, it is essential to examine the purpose of its constitution which has to be considered in the light of the role of the Committee or the advisory body. We also need to remind ourselves of the manner in which its recommendations and advice has to be treated by the appropriate government.

271. We may first and foremost briefly consider the statutory scheme. Section 5 of the Minimum Wages Act enables the appropriate government to appoint a Committee and Sub-Committee to hold inquiries (*under Section 5(1)(a)*) or itself publish proposals for information of the affected persons by publication in the official gazette (*under Section 5(1)(b)*) notifying the date on which the proposal shall be considered.

272. Section 7 of the statute mandates that the appropriate government shall appoint an "*advisory board*" for "*coordinating the work of committees and sub-committees*" and "*advising the*

appropriate government generally" in the matter of fixing and revising the "*minimum rates of wages*".

273. In order to adjudicate upon this issue, a brief examination of the statutory scheme in judicial precedents is necessary. The scheme of the statute was considered in the pronouncement of the Supreme Court reported at ***(1980) 4 SCC 329 Champak Lal H. Thakkar vs. State of Gujarat***. This judgment was also considering a challenge pertaining to the violation of the provisions of the Minimum Wages Act. In para 9 of the pronouncement, the court considered the statutory scheme including the definition of '*employer*', under Section 2(e) and '*scheduled employment*' under Section 2(g). Thereafter the court considered the manner in which fixation and revision of the minimum wages was to be effected in accordance with Section 5 and the composition of the Committee under Section 9 of the enactment. Upon such consideration, the Supreme Court laid down applicable principles which read as follows:

> *"10. The following corollaries are immediately deducible from the provisions of the Act above-noted:*
>
> *(i) For an employer to be covered by the Act the following conditions must be fulfilled:*
>
> > *(a) he must be employing one or more employees in any scheduled employment;*
> >
> > *(b) minimum rates of wages for such scheduled employment must have been fixed under the Act; and*

> *(c) if a committee has been appointed by the Government under Section 5 in respect of such scheduled employment it must consist of persons representing employers and employees in the scheduled employment who shall be equal in number.*
>
> *(ii) Employment in an oil mill is a scheduled employment."*

Thus in order to meet the statutory requirements, it is essential that for the employer to be covered under the Act he should be employing one or more employees in any scheduled employment.

274. On the same aspect, our attention has been drawn to the pronouncement of the Supreme Court reported at ***AIR 1960 SC 1068 : (1960) 3 SCR 476, Madhya Pradesh Mineral Industry Association, Nagpur vs. Regional Labour Commissioner (Central), Jabalpur & Ors***. which was concerned with a challenge to the validity of a notification dated 30th March, 1952 issued by the Madhya Pradesh State Government under Section 5(2) of the Minimum Wages Act, 1948. The Supreme Court noted the contentions in para 5 of the judgment. So far as the applicable principles laid down by the court are concerned, the same are set out in para 10 and 11, which read as follows: -

> *"10. It is thus clear that the whole scheme of the Act is intended to work in regard to the employments specified in Part, I and Part II of the Schedule and the legislature has wisely left it to the appropriate Government to decide to what employments the Act should be extended and in what areas.* ***Section 5(2) empowers the appropriate***

> ***Government to fix or revise minimum wages*** *in regard to any of the employments in the Schedule to which the Act applies. This power can be exercised only if the employment in question is specified in the Schedule and the Act is therefore applicable to it.* ***Section 27 confers*** *a wider power on the appropriate Government, and in exercise of the said* ***power the appropriate Government may add an employment to the Schedule****. The nature and extent of the said two powers are thus quite separate and distinct and there can be no doubt that what can be done by the appropriate Government in exercise of its power under Section 27 cannot be done by it in exercise of its power under Section 5(2). It is significant that the impugned notification has been issued by the Madhya Pradesh Government by virtue of the powers under Section 5(2) of the Act which have been delegated to it by the President in exercise of his authority under Article 258 of the Constitution. xxx xxx xxx"*
>
> *(Emphasis by us)*

275. It thus stands explained that the power to include or exclude a particular employment from applicability of the law, rests with the appropriate Government.

276. It is necessary to understand as to who is to decide as to whether the procedure under Section 5(1)(a) is to be followed or the one prescribed under Section 5(1)(b) adopted? This question stands covered by the judgment reported at ***1969 (3) SCC 84 Chandra Bhavan (Boarding and Lodging), Bangalore & Ors. v. State of Mysore & Ors.*** wherein the challenge was premised on the objection that the procedure under Section 5(1)(a) of the Act had not been followed. With regard to the statutory scheme and mandate, the Supreme Court had observed as follows :

"9. xxx xxx xxx

The legislature has determined the legislative policy and formulated the same as a binding rule of conduct*. The legislative policy is* ***enumerated with sufficient clearness****. The Government is merely charged with the duty of implementing that policy. There is no basis for saying that the legislature had abdicated any of its legislative functions.* ***The legislature has prescribed two different procedures for collecting the necessary data, one contained in Section 5(1)(a) and the other in Section 5(1)(b). In either case it is merely a procedure for gathering the necessary information. The Government is not bound by the advice given by the committee appointed under Section 5(1)(a). Discretion to select one of the two procedures prescribed for collecting the data is advisedly left to the Government.*** *In the case of a particular employment, the Government may have sufficient data in its possession to enable it to formulate proposals under Section (5)(1)(b). Therefore it may not be necessary for it to constitute a committee to tender advice to it but in the case of another employment it may not be in possession of sufficient data. Therefore it might be necessary for it to constitute a committee to collect the data and tender its advice.* ***If the Government is satisfied that it has enough material before it to enable it to proceed under Section 5(1)(b) it can very well do so. Which procedure should be adopted in any particular employment depends on the nature of the employment and the information the Government has in its possession about that employment. Hence the powers conferred on the Government cannot be considered as either unguided or arbitrary.*** *....."*

(Emphasis supplied)

277. It is therefore, well settled that the discretion with regard to choice of procedure to be adopted i.e whether a Committee under Section 5(1)(a) is to be constituted, or, whether upon satisfaction

that sufficient material is available with the appropriate Government, the procedure under Section 5(1)(b) is to be followed, is clearly that of the appropriate Government. It is equally settled principle that this discretion is neither unfettered nor unguided.

278. So far as the objection that persons nominated as employers' representatives on the Committee did not actually represent the employers was rejected by the Supreme Court in the judgment reported at ***(1985) 3 SCC 594, Ministry of Labour and Rehabilitation and Anr. v. Tiffin's Barytes Asbestos and Paints Limited & Anr***. holding as follows :

> *"3.* ***There is equally no substance in the other contention which found favour with the High Court, namely, that the persons to the committee to represent the employers were ineligible to be appointed to the committee as they did not represent employers in the particular scheduled employments.*** *The scheduled employments with which we are concerned are employment in gypsum mines, employment in barytes mines, employment in bauxite mines and employment in manganese mines. It is not explained why the persons appointed to the committee to represent the employers are ineligible to represent the employers in the scheduled employments. xxx xxx xxx*
> ***We are afraid that the approach of the High Court was entirely wrong. For the purpose of appointing the committee to represent the employers in a scheduled employment, it was not necessary that the person appointed should be engaged for profit in the particular employment. It is enough if a nexus exists between the persons so appointed to represent the employers in the particular employment and the particular employment concerned.*** *For example it may be absurd to appoint*

persons engaged in the newspaper industry to a committee to represent employers concerned in the employment of barytes mines or bauxite mines. The case before us is not one of that nature at all. There was ***no material*** *before the High Court* ***nor was the High Court in a position to say that the persons appointed to the committee to represent the employers were entirely unconnected with or ignorant of the particular employments.*** *We fail to understand how by merely looking at their names and the positions occupied by them, the High Court was able to say that they were incompetent to represent the employers in the particular employments. The first of them was the Controller of the Indian Bureau of Mines, another was the Secretary-General of the Federation of Indian Mining Industries and yet another was the President of the Mysore State Mine Owners' Association. All of them are intimately connected with the mining industry and it has not been shown that they are unconnected with or ignorant of the particular scheduled, employments in mines. We find it impossible to uphold the view of the High Court.* ***The decision of this Court in Champak Lal H. Thakkar v. State of Gujarat [(1980) 4 SCC 329 : 1981 SCC (L&S) 9] is of no assistance whatever. In the circumstances we allow the appeals****, set aside the judgment of the High Court and dismiss the writ petitions filed in the High Court. …"*

(Emphasis supplied)

In this case, this objection of the petitioner's stands rejected on a consideration of the factual narration. No absolute principle of law has been laid down.

279. The respondents have relied on the pronouncement of the Supreme Court reported at ***AIR 1958 P&H 425, Jaswant Rai Beri and Ors. v. State of Punjab.*** This case was concerned with the

issue of a notification fixing minimum rates of wages in respect of employment in private presses in Punjab. An objection was taken to the appointment of an editor of a news daily as employer's representative. The contention was that this person was essentially an editor and did not represent the owners of the private presses and therefore, could not be appointed to the Advisory Committee. The Supreme Court rejected this objection observing that even as an editor, he must be an employee, workman or at least had a voice in that matter and that an editor would ordinarily know the employment conditions from the point of view of employers. It was in these circumstances, the court observed that the Minimum Wages Act, 1948 nowhere lays down that only employers can be nominated to the Advisory Committee and that no other person can represent them.

