

1958

March 19.

EXPRESS NEWSPAPERS (PRIVATE) LTD., AND ANOTHER

v.

THE UNION OF INDIA AND OTHERS

(and connected petitions and appeals)

(BHAGWATI, B. P. SINHA, JAFER IMAM, J. L. KAPUR
and GAJENDRAGADKAR, J.J.)

Working Journalists—Regulation of Conditions of Service—Constitutional validity of enactment—Decision of Wage Board fixing rates of wages—Validity—Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955), ss. 3(2), 4, 5(1) (a)(iii), 9(1), 11, 12, 17, 20(d)(2)—Constitution of India, Arts. 19(1) (a), 19(1)(g), 14, 32.

These petitions on behalf of certain newspaper establishments challenged the constitutional validity of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955, and the legality of the decision of the Wage Board, constituted thereunder, purporting to act under s. 9 of the Act. The impugned Act, which was passed in order to implement the recommendations of the Press Commission and had for its object the regulation of the conditions of service of working journalists and other persons employed in newspaper establishments, provided, inter alia, for the payment of gratuity to a working journalist who had been in continuous service, whether before or after the commencement of the Act, for not less than three years, even when he voluntarily resigned from service, regulated hours of work and leave, provided for the payment of retrenchment compensation with retrospective effect in certain cases and by s. 9(1) laid down the principles that the Wage Board was to follow in fixing the rates of wages of working journalists. Under those principles the Wage Board was 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 circumstances which it might consider relevant. The petitioners contended on various grounds that the provisions of the impugned Act violated their fundamental rights under Arts. 19(1)(a), 19(1)(g), 14 and 32 of the Constitution and that the decision of the Wage Board fixing the rates and scales of wages, which was arrived at without any consideration whatsoever as to the capacity of the newspaper industry to pay the same, imposed too heavy a financial burden on the industry and spelled its total ruin, was vitiated by a wrong approach and non-application of the proper criteria and transgressed the principles of natural justice and was, therefore, illegal and void :

Held, that the constitutional validity of the impugned Act, with the sole exception of s. 5(1)(a)(iii) of the Act which infringed

Art. 19(1)(g) of the Constitution, was beyond question and as that section, severable as it was from the rest of the Act, must alone be declared *ultra vires*.

Section 9(1) of the Act, properly construed, made it incumbent on the Wage Board to take into consideration the capacity of the newspaper industry to pay the rates and scales of wages recommended by it and as there was nothing to indicate that it had done so, its decision was void and inoperative.

1958
—
*Express News-
papers (Private)
Ltd., & Another*
v.
*The Union of India
& Others*

Held, further, that there could be no doubt, in view of the interpretation put upon Art. 19(1)(a) of the Constitution by this Court, that liberty of the press was an essential part of the freedom of speech and expression guaranteed by that Article and the press had thereunder the right of free propagation and free circulation without any previous restraint on publication.

Ramesh Thaper v. The State of Madras, [1950] S.C.R. 594 and *Brij Bhushan v. The State of Delhi*, [1950] S.C.R. 605, referred to.

It was legitimate and proper to refer in this connection to the decisions of the Supreme Court of the United States of America, since Art. 19(1)(a) of the Constitution was based on Amendment 1 of the Constitution of that country, and the rules that could be deduced therefrom made it clear that although freedom of the press included freedom from restriction in respect of employment in the editorial staff, the press was not immune from ordinary forms of taxation or from the application of general laws relating to industrial relations or laws regulating payment of wages.

Case law reviewed.

But if a law were to single out the press for laying prohibitive burdens on it that would restrict the circulation, penalise its freedom of choice as to personnel, prevent newspapers from being started and compel the press to seek Government aid, it would be violative of Art. 19(1)(a) and would fall outside the protection afforded by Art. 19(2) of the Constitution.

The impugned Act, judged by its provisions, was not such a law but was a beneficent legislation intended to regulate the conditions of service of the working journalists and the consequences aforesaid could not be the direct and inevitable result of it. Although there could be no doubt that it directly affected the press and fell outside the categories of protection mentioned in Art. 19(2), it had not the effect of taking away or abridging the freedom of speech and expression of the petitioners and did not, therefore, infringe Art. 19(1)(a) of the Constitution.