This judgment has no bearing on the present case inasmuch as the submission in the present case is that no representative of the employers was appointed.

280. The objections of the petitioners that the "*employers*" in scheduled employments in Delhi were not represented on the Committee notified by the GNCT of Delhi has to be thus examined from the perspective as to whether any nexus or connection exists between the organizations (*i.e. DMRC, PWD, CII, FICCI and ASSOCHAM in the present case*) appointed to represent the employers on the Committee and the employments concerned.

Whether Delhi Metro Rail Corporation and the Public Works Department could be considered as an employer engaged in scheduled employment under the MW Act, 1948 for the purposes of Section 9 thereunder

281. It is submitted that the officials of the Delhi Metro Rail Corporation (DMRC) and the Public Works Department (PWD), both completely under the Government of NCT of Delhi, were included in the category of employers in the Committee. The contention is that these persons were actually "*employees of a government undertaking and a department of the GNCT of Delhi respectively*". The petitioners submit that while the PWD was substantially engaged in several scheduled employments, the DMRC was a railway establishment. Consequently, these organizations could not have been "*employer representatives*" on the Committee.

282. Placing reliance on the pronouncement of this court reported at ***150 (2008) DLT 367, Delhi Metro Rail Corporation v. Municipal Corporation of Delhi & Ors.,*** Mr. Dhruv Mehta, ld. Senior Counsel has asserted that the DMRC has been held to be "*railway administration*".

283. Let us examine the objections raised by the respondents to the inclusion of officials from the DMRC as an employer representative for the committee notified under Section 9 of the Minimum Wages Act, 1948.

284. A question as to whether DMRC was liable to pay property tax and other taxes under the Delhi Municipal Corporation Act, 1957 has been answered in the judgment of this court reported at 2008 ***(103) DRJ 369 Delhi Metro Rail Corporation Limited. v. Municipal Corporation of Delhi & Ors***. In this case, the Delhi Metro Rail Corporation (DMRC) had disputed liability to pay property tax in view of Section 184 of the Railways Act. This judgment notes that the Delhi Metro Rail Corporation Limited is a Company registered under Section 617 of the Companies Act, 1956 and that the Central Government and the Government of NCT of Delhi having 50% holding each.

285. On the status of the Delhi Metro Rail Corporation - the petitioner in the matter, a learned Single Judge of this court had opined as follows:

> *"3. At the outset, it may be noticed that both 1989 Act and Delhi Municipal Corporation Act, 1957 are Central Acts enacted by the Parliament. Similarly, the Metro Railways (Construction of Works) Act, 1978 and the Delhi Metro Railway (Operation and Maintenance) Act, 2002 (hereinafter referred to as the 1978 Act and 2002 Act respectively, for short) have been enacted by the Parliament,*
>
> *xxx xxx xxx*
>
> *9. ....* ***The petitioner qualifies and is a Railway within the meaning of Section 2(31) of the 1989 Act. It is engaged in transportation of passengers on rails. It is a public carriage. This factual position is not challenged by the respondent.***

> *10. In view of the reasoning given above, it has to be held that Section 184 of 1989 Act grants protection from levy of taxation by a local authority to "railway administration" be it a Government Railway or a Non Government Railway. The* ***petitioner, therefore, will be entitled to protection under Section 184 of the Act to the extent it is "railway administration" as defined in Section 2 (32) read with Section 2 (25) of the 1989 Act****."*
>
> *(Emphasis by us)*

This judgment has attained finality. The finding of this court that the DMRC qualifies as and is a public carriage is therefore, well settled.

286. It is not disputed before us that railways is an employment for which the appropriate government is the Central Government and not the Government of Delhi.

287. The Delhi Metro Rail Corporation thus is not an employer engaged in "*scheduled employment*" in Delhi. Clearly, it could not have been appointed on the Committee under Section 5 as a representative of the "*employer*" within the meaning of the expressions in the M.W. Act, 1948.

288. We find merit in the objection that an officer of the DMRC could also not have been part of the Committee in any capacity to represent employers of scheduled employments in Delhi for which minimum wages are to be fixed since that establishment, i.e DMRC itself, could not be bound by a notification issued by the Government of NCT of Delhi under the Minimum Wages Act.

289. So far as Public Works Department of Delhi is concerned, there is no dispute at all before us that it is a department of the Government of NCT of Delhi and it is engaged in undertaking the public works and activities required to be undertaken by the Government. Undisputedly, it is a department which is fully under the control of Government of NCT of Delhi.

290. It has been urged at length by Mr. Dhruv Mehta, learned Senior Counsel as well as Mr. Harvinder Singh, and Mr. S.K. Dubey learned Counsels for the petitioners that this department of Government of NCT of Delhi itself is an employer in several scheduled employments. This position is again unchallenged.

291. Another significant stands pointed out by Mr. S.K. Dubey, learned counsel for the petitioner that including the Public Works Department of the Government of NCT of Delhi as a representative of the employers exhibits bias. Our attention has been drawn to the minutes of the meeting which clearly shows that the representatives of the Public Works Department did not give any specific inputs at all as an employer concerned with revision of the minimum wages.

292. The hotel industry had made a similar objection to the constitution of the Committee under Section 5(1)(a) of the Minimum Wages Act before the Karnataka High Court judgment reported at ***(1969) ILJ 97 Kant : (1968) 1 Mys LJ24, Chandra Bhavan (Boarding and Lodging), Bangalore and Ors. v. State of Mysore and Ors.*** The court rejected the challenge citing judicial precedents observing as follows :

"16. xxx xxx xxx

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

xxx xxx xxx

What S. 9 requires is that there shall be ***persons representing employers; it is not necessary that such person should themselves be employers****. Hence, there is no difficulty in holding that the Presidents of the Mysore Chamber of Commerce and the Mysore Planters' Association are representatives of employers in scheduled employment.*

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

xxx xxx xxx"

(Emphasis by us)

Therefore, inasmuch as the Public Works Department is engaged in scheduled employments, its Chief Engineer is competent to represent the employers *(i.e. the Government in such a case*) on the Committee constituted under Section 5 of the Act.

293. Clearly, the inclusion of the officers of the Public Works Department of the Government of NCT of Delhi in the committee as a representative of the employers cannot be faulted.

294. It appears that the GNCTD was of the opinion that simply because the advice of the Committee was not binding, the committee could be set up anyhow to render advice, to further its declared mission. Even if we could agree with the submission of the respondent that the committee was properly constituted, the manner in which its advice was tendered and then dealt with shows that the advice was not even to be seriously considered.

295. Such an interpretation of the law, would render the procedure envisaged under Section 5(1)(a) & 5(2) of the Act otiose and redundant. The rules of statutory interpretation require that the words *"**after considering the advice** of the committee or committees appointed under clause (a) of sub-section (1)"* in Section 5(2), be given their true and intended meaning. The legislature does not waste words. It could not have intended that the recommendations be sought as an empty formality without

giving any consideration to them. Such an interpretation would do violence to the legislative intention.

We may borrow from the pronouncement of the Supreme Court reported at ***(2007) 8 SCC 593Visitor, AMU v. K.S. Misra,*** where the court held thus:

> ***"13. …It is well-settled principle of interpretation of the statute that it is incumbent upon the court to avoid a construction, if reasonably permissible on the language, which will render a part of the statute devoid of any meaning or application. The courts always presume that the legislature inserted every part thereof for a purpose and the legislative intent is that every part of the statute should have effect. The legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. (See Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edn., p. 68.)***
>
> *(Emphasis by us)*

XX. Objection that no local association of any scheduled employment in Delhi made member of Committee and therefore, the "employers" were given no representation therein at all – if so impact thereof

296. For us to adjudicate upon this second limb of the petitioner's objection to the constitution of the Committee, it is first and foremost essential for us to undertake an examination of the question of the constitution of the Committees and the Advisory

Committees, their role as well as impact and bindingness of their recommendations.

297. Questions regarding the constitution of the Committee under Section 5 or Advisory Board under Section 7 of the M.W. Act also stand specifically considered and settled in several judicial pronouncements.

298. Placing reliance on the pronouncement of this court reported at ***2011 (126) DRJ 333 Kathuria Public School v. Union of India,*** it is submitted by Mr. Sanjoy Ghose, ld. ASC that a defect in the constitution of the Committee cannot impact the decision of the Government to revise minimum wages. This case was concerned with the constitution and working of the *de-notification* committee appointed under the Land Acquisition Act for the purposes of considering and making the recommendations for de-notification of land under Section 48 of the Land Acquisition Act, 1894 which was the subject matter of acquisition under the enactment. In this regard, in para 16, it was observed as follows :

> *"16. It was also contended by the learned Counsel for the petitioners that since the De-notification Committee which recommended rejection of the representation of the petitioners was not properly constituted, the recommendation made by it became vitiated in law and consequently the possession taken on the basis of such a recommendation becomes unsustainable. We however, find no merit in the contention. Para 22 of the guidelines clearly stipulates that the* ***recommendations*** *made by the* ***De-notification Committee are not binding on the Lieutenant Governor****,* ***who may take a decision on each***

recommendation, at his discretion. Since the recommendations of the Committee are not binding on the Lieutenant Governor, any irregularity in constitution of the Committee becomes insignificant and does not vitiate the decision taken by the Lieutenant Governor, *who had the* ***benefit of having the whole of the file*** *containing notings of various Officers as well as the correspondence, with him at the time of taking decision in the matter."*

(Emphasis by us)

The court has therefore, held that the recommendations of the De-notification Committee would not bind the Lt. Governor who was required to take an independent decision on the material placed before him and therefore, any irregularity in its constitution is of no significance.