A. K. Gopalan v. The State of Madras, [1950] S.C.R. 88, *Ram Singh v. The State of Delhi*, [1951] S.C.R. 451, *Minnesota Ex Rel. Olson*, (1930) 283 U.S. 697; 75 L. Ed. 1357 and *Dwarkadas Shrinivas of Bombay v. The Sholapur Spinning and Weaving Co., Ltd.*, [1954] S.C.R. 674, considered.

1958

*Express News-
papers (Private)
Ltd., & Another
v.
The Union of India
& Others*

Nor could the impugned Act be held to be violative of Art. 19(1)(g) of the Constitution in view of the test of reasonableness laid down by this Court.

Chintaman Rao v. The State of Madhya Pradesh, [1950] S.C.R. 759, *The State of Madras v. V. G. Rao*, [1952] S.C.R. 597, *State of West Bengal v. Subodh Gopal Bose*, [1954] S.C.R. 587 and *Virendra v. State of Punjab*, [1958] S.C.R. 308, referred to.

It was not correct to say that s. 9(1) of the Act did not lay down the relevant criteria for the fixation of rates of wages. On a true construction of that section it must be held that the criterion of prevalent rates of wages for comparable employment could be consistent only with the wages higher than the bare subsistence or minimum wages and, since rates of wages must be held to include scales of wages as well, it was essential that the Wage Board should take into consideration the capacity of the newspaper industry to pay before it could fix the rates of wages. Although the Act did not specifically say so, it was possible to hold that the third criterion laid down by the section, namely, the circumstances relating to the newspaper industry in different regions of the country, included such a consideration. The provisions of the section were not, therefore, unreasonable and violative of Art. 19(1)(g) of the Constitution.

The provisions of s. 9(1) of the impugned Act did not vest uncontrolled power in the Wage Board. The last criterion of that section which empowered the Board to take into consideration any other circumstances that it might think relevant, must be read *ejusdem generis* with the other criteria that preceded it and as they laid down with sufficient clarity and particularity the principles for the guidance of the Board, the Legislature was perfectly justified in leaving such considerations as might arise in course of the enquiry to the subjective satisfaction of the Board constituted, as it was, of equal number of representatives of both the employers and employees.

Thakur Raghubir Singh v. Court of Wards, Ajmer, [1953] S.C.R. 1049, considered.

It was not correct to say, having regard to the provisions of ss. 11 and 20(2)(d) of the impugned Act, that the Act did not lay down any procedure for the Board to follow or that it was open to the Board to follow any arbitrary procedure violating the principles of natural justice.

There could be no substance in the contention of the petitioners that the provisions of the impugned Act relating to proof-readers, whom it included within the definition of working journalists, period of notice under s. 3(2), retrospective operation in cases specified by s. 4 and hours of work, imposed unreasonable restrictions on their fundamental right to carry on business.

Gratuity, however, was a reward for good, efficient and faithful service rendered for a considerable period and there could be

no justification for awarding the same when an employee voluntarily resigned, except in certain exceptional circumstances. The award of gratuity, therefore, to an employee who voluntarily resigned from service after a period of only three years, under s. 5(1)(a)(iii) of the Act, must be held to be unreasonable and wholly unjustified.

The impugned Act was not discriminatory in character and did not violate Art. 14 of the Constitution. Working journalists formed a separate class by themselves and could be classified apart from the rest of the newspaper employees on a perfectly intelligible differentia rationally related to the object which the Act had in view. Nor could the provisions of either s. 12 or s. 17 of the Act, therefore, be said to be discriminatory in character.

Budhan Choudhary v. The State of Bihar, [1955] 1 S.C.R. 1045, applied.

The impugned Act contained no prohibition nor did it in any way prevent the Wage Board from giving reasons for its decision and thus passing a speaking order where it chose to do so, and it could not, therefore, be said to have violated the fundamental right of a citizen to move the Supreme Court for a writ of certiorari under Art. 32 of the Constitution.