299. The Kerala High Court had occasion to consider the effect of illegality in constitution of the Committee appointed under Section 5 of the Act as well as the bindingness of its recommendations in the judgment reported at ***1984 2 LLB 807 Varghese Paul v. State of Kerala*** and reiterated the well settled legal position in the context of these issues in the following terms :

"5. ***The report and advice of the committee and the general advice rendered by the Advisory Board*** *are expected to be* ***taken into account*** *by the Government before fixing or revising minimum rates of wages in terms of S. 3.* ***The Government must apply their mind independently to the question on the beds of the advice and material rendered to them by the Advisory Board and the committee as well as any other material which may be available to the Government. It is, however, not incumbent on the Government to act solely on the basis***

of the advice of the Board or the report of the committee. ***It is open to the Government to accept or reject such advice or report wholly or partially or to make such suitable alterations as they may deem necessary***. *That this is the* ***correct position*** *is clear from the observations of the* ***Supreme Court*** *in* ***B.Y. Kshatriya S.A.T. B. Kamgar Union,*** *[A.I.R 1963 S.C. 806],* ***State of Andhra Pradesh v. Narayana Velpur Beedi Manufacturing Factory,*** *[1973 — I L.L.N. 418] and* ***State of Rajasthan v. Hari Ram Nathwani, [1975—II L.L.N 249****]. It is also clear from these decisions that the* ***order made*** *by* ***the Government fixing the wages under S. 5 will not be vitiated solely by reason of any illegality in the constitution of the Advisory Board or the committee***. *In so far as the Board and the committee are only competent to advise the Governments and their* ***advice being not binding on the Government, an order*** *made by the Government* ***fixing or revising the wages*** *is* ***not*** *any-the* ***less valid, whatever may be the defect in the composition of the Board or the committee***.*"*

(Emphasis supplied)

300. Our attention also stands drawn to the pronouncement of the Kerala High Court reported at ***AIR 1968 Ker 218 Gangadharan Pillai v. State of Kerala*** wherein the Kerala High Court has held that defects and irregularities in the composition of the advisory board do not vitiate the notification for fixation or revising the minimum wages. The court has held as follows :

"***8.****..There is no doubt that the* ***fixation or revision*** *of* ***minimum wages is to be done, in accordance with the provisions of the Act****, and that* ***consultation*** *with the Advisory Board at contemplated* ***by section 9*** *of the Act* ***is a necessary requirement of such fixation or revision***. *The* ***Advisory Board*** *with which* ***consultation is effected must***

***have the statutory personnel and composition enjoined by section 9 of the Act**. **This, at the material time, it did not have in the instant case**. But it appears to me that **this does not vitiate the ultimate decision of the Government** in the notification Ext. P-4 issued by it. **The function of the Advisory Board was purely advisory; the Government was not bound by its advice**, the ultimate decision had to be taken by the Government. In this view, I am inclined to think that **notwithstanding the defect in the composition of the Advisory Board the notification Ext. P-4 is not vitiated by any illegality**."*

(Emphasis supplied)

301. Similarly, in the judgment reported at ***(1969) ILJ 97 : (1968) 1 Mys LJ24 Chandra Bhavan (Boarding and Lodging), Bangalore and Ors. v. State of Mysore and Ors.***, it was observed that Section 9 requires that there shall be persons representing employers and that Presidents of the Mysore Chamber of Commerce as well as Mysore Planters Association were representatives of employers in scheduled employments.

302. The objections as to constitution of the advisory committee stand pressed to support the challenge to a final notification under the MW Act also in the pronouncement of the Kerala High Court reported at ***(1992) 2 KLJ 244 : (1995) III LLJ 136 Ker N. Achuthan vs. State of Kerala.*** In this case, the court accepted that managers of theaters were directly involved in running of the theaters; that they could not be considered as having been no nexus with the conduct of business in the theatre; that they were intimately connected with the problems of the employees and were

the representatives of the employers. It was further held that film distributors can never be said to represent employees as they are also intimately connected with the employers. The court clearly held that even if there was some irregularity in the constitution of the committee, that irregularity had not affected the working of the committee materially or to prejudice the interest of the employers, the court would not interfere under Article 226 of the Constitution of India with the notification fixing the minimum wages.

303. The Patna High Court has also had occasion to consider an objection premised on the impact of error in procedure adopted and working of the Committee in the judgment reported at ***(2002) I LLJ 488 (Pat) North Bihar Chamber of Commerce and Industries and Ors. vs. State of Bihar & Ors***. and placing reliance on judicial precedents from *inter alia* Andhra Pradesh, Rajasthan, held as follows :

> *"6. In view of the proviso appended to Sub-section (2) of Section 5 there is* ***no doubt that where the Government proposes to revised*** *the minimum wages by following the procedure laid down in Section 5 (1)(b) i.e. by* ***publishing the proposals inviting representation from the persons affected thereby, consultation with the Advisory Board is mandatory****. The point for consideration is* ***whether the ultimate decision of the State Government*** *under Section 5(2) read with Section 3* ***is vitiated on account of any defect in the constitution of Managing Committee****. The point is not res Integra.*
>
> *xxx* *xxx* *xxx*
>
> *7. In* ***State of Andhra Pradesh v. Narayana Velur Beedi Manufacturing Factory and Ors., AIR 1973 SC 1307 :***

1973 (4) SCC 178 *: 1973-I-LLJ-476, the Court observed at p. 480 of LLJ:*

> *"In our judgment the **view** which has prevailed with the **majority of the High Courts** must be sustained. The **committee** or the Advisory Board **can only tender advice** which is **not binding on the Government** while fixing the minimum wages or revising the same as the case may be. Of course the Government is expected, particularly in the present democratic set up, to take that advice seriously into consideration and act on it but it is not bound to do so."*

*In **State of Rajasthan and Anr. v. Shri Han. Ram Nathwani and Ors.**, **AIR 1976 SC 277 : 1975 (2) SCC 517 : 1976-I-LLJ-1**, **the Advisory Board had appointed a sub-committee consisting of members who were not members of the Board**. The **point** that arose for consideration was **whether the report of the Advisory Board was vitiated**. It was answered in these words:*

> *"Surely the **Advisory Board has no power to appoint a rival sub-committee** to the one appointed by the Government and take in such sub-committee persons who are not members of the Board, as was done in this case. There is, therefore, **no doubt that the Advisory Board committed an irregularity in taking into consideration the report of the sub-committee invalidly appointed by it. Does it necessarily follow from this that the impugned notification dated July 31, 1965** based upon the report of the Advisory Board which in its turn had taken into consideration not only the report of the committee appointed by the Government but also that of the sub-committee appointed **by the Board is bad**? On a careful consideration of the matter we give **our answer in the negative. The irregularity, even characterising it as illegality, committed by***

> ***the Advisory Board in taking into consideration the report of the sub-committee was not such as to nullify its recommendation contained in its report****, or, in any event, the final decision of the Government contained in the impugned notification."*
>
> *(Emphasis by us)*

304. The issue of impact or bindingess of the recommendations of even a validly constituted Committee also stands answered by the Supreme Court of India in the judgment reported at ***AIR 1955 SC 25 Edward Mills Co. Limited vs. State of Ajmer*** in the following terms :

> *"**18.** ... **Quite apart from this, it is to be noted that a committee appointed under Section 5 of the Act is only an advisory body and that the Government is not bound to accept any of its recommendations. Consequently, procedural irregularities of this character could not vitiate the final report which fixed the minimum wages.…**"*
>
> *(Emphasis supplied)*

305. In ***(1969) ILJ 97 Kant : (1968) 1 Mys LJ24 Chandrabhava Boarding and Lodging vs. State of Mysore,*** a Division Bench of the Karnataka High Court held as follows : -

> *"93. All that **Sec. 7** states is that it is the function of the **Advisory Board** to **advise the appropriate Government** in the matter of fixing and revising minimum rates of wages. **Section 7 does not state**, either expressly or by necessary implication, **that the Government is bound to consult the***

Advisory Board for initial fixation of minimum rates *of wages."*

(Emphasis by us)

306. So can it be said that, as the advice of the Advisory Board is not binding on the Government, is it an absolute proposition that defect in composition of the Advisory Board would never vitiate its advice or the notification fixing/revising minimum wages based thereon? The answer to this question is in the negative and was so answered by the Patna High Court in ***(2002) I LLJ 488 (Pat), North Bihar Chamber of Commerce and Industries v. State of Bihar*** :