Rex v. Northumberland Com. Appeal Tribunal, Ex Parte Shaw, [1951] 1 K. B. 711 and *Rex v. Northumberland Compensation Appeal Tribunal, Ex Parte Shaw*, [1952] 1 K. B. 338, held inapplicable.

A. K. Gopalan v. The State of Madras, [1950] S.C.R. 88, relied on.

The question whether a particular body was exercising legislative, administrative or judicial or quasi-judicial functions has to be determined in the light of the statute under which it was constituted and an administrative body functioning as such can also be acting in a quasi-judicial capacity. The test would be whether it had to decide on evidence and decide judicially. So judged, there could be no doubt that the Wage Board under the impugned Act was functioning in a quasi-judicial capacity.

Nagendra Nath Bora v. Commissioner of Hills Division and Appeals, Assam, [1958] S.C.R. 1240, referred to.

Case-law reviewed.

Although this Court would not normally enter into questions of fact, in this case the Wage Board had wholly ignored an essential condition for the exercise of its function and imposed a very heavy financial burden on the newspaper industry. Although the classification of the newspaper industry on the basis of gross-revenue, fixation of scales of wages, provisions as to the hours of work leave, retrospective operation in specified cases, and grouping of newspapers into chains or multiple units could not be said to be improper or unjustified, they made the burden heavier still.

1958

Express Newspapers (Private) Ltd., & Another
v.

The Union of India
& Others

1958

Express News-
papers (Private)
Ltd., & Another

v.

The Union of India
& Others

The Board made no enquiry whatsoever as to the ability of the industry to pay either as a whole or region-wise and did not call for or hear representations from them before finalising its decision. Its decision was, therefore, *ultra vires* the Act and contrary to the principles of natural justice.

ORIGINAL JURISDICTION: Petitions Nos. 91, 99, 100, 101, 103 & 116 to 118 of 1957.

Petitions under Article 32 of the Constitution of India for the enforcement of Fundamental Rights.

AND

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 699-703 of 1957.

Appeals by special leave from the decision of the Wage Board for Working Journalists published in the Gazette of India Extraordinary (Part II, Section 3) dated May 11, 1957.

1957. Dec. 3, 4, 5, 6, 10, 11, 12, 13, 17, 18, 19, 20.

1958. Jan. 8, 9, 10, 14, 15, 16, 17, 21, 22, 23, 24, 28.

M. K. Nambiar and *G. Gopalakrishnan*, for the petitioners in Petition No. 91 of 1957. The Working Journalists Act, 1955, is *ultra vires* as it infringes the fundamental rights of the Petitioners guaranteed by the Constitution under Arts. 19(1)(a), 19(1)(g), 14 and 32. Article 19(1)(a) which guarantees freedom of speech and expression includes the freedom of the employment of means to exercise those rights and consequently comprehends the freedom of the Press. The guarantee of an abstract freedom of expression would be meaningless unless it contemplated and included in its ambit all the means necessary for the practical application of the freedom. (Freedom of the Press—A Framework of Principles—Report of the Commission on Freedom of Press in the United States of America, 1947; Report of the Royal Commission for the Press in the United Kingdom 1949; *Ramesh Thapar v. The State of Madras*, [1950] S. C. R. 594; *Brij Bhushan v. State of Delhi*, [1950] S. C. R. 605; *Ex parte Jackson*, 96 U. S. 727; *Lovell v. City of Griffin*, 303 U. S. 444; *Grosjean v. American Press Co.*, 80 L. Ed. 660; *Schneider v. Irvington*, 84 L. Ed. 155.

Constitution of the United States of America, Revised and Annotated (1952), U. S. Govt. Printing Office pp. 792, 988). If the impugned Act is viewed as a whole it will appear that it authorised the fixation of salary of working journalists at a level which disables the running of the press. The impugned Act thus impedes, controls and prohibits the free employment of the agencies of expression on that section of the Press which form its vocal chord and therefore the Act infringes the freedom contemplated under Art. 19 (1) (a) and is not saved by Art. 19 (2). In judging the validity of the enactment it must be tested by its operation and effect (*Dwarkadas Srinivas of Bombay v. The Sholapur Spinning and Weaving Co. Ltd.*, [1954] S. C. R. 674, 683; *Minnesota Ex Rel. Olson*, 75 L. Ed. 1357).