> *"8.* ***If****, as held by the Apex Court,* ***the advice of the Advisory Board is not binding on the Government it would logically follow that even if there be any defect in the composition of the Advisory Board it would not per se vitiate the advice or in any event, the ultimate decision of the Government unless it is shown that such defect or illegality has resulted in any prejudice to the party such as where the interest of a particular group of employer or employees is not represented and taken into account.*** *However it is relevant to mention in this connection that though Section 9 of the Act contemplates* ***equal representation*** *proviso to Rule 14 of the Bihar Minimum Wages Rules, 1951 permits the Advisory Board to conduct its business, in an adjourned meeting, within one week of the date of the original meeting, irrespective of the number or category of members. That is to say, in an adjourned meeting even though the number of the representatives of the employers or the employees is less the meeting can be validly held and business can be transacted. This shows that the* ***provision is directory*** *and if that is so,* ***unless prejudice is shown to have been caused, no interference may be called for****. As no such case has been pleaded nor any argument made at the Bar it is not necessary 1 to*

further dwell upon the theory of prejudice in the present case.

xxx xxx xxx

11. In view of the above decision the point which arises ***for consideration is whether the grounds urged to challenge the constitution of the Advisory Board can be called "substantial" grounds on which the decision of the State Government to revise the minimum wages should be interfered with under Article 226 of the Constitution.*** *In my opinion, the grounds are peripheral.* ***Unless prejudice is shown to be caused the impugned notification cannot be interfered with. In a case falling under Section 5(1)(b) of the Act*** *the Government is required to consult the Advisory Board but* ***as the advice of the Advisory Board is not binding on the Government any irregularity, even illegality, in the constitution of the Advisory Board per se would not vitiate the decision of the Government****."*

(Emphasis supplied)

307. The above judgment was rendered in the context of the Advisory Board constituted under Section 7 of the Act. The same principles would apply to a defect in the constitution of the Committee under Section 5 thereunder.

308. On this issue, we may usefully advert to the pronouncements of some other High Courts placed before us by both sides. In the judgment of the High Court of Andhra Pradesh reported at ***1975 Lab IC 44 ; I LLJ 211 Tourist Hotel vs. State of A.P***., the Advisory Committee, while submitting its report, left the issue pertaining to the deductions to be made towards food etc. to the concerned government. After seeking the view of the Labor Commissioner and the advice of the Advisory Board, the Government issued a notification fixing the minimum rates of

wages and also fixing the rates of deduction for supply of food and accommodation. The court rejected the contention that the said omission on the part of the Advisory Committee had vitiated the fixation of minimum wages. However, it expounded on the expression "*advise*" in Section 5 and, manner thereof which observations deserve to be extracted in extenso and read as follows:

> *"21. The word "**advise**" appearing in **Section 5** like the word "**consultation**" is quite often used and is well understood. These words, in circumstances such as here, **are inter-changeable words**. Although no purpose will be served in attempting to define the word "advise", it is useful to keep in mind its **popular meaning**. 20th Century Chamber's Dictionary gives amongst others, the meaning as "to counsel" or "to consult". Likewise, the Shorter Oxford Dictionary gives as one definition of the verb to consult "to ask advice of", "seek counsel from". **The term "advise", however, like "consult", is not synonymous with "direct" or "instruct". When Section 5 authorises the committee to advise, it has no power to direct or instruct the Government. The committee can only counsel and the Government is not bound by the advice.***
>
> *22. **Section 5 does not prescribe any form of advice.** What all it says is that the **Government shall seek advice** of the committee and **consider it before it takes a decision** to fix or revise wages. The **essence of consultation is the communication of genuine invitation, extended with a receptive mind,** to give advice. **If in any given case complaint is made of failure of advice, it will be for the Courts to examine the facts and circumstances of the particular case and to decide whether consultation was in fact held**. In deciding whether consultation has taken place, in our judgment, regard must always be had to the substance of the matter rather than its form. It is to be borne in mind that the **advice of the committee is a step or***

an element in the process of taking a final decision of fixation or revision of the minimum rates of wages*. That being the object of seeking the advice the* ***Government should give full and fair opportunity to the committee to advise****. The Government must also supply necessary information to the committee to enable it to tender advice. This is so held in V. Ramayya v. State of A.P. (1973) I AWR.241.*

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28. What all is thus ***essential*** *is the* ***genuine communication*** *and* ***invitation to the committee properly constituted to give advice*** *and the* ***consequent opportunity of responding to such invitation. More than that it is not necessary under Section 5 to do****. As the* ***Government is not bound to accept the advice, the committee also is free to tender or refuse to tender any advice. Section 5 does not oblige the committee to necessarily tender the advice. If no advice is tendered or inadequate advice is given, Section 5 does not deprive the Government of its power and duty to fix or revise the minimum rates of wages****. The* ***contention that since the committee omitted to tender advice on an important aspect****, the* ***Government ought to have referred the matter to another committee under Section 5 is not justified*** *The words of Section 5 do not compel the Government to do that. It may superficially look that the direct control effected by this device of consultation with the committee is worthless, but in practice few Ministers will be so regardless of public opinion as to ignore serious views carefully advanced in the course of statutory consultations of this kind. The same thing will apply to the Advisory Committee and ordinarily the members of the committee would act in the interest of those whom they claim to represent."*

(Emphasis by us)

309. Thus the legal position under Section 5 of the Minimum Wages Act, 1948 is well settled. It is essential that under Section 5(1) of the MW Act a Committee "*properly constituted*" is "*genuinely invited*" with an open ('*receptive*') mind to tender advice to the appropriate Government. For this purpose, the Committee must have a full, fair and real opportunity to render such advice. Such Committee is only an advisory body. The consultation is mandatory. The appropriate government is required to take into account the report and advice rendered by the Committee/Advisory Board and to apply independent mind and take a balanced decision so far as fixation or revision of minimum wages is concerned. The Government is not bound by the recommendations of the Committee. It is open to the Government to accept (wholly or in part) or to reject the advice of the Board or report of the Committee. Other procedural irregularities would not vitiate, either the report of the Committee, or the decision of the Government fixing or revising the minimum wages.

310. It is amply clear therefore, that defect in composition of the Committee under Section 5 or the Advisory Board under Section 7 of the MW Act would not *per se* vitiate either its advice or the decision taken thereon. It is also well settled that a defect in the composition of the Committee would vitiate its advice, or the ultimate decision of the Government fixing the minimum wages, only if such illegality or defect has worked to the prejudice to a party, whence interference be called for. This prejudice would

certainly result where the interest of a particular group of employer or employees has not been represented or has not been taken into consideration. The objections of the petitioners in the present case have to be tested on this threshold.

311. It appears that the GNCTD was of the opinion that simply because the advice of the Committee was not binding, the committee could be set up anyhow to render advice, to further its declared mission. Even if we could agree with the submission of the respondent that the committee was properly constituted, the manner in which its advice was tendered and then dealt with shows that the advice was not even to be seriously considered.

312. Such an interpretation of the law, would render the procedure envisaged under Section 5(1)(a) & 5(2) of the Act otiose and redundant. The rules of statutory interpretation require that the words *"**after considering the advice** of the committee or committees appointed under clause (a) of sub-section (1)"* in Section 5(2), be given their true and intended meaning. The legislature does not waste words. It could not have intended that the recommendations be sought as an empty formality without giving any consideration to them. Such an interpretation would do violence to the legislative intention.

We may borrow from the pronouncement of the Supreme Court reported at ***(2007) 8 SCC 593Visitor, AMU v. K.S. Misra,*** where the court held thus:

> ***"13. …<u>It is well-settled principle of interpretation of the statute that it is incumbent upon the court to avoid a construction, if reasonably permissible on the language, which will render a part of the statute devoid of any meaning or application. The courts always presume that the legislature inserted every part thereof for a purpose and the legislative intent is that every part of the statute should have effect. The legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. (See Principles of Statutory Interpretation by Justice G.P. Singh, 9th Edn., p. 68.)</u>***

313. The judgment in ***Kathuria Public School v. UOI*** relied upon by Mr. Ghose has no bearing on the wide spectrum of judicial pronouncements on the issue under consideration before us.

314. We shall hereafter examine the factual matrix in the present case in the light of these binding principles.

315. We find that the Confederation of Indian Industry (*CII*), the Federation of Indian Chambers of Commerce and Industry (*FICCI*) and the Associated Chambers of Commerce and Industry (*ASSOCHAM*) were included as members in the Committee, as representatives of the employers. It is urged that CII, FICCI and ASSOCHAM are national level organizations constituted for the purposes of representing Indian industry in international forums

and do not have significant number of employees in Scheduled employments (if at all) in the National Capital Territory of Delhi.

There is no material dispute to this submission.

316. In the counter affidavit, the respondents have explained that on 25th October, 2016, in the 3rd meeting of the Committee, the CII representative had stated that they had sent the information regarding the names of the organizations who should be called for as a special invitee via e-mail dated 14th October, 2016. It is submitted by the respondents that after going through the said e-mail sent by CII, it was observed that "*the information contained only the names of the organizations, i.e., Okhla Industrial Association, Naraina Industrial Association and Badli Industrial Association, and no address or details of office bearers, and other relevant information was furnished/provided by them*" so it was not possible to invite them and put forth their point of view.

317. The respondents have stated that even though this was brought to the notice of the management representatives in subsequent meetings but the required information was not furnished.

Unfortunately this stand has no basis in reality and in fact appears to be stand taken up only for the purpose of creating a defence to the petitioner's challenge.

318. The petitioners have placed before us an extract of the website *delhigov.in* maintained by the Government of NCT of Delhi. The website contains the detailed list of industrial/market

associations/federations in Delhi with their full particulars. The respondents have displayed a list of 40 Employer Association's on this website with full details and addresses. Therefore, the submission that they could not invite any local employer for the reason that they did not have the details, is a deliberate misstatement.

319. Interestingly, in the counter affidavit to grounds (i) and (j), in para 8 thereof, the respondents have stated that "*it is **not practically feasible** to give representation to employer in each scheduled employment*". It has been pointed out by Mr. Harvinder Singh that, even if this is correct, the issue which has been raised by the petitioner before us is that, in the present case, the respondents failed to include any representative of the local employers. It is not a case where there was some representation of the local employers on the Committee.

320. Mr. Harvinder Singh has also drawn our attention to the copy of an order dated 31st May, 2017 issued by the Labour Department, Government of NCT of Delhi informing about passing of the impugned notification dated 3rd March, 2017, and requesting the Secretary Generals of CII, FICCI, PHDCCI, ASSOCHAM to circulate the notification ***to local employers organization***. This endorsement clearly shows that the respondents were actually aware that "*local employers organizations*" existed. It also manifests the admission that the Government was aware that the

local employer's organizations had not been joined or represented on the Committee.

321. The writ petitioners have placed before us the earlier Committees constituted by the Delhi Government prior to 2011 for recommending revision of the minimum rate of wages. We find that the representatives of the *Delhi Mercantile Association*, *New Trade Association* and the *PHD Chamber of Commerce and Industry* have been associated. These associations are bodies of the actual employers of the Scheduled employments in Delhi.

322. The submissions of the respondents to justify the non-inclusion of local employers, in fact incorporates the admission that representatives of the local employment bodies were necessary and relevant and that the respondents had actually failed to include them.

323. The Government of NCT of Delhi therefore, were conscious of the requirement of law and have failed to comport to the same. It is necessary to examine the effect thereof on the challenge to the proceedings of the Committee and the impugned notification based thereon.

324. It has to be held from the above that inclusion of the representatives of CII, FICCI, ASSOCHAM was not in compliance of Section 9 of the Act requiring equal representation on the Committee of the employers and employees from scheduled employments. In the present case, the respondents have

consciously not nominated any representative from a scheduled employment on the Committee.

325. We therefore find substance in the submission that instead of appointing representatives of the local scheduled employments on the Committee who would have been in the best position to put forth the stance of the employers, national level organizations not representing the interests of the employers engaged in scheduled employments were nominated on the Committee. The respondents have denied the statutorily mandated representation to the actual employers in scheduled employments in Delhi which tantamounts to non-compliance of Section 9 of the Minimum Wages Act, 1948 and failure on the part of the respondents to constitute a Committee required by law to be constituted.

326. Clearly the Government of NCT of Delhi was aware of the requirement of law and consciously failed to comport to the same.

327. Such non-representation of the employers on the Committee would have direct impact of the interests of the employers being completely ignored. It has to be held that employers in the scheduled employments stand ousted from the consideration and their interests certainly compromised to their prejudice. This prejudice to the employers and employees would constitute a '*most*' substantial ground (***Ref : (2008) 5 SCC 428 (para 14), Manipal Academy of Higher Education vs. Provident Fund Commissioner***) justifying interference by this court in exercise of jurisdiction under Article 226.

XXI. Observance of principles of natural justice was mandatory for exercising power under Section 5(1) of the MW Act, 1948

328. It has been urged at length before us that the provisions of Section 9 of the Minimum Wages Act embodies the principles of natural justice. It has been submitted that it is for this reason that the Committee under Section 5(1)(a) must necessarily have equal representatives of employers and employees. Mr. Dhruv Mehta, ld. Senior Counsel has submitted that the notification dated 15th September, 2016 violates this principle and that therefore, there was every likelihood of bias having perpetuated against the employers.

329. This submission necessitates an examination of the issue of the nature of the power to fix or revise minimum wages under the MW Act, 1948.

330. Placing strong reliance on the landmark pronouncement of the Supreme Court reported at ***(1969) 2 SCC 262, A. K. Kraipak & Ors. v. Union of India & Ors.***, ld. Senior Counsel would contend that the question was not as to whether there was an actual bias, but whether there were reasonable grounds for the petitioners to believe that the Committee was likely to have been biased. In ***A.K. Kraipak*** the court held thus:

> *"15. It is unfortunate that Naqishbund was appointed as one of the members of the selection board. It is true that ordinarily the Chief Conservator of Forests in a State should be considered as the most appropriate person to be in the*

selection board. He must be expected to know his officers thoroughly, their weaknesses as well as their strength. His opinion as regards their suitability for selection to the All-India Service is entitled to great weight. But then under the circumstances it was improper to have included Naqishbund as a member of the selection board. He was one of the persons to be considered for selection. ***It is against all canons of justice to make a man judge in his own cause****. It is true that he did not participate in the deliberations of the committee when his name was considered. But then the* ***very fact that he was a member of the selection board must have had its own impact on the decision of the selection board****. Further admittedly he participated in the deliberations of the selection board when the claims of his rivals particularly that of Basu was considered. He was also party to the preparation of the list of selected candidates in order of preference. At every stage of his participation in the deliberations of the selection board there was a conflict between his interest and duty. Under those circumstances it is difficult to believe that he could have been impartial.* ***The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased.*** *We agree with the learned Attorney General that a* ***mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct.*** *It was in the interest of Naqishbund to keep out his rivals in order to secure his position from further challenge. Naturally he was also interested in safeguarding his position while preparing the list of selected candidates.*

xxx xxx xxx

21. It was next urged by the learned Attorney General that after all the ***selection board was only a recommendatory body.*** *Its recommendations had first to be considered by the*

Home Ministry and thereafter by the UPSC. ***The final recommendations were made by the UPSC Hence grievances of the petitioners have no real basis****. According to him while considering the validity of administrative actions taken, all that we have to see is whether the ultimate decision is just or not.* ***We are unable to agree with the learned Attorney-General that the recommendations made by the selection board were of little consequence. Looking at the composition of the board and the nature of the duties entrusted to it we have no doubt that its recommendations should have carried considerable weight with the UPSC. If the decision of the selection board is held to have been vitiated, it is clear to our mind that the final recommendation made by the Commission must also be held to have been vitiated****. The recommendations made by the Union Public Service Commission cannot be disassociated from the selections made by the selection board which is the foundation for the recommendations of the Union Public Service Commission. In this connection reference may be usefully made to the decision in Regina v. Criminal Injuries Compensation Board Ex parte Lain."*

(Emphasis supplied)

331. On the issue of whether the exercise of fixation of minimum wages is a purely administrative act, there is no clear enunciation of the law. We may note, here, that there is also no authoritative pronouncement to the effect that fixation of minimum wages is a quasi-judicial exercise. A Division Bench of the High Court of Travancore-Cochin held, in ***Punchiri Boat Service Ltd v. State of Travancore-Cochin, AIR 1955 Trav Co 97***, that *"the fixation of minimum rates of wages in respect of any scheduled employment by the appropriate Government is,* ***no doubt an administrative act****"*. To the same effect are the decisions of the High Court of

Kerala in ***Gangadharan Pillai v. State of Kerala, 1968 KLJ 11***, ***South India Estate Labour Relations Organisation v Madras State, AIR 1955 Mad 45***, the High Court of Rajasthan in ***N. K. Jain v. Labour Commissioner, AIR 1957 Raj 35*** and the High Court of Karnataka in ***Chandrabhavan Boarding & Lodging v. State of Mysore, MANU/KA/0101/1968***. As against this, a Division Bench of the High Court of Andhra Pradesh opined, in ***Tourist Hotel v. State of AP, (1975) I LLJ 211 (AP)***, that the exercise of fixation of minimum wages was neither executive, nor quasi-judicial, but legislative in nature.

332. The issue travelled to the Supreme Court in the appeal preferred against the judgement of the High Court of Karnataka in ***Chandrabhavan Boarding & Lodging (supra)***, and was effectively deflated, as the Supreme Court held that "*it (was) unnecessary for our present purpose to go into the question whether the power given under the Act to fix minimum wages is a quasi-judicial power or an administrative power*" as, with the development of the law after ***A. K. Kraipak v. U.O.I., (1969) 2 SCC 263***, *"the dividing line between an administrative power and quasi-judicial power is quite thin and is being gradually obliterated".*

While observing, therefore, that the prevalent judicial opinion appears to be in favour of treating fixation of minimum wages, under the Act, as an administrative exercise, we, too, do not propose to return any definitive finding on the issue, as it is not

necessary to do so, in order to examine the applicability of the principles of natural justice thereto. Whether the exercise is regarded as administrative or quasi-judicial, the law, as it has developed and stands today, mandates compliance with the principles of natural justice.

333. Prior to the pronouncement of the House of Lords in ***Ridge v. Baldwin, (1964) AC 40***, the concept of right of hearing, as a constituent of the principles of natural justice, was regarded as mandatory only in the case of quasi-judicial actions. ***Ridge v. Baldwin (supra)***, however, restated the law, by holding that *no power, which could affect the rights and interests of the citizen, could be exercised, save and except in accordance with the principles of natural justice*.