The Act also violates the right guaranteed by Art. 19 (1) (g) of the Constitution as it places unreasonable restraint on the petitioners' freedom to carry on business (*Chintaman Rao v. The State of Madhya Pradesh*, [1950] S. C. R. 759; cited with approval in *Dwarka Prasad Laxmi Narain v. The State of Uttar Pradesh*, [1954] S. C. R. 803 and *Ch. Tika Ramjidas v. State of U. P.* [1956] S. C. R. 393; *The State of Madras v. V. G. Row*, [1952] S. C. R. 597, 606-607; *The State of West Bengal v. Subodh Gopal Bose*, [1954] S. C. R. 587; *Virendra v. State of Punjab*, A. I. R. 1957 S. C. 896). The law imposing restrictions on fundamental rights must be reasonable not only in its substantive content but in its procedural content as well (*Dr. N. B. Khare v. State of Delhi*, [1950] S. C. R. 519; *Gurbachan v. State of Punjab*, [1952] S. C. R. 737). The relevant criteria for the fixation of wages were not laid down in s. 9 (1) of the Act. The criteria for the fixation of wages laid down in the Act were only relevant for fixing minimum rates of wages, though the word "minimum" used in the Bill 13 of 1955 as introduced in the Rajya Sabha was subsequently dropped before the Bill became the Act. It was not made incumbent on the Wage Board to consider the capacity of industry to pay as an essential criterion or a major factor in

1958

Express News-
papers (Private)
Ltd., & Another

v.

The Union of India
& Others

1958

*Express News-
papers (Private)
Ltd., & Another*
v.

The Union of India
& Others

fixing wages. The other circumstances, viz., "any other circumstances which to the Board may seem relevant" mentioned in s. 9 (1) of the Act was left to be determined by the Board on its subjective satisfaction which could not be controlled by any higher authority. The Act thus enables the Board to exercise arbitrary powers in regard to the same and that is unreasonable by itself (*Thakur Raghubir Singh v. Court of Wards, Ajmer*, [1953] S. C. R. 1049; *R. M. Seshadri v. District Magistrate, Tanjore*, [1955] 1 S. C. R. 686). The procedure to be followed by the Wage Board was not laid down in the Act (c. f. The Bombay Industrial Relations Act, 1946, as amended) and it was open to the Board to follow any arbitrary procedure disregarding the principle of *audi alteram partem* and as such the Act is unreasonable. The Wage Board was not exercising legislative functions but functions which were quasi-judicial in character. The intention of the Legislature was to assimilate the Wage Board as much as possible to an Industrial Tribunal constituted under the Industrial Disputes Act, 1947. If it is held that s. 11 of the Act is an enabling provision, and gave the Board the arbitrary discretion whether to exercise the same powers and follow the same procedure of an Industrial Tribunal or any procedure it liked, it is unreasonable.

The provisions of ss. 2 (f), 3, 4, 5, 8 to 11, 12, 14, 15 and 17 place restraints on newspaper establishments which would have the effect of destroying the business of the petitioners. The right to impose restrictions on the right to carry on business under Art. 19 (6) conferred no power on the Legislature to destroy the business itself (*Stone v. Farmers Loan and Trust Co.*, 29 L. Ed. 636; *Municipal Corporation of the City of Toronto v. Virgo*, 1896 A. C. 88; *A. G. for Ontario v. A. G. for the Dominion*, [1896] A. C. 348).

The Act is discriminatory in character and violates Art. 14 of the Constitution. It gives the working journalists a more favoured treatment as compared to other employees in several ways, statutory benefits by way of retrenchment compensation, gratuity, limitation of the hours of work and leave, not enjoyed by

others in comparable employments. It is restricted in its scope to a selected section of newspaper employees. It gives them the benefit of the wage fixation by devising machinery in the form of a Pay Commission without the existence of any industrial dispute, without prescribing the major criterion of capacity to pay to be taken into consideration; (*Britannia Bldg. and Iron Co. Ltd.*, (1954) 1 L. L. J. 651, 654; *Union Drug Co. Ltd.*, (1954) 1 L. L. J. 766, 767; Report of the Committee on Fair Wages, pp. 13-15, paras. 21, 23 and 24); or following the procedure prescribed by the Industrial Disputes Act, 1947, even in disregard of principles of *audi alteram partem*. The employers of the newspaper establishments are subjected to discriminatory treatment by the Act in that (i) they are singled out from all other industrial employers who are covered by the ordinary law regulating industrial relations under the Industrial Disputes Act, 1947; (ii) they have been saddled with new burdens in regard to a section of their workers in matters of gratuity, compensation, hours of work and wages; (iii) s. 12 of the Act makes the decision of the Wage Board binding only on the employers and not on the employees and (iv) s. 17 provides for recovery of money from employers only and not from employees in the same manner as an arrear of land revenue.

The classification made by the impugned Act is arbitrary and unreasonable in so far as it removes the newspaper employers vis-a-vis the working journalists from the general operation of the Industrial Disputes Act, 1947.

The right to apply to Supreme Court for enforcement of a fundamental right under Art. 32 is itself a fundamental right guaranteed by the Constitution (*Ramesh Thapar v. The State of Madras*, [1950] S. C. R. 594, 597). The right to claim a writ of certiorari against a decision is dependent on the fact that the impugned decision on its face is a "speaking order". (*Rex v. Northumberland Compensation Appeal Tribunal, Ex parte Shaw*, [1951] 1 K. B. 711, affirmed by the Court of Appeal in [1952] 1 K. B. 338; *A. K. Gopalan v. The State of Madras*, [1950] S. C. R. 88, 243). The Act

1958

—
Express Newspapers (Private) Ltd., & Another
 v.

The Union of India & Others

1958

Express News-
papers (Private)
Ltd., & Another

v.

The Union of India
& Others

contravenes Art. 32 of the Constitution because it does not provide for giving any reasons for the decision to be made by the Wage Board.

Decision of the Wage Board is illegal and void because (i) the Act under which it is made was *ultra vires* (*Mohd Yasin v. Town Area Committee of Jalalabad*, [1952] S. C. R. 572; *Himatalal Harilal Mehta v. State of U. P.*, [1954] S.C.R. 1122); (ii) the decision itself infringes the fundamental rights of the petitioners (*Bidi Supply Co. v. Union of India*, [1956] S. C. R. 267 and (iii) the decision is *ultra vires* the Act) *Pandit Ram Narain v. State of U. P.*, [1956] S. C. R. 664). The reconstitution of the Board on the retirement of one of its members was *ultra vires* and unauthorised by the Act as it stood at the time, the Rules having been published on July 10, 1956. The procedure as to decision by majority is not warranted by the Act, and the Rule which sanctioned such a procedure is *ultra vires* the Act. The procedure followed by the Board offended the principles of natural justice and is therefore invalid. It did not follow the procedure of an Industrial Tribunal even though on two occasions, viz., when the *questionnaire* was issued and when a number of newspapers failed to reply to the *questionnaire*, the Board asserted that it had the powers of an Industrial Tribunal. Neither in the *questionnaire* nor at any time thereafter were concrete proposals submitted by the Board to the newspaper establishments. Its decision is invalid as no reasons are given for it nor does it indicate what considerations prevailed with the Board in arriving at it.

The classification of newspapers on the basis of gross revenue is contrary to the provisions of the Act. In the gross revenue which is earned by newspaper establishments advertisement revenue ordinarily forms a large bulk of such revenue and unless the proportion of advertisement revenue to the gross revenue were taken into consideration it would not be possible to form a correct estimate of the financial status of a newspaper establishment with a view to its classification. Profit and loss of newspaper establishment should be the proper test and if that

test were adopted it would give an altogether different picture.