334. ***Regina v. Criminal Injuries Compensation Board ex parte Lain, (1967) 2 QB 864***, expanded the concept further by holding that the principles of natural justice were applicable not only to situations in which the determination affected rights immediately enforceable, but *also to determinations which, in order to become enforceable, required happening of a further contingency, such as, in that case (approval by the Minister of Transport and Resolution by Parliament).*

335. The *raison d'etre* behind extending the requirement of compliance with the principles of natural justice, even to cases which might, *stricto sensu*, be regarded as administrative, rather

than quasi-judicial, flows from the basic characteristic of natural justice, as being nothing more than "*fair play in an action*".

336. On this aspect, in ***A.K. Kraipak v. U.O.I. (1969) 2 SCC 262,*** the Supreme Court quoted, with approval, the view expressed in ***In re H.K. (An Infant), (1967) 2 QB 617***, that "*good administration and an honest or bonafide decision must ... require not merely impartiality, not merely bringing once mind to bear on the problem, but acting fairly*". The very purpose of the rules of natural justice being prevention of miscarriage of justice, it was held, by the Supreme Court, that there was no reason why these principles should be made inapplicable to administrative actions.

337. *Krishna Iyer, J.* expressed the same thought, in para 48 of the classic pronouncement in ***Mohinder Singh Gill v. Chief Election Commissioner (1978) 1 SCC 405***, thus:

> *"48. Once we understand the soul of the rule as fair play in action – and it is so – we must hold that it extends to both the fields.* ***After all, administrative power in a democratic set-up is not allergic to fairness in action and discretionary executive justice cannot degenerate into unilateral injustice."***
>
> *(Emphasis supplied)*

338. ***Sahara India (Firm) (1) v. CIT, (2008) 14 SCC 151*** proceeded a step further, by holding that any administrative order, which resulted in civil consequences, was required to be in consonance with the rules of natural justice. The expression 'civil consequences' was defined, in the said decision, thus:

> *"The expression 'civil consequences' encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes* ***everything that affects a citizen in his civil life****."*
>
> *(Emphasis supplied)*

It was, therefore, held, in the said decision, that, unless, by expressly or by necessary implication, the operation of the principles of natural justice was excepted by statute, the said principles were generally read into the statutory provisions, particularly where the decision taken would have civil consequences on the party affected. This principle, it was held, was applicable, to as much to administrative acts, as to quasi-judicial decisions.

339. The expression "*fair play in action*" was also held, in ***Management of M. S. Nally Bharat Engineering Co. Ltd v. State of Bihar, (1990) 2 SCC 48***, to be an alternative to '*natural justice'*, without any distinction between the two. It was further held, in the said decision, thus:

> *"Fairness, in our opinion, is a fundamental principle of good administration. It is a rule to ensure the vast power in the modern State is not abused but properly exercised. The State power is used for proper and not for improper purposes. The authority is not misguided by extraneous or irrelevant consideration. Fairness is also a principle to ensure that statutory authority arrives at a just decision either in promoting the interest or affecting the rights of persons. To use the time hallowed phrase "that justice should not only be done but be seen to be done" is the*

essence of fairness equally applicable to administrative authorities. Fairness is thus a prime test for proper a good administration."

340. The requirement of complying with the principles of natural justice, while effecting any revision in the rates of minimum wages already fixed, also follows from the principle of legitimate expectation which, it is well settled, may accept even in the absence of the existence of a legal right to the "*expected*" object. [*Ref*: ***Bannari Amman Sugars Ltd v. C.T.O., (2005) 1 SCC 625***]

341. Inasmuch as any change, in the prescribed rates of minimum wages, is bound to adversely impact either the industry or the workmen, whether one were to apply the principles of natural justice, or the principles of fair play and due process, these stakeholders were necessarily required to be afforded a proper opportunity of hearing before the decision to revise minimum wages was finalized.

342. In support of the objection as well, Mr. Dhruv Mehta, learned Senior Counsel has drawn our attention to para 14 of ***1969 (3) SCC 84 Chandra Bhavan (Boarding and Lodging), Bangalore & Ors. vs. State of Mysore & Ors***. wherein the court has observed as follows :

"14. It was urged on behalf of the hotel owners that the power conferred to fix the minimum wages on the appropriate Government under Section 5(1) is a quasi-judicial power and in exercising that power, it was

incumbent on the appropriate Government to observe the principles of natural justice. The Government having failed to observe those principles, the fixation of wages made is liable to be struck down. It is unnecessary for our present purpose to go into the question whether the power given under the Act to fix minimum wages is a quasi-judicial power or an administrative power. ***As observed by this Court in A.K. Kraipak v. Union of India [1969 (2) SCC 263] the dividing line between an administrative power and quasi-judicial power is quite thin and is being gradually obliterated. It is further observed therein that principles of natural justice apply to the exercise of the administrative powers as well. But those principles are not embodied rules. What particular rule of natural justice, if any, should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the tribunal or body of persons appointed for the purpose****."*

(Emphasis by us)

343. The respondents on the other hand vehemently press restrictions on the applicability of these principles.

344. Mr. Sanjoy Ghose, Additional Standing Counsel on the other hand has placed reliance on the pronouncement of the Supreme Court reported at ***(2016) 8 SCC 535 Board of Control for Cricket v. Cricket Association of Bihar and Ors.*** wherein the Supreme Court relied on the judicial precedents in ***(2005) 5 SCC 337 Viveka Nand Sethi v. Chairman J&K Bank Ltd.; (1980) 4 SCC 379 S.L. Kapoor v. Jagmohan; (2004) 8 SCC 129 State of Punjab v. Jagir Singh; (2005) 3 SCC 409 Karnataka SRTC v. S.G. Kotturappa; (1994) Supp. (2) SCC 641 Ravi S. Naik v Union of India*** and

(1984) 1 SCC 43 K.L. Tripathi v. SBI and held that principles of natural justice are not codified rules or procedure; that courts have declined to lay down any strait jacket formula; that the scope and extent and that the extent, manner and application of the principles depends much on the nature of the jurisdiction exercised by the court or the tribunal; nature of the inquiry undertaken and the effect of such inquiry on the rights and obligations of those before it. There can be no dispute to these well settled principles in law.

Therefore, the objection pressed by the petitioners has to be tested against the procedure followed by the respondents in the present case and whether the same violated any principle of natural justice.

345. The Minimum Wages Act and Rules prescribes the manner for fixing, reviewing and revising minimum wages, constitution of committees and the procedure for fixing minimum wages. The object of incorporating these provisions is to ensure that there are adequate safeguards against any hasty, arbitrary or capricious decisions by the *"appropriate Government"*.

346. It is trite that the requirements of law have to be strictly complied with. We may advert to a summation of the law on this principle in a pronouncement reported at ***Bijender Singh & Ors. v. Union of India & Ors. 2015 SCC OnLine Del 11658 : (2015) 222 DLT 616 (DB)*** authored by one of us (*Gita Mittal J.)* which held:

> *"56. It needs no elaboration that* ***where law prescribes, the manner in which an act has to be performed, it has to be performed in that manner or not at all.*** *This principle emerged from the case of* ***Taylor v. Taylor reported as (1875) 1 Ch.D 426 (Chancery Division).*** *(Ref: Nazir Ahmed v. Emperor AIR 1936 PC 253; Ballabhadas Agarwala v. J.C. Chakravarty, AIR 1960 SC 576; State of Uttar Pradesh v. Singhara Singh, AIR 1964 SC 358; Gujarat Electricity Board v. Girdharlal Motilal, AIR 1969 SC 267; Ramachandra Keshav Adke v. Govind Joti Chavare, AIR 1975 SC 915; Sulochna Uppal v. Surinder Sheel Bhakri, 1990 (3) Delhi Lawyer 325; Harnam Singh v. Bhagwan Singh, ILR (1991) 2 Del 625).* ***Any exercise of power, especially such as is being undertaken in public interest can be effected only after strict compliance with statutory provisions."***
>
> *(Emphasis supplied)*

347. We have discussed above that even if there was some irregularity in the constitution of the committee, but that irregularity had not affected the working of the committee materially or to prejudice the interest of the employers, the court would not interfere under Article 226 of the Constitution of India with the notification fixing the minimum wages. The position however is different if it can be shown or if the interest of a particular group of employer(s) or employees is not represented or taken into account or that such defect has resulted in prejudice to a party. In the present case, we have discussed above that the improper constitution of the committee especially the lack of representation of the employers has substantially resulted in prejudice to their interest.

348. The appropriate Government has thus no option but to appoint the Committee. So far as the advice of the Committee is concerned, it can neither be wished away nor ignored. The same has to be considered by the Government. In fact, it is the existence of these statutory provisions i.e. mandate to constitute the Committee and intervention of its advice into the decision making process of the appropriate Government which is the basis for the Supreme Court upholding the Constitutionality of the law enabling fixation (or revision) of the minimum wages.

349. Light is shed on this issue in the Division Bench pronouncement reported at ***AIR 1957 Raj 35 N.K. Jain vs. The Labour Commissioner (Rajasthan)*** placed by Mr. Dhruv Mehta, Senior Counsel before us. In this case, the order of the Labour Commissioner, Rajasthan ordering the applicant to pay the rates for weekly holiday was challenged. The grounds of challenge were set out in para 4 of the judgment which reads as follows :

> *"4. The grounds on which the application is based are these—*
> *(1) that minimum wage have not been validly fixed, and the notification of 24th of March, 1952, appointing a Committee, and 29th of March, 1952, fixing minimum wages, are invalid inasmuch as the provision of sec. 9 of the Act has not been complied with;*
> *(2) the delegation of powers by the Central Government to the Rajas-than Government under Art. 228 of the Constitution is invalid as Art. 258 has no application to such a case as the fixing of minimum wages is a quasi judicial function;*

(3) that the minimum wages fixed are only for mica works and not for mica mines, and mica mines are not included in the meaning of mica works as used in the schedule of the Act and, therefore, minimum wages could not be fixed for workers in mica mines."

350. The judgment of the court which was penned by then *Chief Justice Wanchoo* is illuminating and deserves to be considered in *extenso* and reads as follows :

"11. The scheme of the Act, in the matter of fixation of minimum wages is this. The appropriate Government is authorised to fix minimum rate of wages in the scheduled employments under sec. 3. Sec. 4 explains what a minimum rate of wages is. ***Sec. 5*** *provides for the procedure for fixing minimum wages, and there are* ***two methods*** *either of which can be adopted by the appropriate Government. Under the* ***first method****, a* ***Committee is appointed*** *to hold enquiries, and advise the Government. Under the second method, the Government publishes their proposals for the information of persons likely to be affected thereby, and specifies a date, not less than two months from the date of the notification, on which the proposals will be taken into consideration. Thereafter, the* ***Government takes into consideration*** *either the* ***advice of the Committee*** *appointed under clause (a) of sec. 5(1), or considers all representations received by it under clause (b) of sec. 5(1), and* ***thereafter fixes by a notification the minimum rate of wages*** *which comes into force on the expiry of three months from the date of its issue unless specified to come into force on some other date. Sec. 6 deals with Advisory Committees and Sub-Committees, sec. 7 with Advisory Boards, and sec. 8 with the Central Advisory Board. Then comes* ***sec. 9 which provides for the composition of Committees,*** *Advisory Committee. Advisory Sub-Committees and the Advisory Boards. These* ***have to consist*** *of persons to be*

nominated by the appropriate Government ***representing employers*** *and* ***employees in the scheduled employments,*** *who shall be* ***equal in number****, and* ***independent persons not exceeding one-third of the total number of members, and one of such independent persons has to be appointed the Chairman. Sec. 9****, in our opinion, governs the composition of the Committee appointed under sec. 5(1)(a) also. It is obvious that in this case* ***sec. 9 was not complied with****. What the State of Rajasthan did was to compose a committee consisting of six of its officers. There was* ***no representation of the employers or of the employees in the scheduled employments on the Committee. The Committee****, therefore, which was formed in this case, and on the advice of which we presume the State Government issued the notification of the 29th of March, 1952,* ***was not properly constituted*** *as required by law.*

12. It has been admitted that sec. 9 was not strictly complied with, but it is urged that this was only an irregularity, and cannot affect the validity of fixation of wages by the Government of Rajasthan. It was also pointed out that the notification delegating the power to the Government of Rajasthan was made on the 21st of February, 1952, and there was great pressure of time, and under sec. 3, as it then stood, minimum wages had to be fixed by the 31st of March, 1952, or otherwise they could not be fixed at all, and therefore, this irregularity took place. Whatever may be the reason for the irregularity, what ***we have to see is whether the irregularity has affected the validity of the later notification fixing the minimum rates of wages on the 29th of March, 1952.*** *In this connection, learned Government Advocate* ***relies on Edward Mills Co. Ltd. Beawar v. State of Ajmer(1).*** *xxx xxx xxx Learned Government Advocate has urged that in this case also there was a procedural irregularity in the appointment of the advisory body, and that this*

irregularity could not vitiate the final notification of the State Government, which fixed the minimum wages. ***We are, however, of opinion that there are irregularity and irregularities, and sometimes an irregularity may be such as not to vitiate the final notification fixing the minimum rate of wages. At other times, however, the irregularity may be of a fundamental character, and may vitiate the final order****. It is well settled that the words used in a judgment have to be read in the context in which they were used, and if we read the words on which the learned Government Advocate relies in the context in which they were used by the Supreme Court, it is obvious that a* ***minor irregularity*** *of the nature with which the Supreme Court was dealing in the case* ***would not vitiate the final order; but it does not follow from this that whatever the nature of the irregularity there will be no vitiation of the final order.***

13. Let us ***look at the nature of the irregularity in this case.*** *Sec. 9 says that the committee will consist of an equal number of the representatives of employers and employees in the scheduled employment and independent persons not exceeding one-third of the total membership.* ***In this case, there was no representation of the employer or the employees. We may assume that all the six members appointed were independent persons. There was thus no Committee constituted under the Act, and the State Government has fixed minimum wages without the advice of the Committee, and without taking the alternative procedure mentioned in sec. 5(1)(b).*** *Can it be said in such circumstances that the final order fixing the minimum rate of wages is valid, though it has been made after completely ignoring the provision of sec. 5(1).* ***We are of opinion that where the provision of sec. 5(1) has not been followed at all, it is not open to the State Government to fix minimum wages, and any order fixing minimum rates of wages without following the provisions of sec. 5(1) is of no force and effect****.*

14. We may in this connection refer to ***Bijay Cotton Mills Ltd. v. State of Ajmer(2).*** *In that case, the validity of the Minimum Wages Act was attacked, and it was urged that the whole Act was illegal in view of the provisions of the Constitution. The learned Judges held that the* ***material provisions of the Act were not illegal and ultra vires****, as the* ***restrictions imposed by them****,* ***though they interfered to some extent with the freedom of trade or business guaranteed under Art. 19(1)(g) of the Constitution, were reasonable,*** *and being* ***imposed in the interest of the general public were protected by the terms of clause (2) of Art. 19.*** *xxx xxx xxx"*

The ***Supreme Court held the Act valid because of the provision****, among others, which* ***required the State Government, before fixing minimum wages, to take into account the advice of the Committee or the representations on its proposals. If this provision and similar provisions relating to consultation with advisory bodies had not been made obligatory, the Act would, in all probability, have been struck down. Therefore, obtaining the advice of the committee under sec. 5(1)(a), or consideration of representations on the proposals of the State Government is the sine qua non of the fixation of minimum rates of wages by the State Government. If the State Government were to proceed to fix minimum wages without appointing a committee under sec. 5(1)(a), or without publishing its proposals and inviting the representations and considering them****, and* ***further if the State Government were to revise the minimum rates of wages without consultation with advisory bodies provided in other sections of the Act, the notification fixing minimum rates of wages or revising them would, in our opinion, be clearly against the basic provisions of the Act and would have no force and validity. In this case, the State Government did appoint a committee but it was no committee within the meaning of sec. 9 of the Act. There was no representation of the employers or the employees in the scheduled employments on that***

> ***committee. In effect therefore though there was in name a committee, in reality there was none****. The State* ***Government's notification****, therefore, of the 29th of March, 1952,* ***fixing minimum rate of wages was in effect made without consulting the committee, and without publishing its proposals and obtaining representations on them and considering those representations****. In these circumstances, the* ***notification dated 29th March, 1952****,* ***fixing minimum rates of wages in certain scheduled employments including mica mines is of no force and effect****.*
>
> *(Emphasis by us)*

The purpose of the Constitution of such Committee under Section 5 of the MW Act, 1948 has to be considered in the light of the role of the Committee or the advisory body.

351. Mr. Harvinder Singh, learned counsel has urged that even from the employee's perspective, the respondent no.1 deliberately did not include two of the largest trade unions, who were affiliated to political parties in the opposition, as they were opposed to the policy of the ruling government in Delhi.

352. The position remains thus abysmal even where the employees representatives are concerned. The respondents had nominated five trade unions as representatives of the employees but not those who may have been at divergence with their objective.

353. The contention is that such constitution of the Committee was *mala fide* as the respondents sought to exclude any opposition to their declared and pre-decided policy to provide historic highest

minimum rates of wages in Delhi, which policy has not been denied in the counter affidavit. Keeping in view the object of the law which is to ensure fairness to the unorganized labour, this intent by itself cannot be criticized. However, to implement the same, statutory requirements cannot be waived or bye-passed nor the interests of all parties effected be ignored. We have, in the present case found that in issuing the omnibus notification, employees who, keeping in view their skills/location etc., would have been entitled to higher wages, stand unfairly deprived of the same.

354. In the present case, the Committee appointed by the respondents neither had any representation of the employers engaged in scheduled employment nor had fair representation of the employees which was essential to ensure a fair and impartial view of the matter.

355. The advice of the committee even though not binding is an integral step of the entire procedure of revising minimum wages. The advisory committee's advice is based on the real time needs and practicality of the need for revision of minimum wages, hence, even though the advice is not binding it is essential that the advice is actually taken into consideration.