Until now whenever the wage had to be fixed for an industry the relevant consideration had always been the capacity of the industry to pay. The wages which are normally fixed after a general inquiry applicable to the whole industry have always been minimum wages. Assessment of a wage level and scale only by reference to gross revenue was erroneous.

1958
 Express News-
 papers (Private)
 Ltd., & Another
 v.
 The Union of India
 & Others

The decision suffers from another major defect in computing gross revenue not for each newspaper but collectively for the organisation which might be running a number of papers. The result of this mode of calculation was that an organisation publishing a large number of papers might well fall within the top class by virtue of its gross revenue although each one of the papers taken individually might be running at a loss. This process of considering the multiple units or a chain of newspapers as one establishment has affected the petitioners adversely and is unauthorised by the Act. The Wage Board was not authorised by the Act to fix the wages of working journalists in relation to the whole industry but could do so only in respect of individual establishments as will appear from the definition of a "newspaper establishment" given in s. 2(d) of the Act. An establishment can only mean "an establishment" and not a group of them, even though such an individual establishment may produce or publish one or more newspapers. (*Pravat Kumar v. W. T. C. Parker*, A. I. R. 1950 Cal. 116, 118; *S. R. V. Service Co. Ltd. v. State of Madras*, A. I. R. 1956 Mad. 115, 121-122).

The decision of the Wage Board is illegal as it does not disclose that the capacity to pay of the individual establishment was ever taken into consideration. There is nothing on record to suggest that both as regard rates of wages and the scales of pay the Wage Board ever took into account as to what the impact of its decision would be on the capacity of the industry to pay either as a whole or region-wise. Even as regards the fixation of wages the Wage Board does

1958

*Express News-
papers (Private)
Ltd., & Another*
v.
The Union of India
& Others

not seem to have taken into account the other provisions of the Act which conferred upon the working journalists other benefits which would affect the paying capacity of the newspaper establishments. Furthermore the working journalists constitute only 1/5 of the total staff employed by various newspaper establishments. If the conditions of service of working journalists were to be improved by the Wage Board the other employees who form 85% were bound to be restive and likely to raise industrial disputes for betterment of their conditions of service. This would impose an additional financial burden on the newspaper establishments and would substantially affect their capacity to pay. The retrospective operation of the decision of the Wage Board was also calculated to impose financial burden on the newspaper establishments.

The Wage Board exceeded its power in giving retrospective operation to its decision. The Wage Board had acted illegally in fixing scales of pay for a period of three years when the Act does not give it such authority. Further the Wage Board was handicapped for want of Cost of Living Index.

K. M. Munshi, L. K. Jha, S. S. Shukla, Balbhadra Prasad Sinha and R. J. Joshi, for the petitioners in Petitions Nos. 99 to 101 of 1957. The freedom of the Press is a fundamental personal right of the petitioners. It rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public. Such freedom is the foundation of a free government and as such enjoys a preferential position among the constitutional guarantees. This is a "preferred right".

The purpose of the constitutional guarantee of free speech is to prevent public authority from assuming the guardianship of the public mind (*Thomas v. Collins*, 89 L. Ed. 430; The Supreme Court and the right of Free Speech and Press—Annotation in 93 L. Ed. 1151; *Beauharnais v. Illinois*, 96 L. Ed. 919, 943—dissenting opinion of Douglas, J.). While the Press enjoys no immunity from the application of the general laws relating to industrial relations, an Act or any