356. There is yet another reason why we have difficulty in accepting the contentions of the respondents. *C.K. Thakker, J.* in the work titled ***Administrative Law*** (at p.900), states that the Doctrine of Legitimate Expectation, is the latest recruit in a long

list of concepts fashioned by courts for the review of administrative actions. It is stated that in cases where no legal right is impacted, the court may not insist on an administrative authority to act judicially but may still insist that it acts fairly.

357. In the leading case of ***Attorney General of Hong Kong v. Ng Yuen Shiu, (1983) 2 AC 629,*** Lord Fraser said:

> ***"When a public authority has promised to follow a certain procedure, it is in the interest of good administration that it should act fairly and should implement its promise, so long as implementation does not interfere with its statutory duty."***

358. In the case in hand, the representatives of the employers, had a legitimate expectation of being heard as the advice of the committee was to inevitably affect them.

359. We have examined the submissions of the petitioners that the impugned notification not only prejudices the employers, but also substantively prejudices the rights of the employees.

360. The decision of the Supreme Court in ***(2011) 8 SCC 737 State of Tamil Nadu v. K. Shyam Sunder & Ors.*** deserves to be extracted *in extenso* and read as follows:-

> *"50. In* ***Ajay Hasia and Ors. v. Khalid Mujib Sehravardi and Ors.*** *AIR 1981 SC 487, this Court held that Article 14 strikes at arbitrariness because an action that is arbitrary, must necessarily involve negation of equality.* ***Whenever*** *therefore, there is* ***arbitrariness*** *in* ***State action****, whether it be of the legislature or of the* ***executive****,* ***Article 14 immediately springs into action and strikes***

down such State action*. (See also:* ***E.P. Royappa v. State of Tamil Nadu and Anr.*** *: AIR 1974 SC 555; and* ***Smt. Meneka Gandhi v. Union of India and Anr.*** *: AIR 1978 SC 597).*

51. In ***M/s. Sharma Transport rep. by D.P. Sharma v. Government of A.P. and Ors. : AIR 2002 SC 322****, this Court defined arbitrariness observing that the* ***party has to satisfy that the action was not reasonable*** *and* ***was manifestly arbitrary****. The expression '****arbitrarily****' means;* ***act done in an unreasonable manner****, as fixed or done* ***capriciously*** *or* ***at pleasure without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone****."*

(Emphasis supplied)

361. It is also a well settled principle that exercise of power will be set aside if there is a manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary. *[Ref:* ***(2003) 4 SCC 579 (para 13), Indian Railway Construction Company Limited v. Ajay Kumar*** *and;* ***(1988) 4 SCC 59, State of UP v. Renu Sagar Power Co.]***

362. Given the detailed factual narrative, the law and the failure of the Committee as well as the respondents to comport to the same, we have no manner of doubt that the exercise of power by the respondents was not reasonable and was manifestly arbitrary. The same has to be struck down as violative of Article 14 of the Constitution of India.

363. In the present case, thus not only was the constitution of the Committee completely flawed. Such flawed Committee gave a report which was not based on relevant material, denied fair representation to the employers well as the employees in fact without any effort even to gather relevant material and information. The Government decision based on such advice in violation of express statutory provision and principles of natural justice as well as to the prejudice of employers as well as employees is unsustainable.

364. The above would constitute a most substantial ground (as per ***(2008) 5 SCC 428 (para 14), Manipal Academy of Higher Education v. Provident Fund Commissioner*** again justifying our intervention)

XXII. <u>Conclusions</u>

I. The High Court under Article 226 of the Constitution of India can interfere with a notification fixing minimum wages only on "*the most substantial grounds*".

II. The purport and object of the Act in fixing the minimum wage rate is clearly to prevent exploitation of labour. The hardship caused to individual employers or their inability to meet the burden of minimum wages or its upward revision, has no relevance.

III. The object, intendment and provisions of the Minimum Wages Act, 1948 are clear and unambiguous, and therefore, the

applicability of the beneficent rule of interpretation is completely unnecessary.

IV. Minimum wages have to be more than wages at the subsistence level, have to take into consideration all relevant factors and prescriptions made after due application of mind and must take into consideration the norms and component as approved by the Supreme Court in the ***Reptakos*** judgment.

V. The Supreme Court has rejected challenges to the constitutionality of the Minimum Wages Act, 1948 for the reason that the legislation has ensured the mechanism provided under Section 5, 7 and 9 of the enactment. This places the requirement of compliance with the provisions thereunder on an extremely high pedestal and they had to be strictly adhered to by the respondents.

VI. The appropriate government is required to take into account the report and advice rendered by the Committee/Advisory Board and to apply independent mind and take a balanced decision so far as fixation or revision of minimum wages is concerned. The Government is not bound by the recommendations of the Committee. It is open to the Government to accept (wholly or in part) or to reject the advice of the Board or report of the Committee.

VII. While there is no absolute prohibition on an employee of the Government being nominated as an independent member of the Committee under Section 5 of the Minimum Wages Act, an

objection to such nomination has to be decided on the facts and circumstances of the case. It is only when minimum wages are under consideration for an industry in which the State may be vitally interested as an employer, that it may not be proper to nominate an official to the Committee treating him to be an independent member.

VIII. A defect in composition of the Committee under Section 5 would not *per se* vitiate either its advice or the decision taken thereon. A defect in the composition of the Committee would vitiate its advice, or the ultimate decision of the Government fixing the minimum wages, only if such illegality or defect has worked to the prejudice to a party, for example where the interest of a particular group of employer or employees has not been represented or has not been taken into consideration.

IX. The Delhi Metro Rail Corporation is not an employer engaged in scheduled employment in Delhi and it could not have been appointed on the Committee under Section 5 as a representative of the employer.

X. Though the eligibility of the officers of the Labour Department or the Director of Economics & Statistics as members of the Committee cannot be faulted, however they failed to conduct themselves dispassionately & did not apply their independent minds. The respondent has appointed the very officials as independent persons on a Committee, which had already taken a view in the matter and made recommendations as members of a

Committee in the year 2016, therefore, when appointed for the second time, they were clearly close-minded and proceeded in the matter in a predetermined manner.

XI. The respondents have denied the statutorily mandated representation to the actual employers in scheduled employments in Delhi which tantamounts to non-compliance of Section 9 of the Minimum Wages Act, 1948 and failure on the part of the respondents to constitute a Committee required by law to be constituted.

XII. It is essential that under Section 5(1) of the MW Act, a Committee "*properly constituted*" is "*genuinely invited*" with an open ('*receptive*') mind to tender advice to the appropriate Government.

XIII. It has to be held that employers in the scheduled employments as well as employees with divergent views stand ousted from the consideration and their interests certainly compromised to their prejudice. This prejudice to the employers and employees would constitute a '*most*' substantial ground (***Ref : (2008) 5 SCC 428 (para 14), Manipal Academy of Higher Education vs. Provident Fund Commissioner***) justifying interference by this court in exercise of jurisdiction under Article 226.

XIV. Clearly the Government of NCT of Delhi was aware of the requirement of law and consciously failed to comport to the same.

XV. It is not open to a representative to insist on an oral hearing before the Committee appointed under Section 5 or the Advisory Board under Section 7 of the Minimum Wages Act, 1948.

XVI. The fixation of minimum wages in Delhi cannot be faulted simply because they are higher than the rates of minimum wages fixed in surrounding States and Towns.

XVII. The Committee in making its recommendations as well as the respondents in issuing the singular notification for uniform minimum wages for all scheduled employments have completely ignored vital and critical aspects having material bearing on the issue.

XVIII. Any change in the prescribed rates of minimum wages, is bound to impact both the industry and the workmen. The respondents were bound to meaningfully comply with the principles of natural justice especially, the principles of fair play and due process. The representatives of the employers, had a legitimate expectation of being heard as the advice of the Committee was to inevitably affect them, which has been denied to them before the decision to revise minimum wages was finalized.

XIX. The constitution of the Committee was completely flawed and its advice was not based on relevant material and suffers from non-application of mind. The Government decision based on such advice is in violation of express statutory provision , principles of natural justice, denied fair representation to the employers well as

the employees in fact without any effort even to gather relevant material and information.

XX. The non-application of mind by the committee and the respondents, to the relevant material considerations, offends Article 14 of the Constitution of India.

XXIII. Result

365. The Notification bearing no. ***F-13(16)/MW/1/2008/Lab/ 1859*** dated 15th September, 2016 issued by the respondents constituting the Minimum Wages Advisory Committee for all scheduled employments is *ultra vires* Section 5(1) and Section 9 of the Minimum Wages Act, 1948 and is hereby declared invalid and quashed.

366. The Notification bearing no. ***F.Addl.LC/Lab/MW/2016*** dated 3rd of March 2017 issued by the respondents revising minimum rates of wages for all classes of workmen/employees in all scheduled employments is *ultra vires* Article 14 of the Constitution of India; of Section 3 & Section 5(2) of the Minimum Wages Act, 1948, of Rule 20 of the Minimum Wages (Central) Rules; appears from non-application of mind, is based on no material and is in contravention of principles of Natural Justice and is hereby declared invalid and quashed.

367. The writ petitions are allowed in the above terms.

368. The applications are disposed of as having been rendered infructuous.

369. No order as to costs.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

AUGUST 04, 2018/aj