of its provision would violate the right of free speech and expression if it lays a direct and preferential burden on the freedom of the Press; if it has a tendency to curtail circulation and thereby narrow the scope of disseminating information; if it fetters the petitioners' freedom to choose the means of exercising their right to freedom of expression and if it is likely to undermine the independence of the Press by having to seek Government aid. The Act singles out the Press for levying upon it a direct burden which is excessive and so restrictive as to be prohibitive. It begets a class of workers whose benefits and rights are given a preferential enforceability parallel to that of a public debt. The impugned Act by s. 9 leaves, in violation of the Constitution, the fixation of wages to an agency invested with arbitrary and uncanalized power to impose an indeterminate burden on the wage structure of the Press, such employer and employee relations at its descretion as it thinks fit, and such burden and restrictions for such time as it thinks fit. The Act and the decision of the Wage Board, which under the Act becomes enforceable as a part of it, have imposed an excessive and prohibitive burden which will have a tendency to curtail the revenue and restrict circulation which is the means of imparting information and giving free expression to speech, impose a penalty on the petitioners' right to choose the instruments for its exercise or to seek alternative media of expression, drive the Press to seek Government aid in order to survive and prevent newspapers from being started. The Act has created an impossible situation in which the petitioner could only say "I cannot live, I cannot die and I cannot commit suicide". Even if the petitioners were to close down their business and dispose of all their assets they would not be in a position to meet all the liabilities.

The Constitution does not permit any abridgment of the fundamental right of freedom of speech and expression unless it falls within the categories of restrictions mentioned in Art. 19(2). When the permitted restrictions were incorporated special care was taken by the framers of the Constitution to see that

1958

*Express News-
papers (Private)
Ltd., & Another
v.*

*The Union of India
& Others*

1958

Express News-
papers (Private)
Ltd., & Another

v.

The Union of India
& Others

freedom of speech was protected and that the right should not be at the mercy of the legislature which might want to impose excessive burden on the Press. It is for this reason that the "Public interest" restriction in Art. 19(6) appearing against the fundamental right in Art. 19(1)(g) is not to be found in Art. 19(2).

A distinction has to be drawn between the Constitution of U. S. A. and India. What is known as the "due process of law" in America has been specifically omitted from the Constitution of India. In U. S. A. the "due process" clause enabled the Supreme Court to read into the Constitution any doctrine restrictive of the fundamental right, e. g., in the 1930's the U. S. Supreme Court had held that statutory fixation of minimum wage in the newspaper industry was violation of fundamental rights of free speech, but after some years the same Court acting under the discretion given by the due process clause took cognizance of altered circumstances in labour relations and held that the imposition of a minimum wage on the Press did not violate the fundamental right (Constitution of the United States of America, Revised and Annotated (1952), U. S. Govt. Printing Office, pp. 792, 988). The Indian Constitution does not permit restriction of freedom of speech except under the limitation set by Art. 19(2). Restrictions that could be held *intra vires* in respect of other industries would still be *ultra vires* under Art. 19(1)(a) of the Constitution in respect of the Press industry because of the special privilege of right of free speech. Any direct restriction placed by Government on the Press would be violation of Art. 19(1)(a), and therefore even if the Government had sought to impose a minimum wage for the Press by direct legislation it would have been equally unconstitutional. This illegality, however, would not attach to the finding of an adjudicatory machinery such as was contemplated under the Industrial Disputes Act, 1947. Where Government provided a media for the settlement of disputes and claims between citizens and citizens there was no question of any contravention of fundamental rights which were protected against governmental encroachment.

The various sections of the Act have the effect of placing restrictions on the press which would inevitably have the effect of restricting the freedom of speech and expression in contravention of Art. 19(1) (a). The Act has created a privileged class of working journalists above the other workers either in this country or anywhere also, above contract and above the law of the land.

The Wage Board has exceeded its authority and has arrived at conclusions and findings which restricts the fundamental rights of the petitioners. The Act authorises the Central Government to constitute a Wage Board for fixing rates of wages. This does not authorize the Board to enter into the wider question of determination of scales of pay. Fixing could only mean fixing with reference to a point of time. The Legislature did not contemplate that single wage should determine the wage scales, for all time to come. The whole framework of the Act was based on minimum wage and the sudden removal of the word "minimum" has caused all these difficulties. "Rates of wages" and not "scales of wages", the Wage Board was to consider. The term "rates of wages" applies only to a particular point of time.

[*Sinha, J.*—Section 9(2) of the Act says that the Board may fix "rates of wages for time work and for piece work". They cannot have any reference to scales. The same words in the statute mean the same thing. They cannot mean different things in different sections.]

Yes. These words are used again and again in the Act. In the Minimum Wages Act, the Payment of Wages Act, etc., where the same expression "rates of wages" is used to indicate a wage fixed in time and amount. The Wage Board has exceeded its power in fixing the scales of wages and increments and thereby places a fetter on the Press, not contemplated by the Act.

The Act and the Wage Board have disregarded all considerations which according to authority and law were germane to the proper fixation of wages without

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

1958

Express News-
papers (Private)
Ltd., & Another

v.

The Union of India
& Others

placing restrictions on fundamental rights. Even the Minimum Wages Act provides for periodical reviews, and proposals for minimum wages should be notified for inviting the opinions.

The decision of the Wage Board has been arrived at in violation of the procedure prescribed by s. 11/ of the impugned Act and in violation of the rules of natural justice and is thus illegal.

The Wage Board has been unreasonable in basing wages on revenue from all sources rather than on the revenue which the working journalists contributed by their labour.

Classification of newspapers on the basis of the gross revenue of all papers run by an organisation and fixation of wages on such classification has led to results which are absurd and discriminatory in effect and ignore the principle enunciated by the Act itself. As an example, take the case of a paper with small circulation in Kutch which is placed in a higher category than a paper in Bombay simply because the former is part of a larger organisation.

The Wage Board has not taken care to remain within the terms of the impugned Act, namely, that the wages should be based on regional consideration.

The Wage Board has given its decision in complete disregard of the newspapers' capacity to pay. It did not take proper care in framing its decision. Lack of such care in framing its decision makes it unreasonable and hence restrictive of fundamental rights.

The Wage Board has exceeded its authority by giving retrospective effect to the wage structure devised by it. This is invalid and *ultra vires* the Act.

Section 12 of the Act creates one-sided obligation by making decision of the Board binding only on the employers. Such one-sided obligation can be appropriate when a minimum subsistence wage is fixed but cannot attach to payment of wages at luxury levels. This unilateral obligation on the employer leaves it open to the journalists to agitate for an increase in wages before an industrial tribunal, but it precludes the employer from seeking any alteration under any circumstances. The Act has provided no machinery

for a review or revision of the wage structure even if circumstances changed.

Restrictions on fundamental right to do business arise because the Act and the decision of the Wage Board have the effect, firstly, of considerably increasing the operating cost and, secondly, of fettering the conditions of service or the terms of the contract of service between the employer and the employee.

By disregarding the disparity in regional conditions the Wage Board has discriminated between paper and paper, employer and employer and employee and employee.

S. P. Sinha, Gurbachan Singh, Harbans Singh and R. Patnaik, for the petitioners in Petition No. 103 of 1957.

S. S. Shukla, for the petitioners in Petitions Nos. 116 to 118 of 1957.

M. C. Setalvad, Attorney-General for India, B. Sen and R. H. Dhebar, for respondent No. 1 (The Union of India) in all the Petitions. Before going into the merits of the case it is necessary to examine the background and the perspective in which the Act was enacted, the careful inquiry which preceded its enactment and the conditions which the Act was designed to meet. (Report of the Press Commission, dated July 14, 1954; Report of the Inquiry Committee constituted in 1947; Report of the C. P. and Berar Press Inquiry Committee constituted on March 27, 1948).

The Act does not infringe any of the fundamental rights of the petitioners guaranteed under Arts. 19(1)(a), 19(1)(g), 14 and 32 of the Constitution. The functions of the Wage Board constituted under s. 8 of the Act were not judicial or quasi-judicial in character; the fixation of the rates of wages by the Wage Board was a legislative act and not a judicial one; the Wage Board arrived at its decision on a consideration of all the criteria laid down in s. 9(1) of the Act for fixation of wages and the material as well as the evidence placed before it; a large number of the decisions of the Wage Board was unanimous; under the Act the Wage Board has the power and authority to fix the

1958

*Express News-
papers (Private)
Ltd., & Another
v.*

*The Union of India
& Others*

1958

*Express News-
papers (Private)
Ltd., & Another
v.
The Union of India
& Others*

scales of wages also and/ to give retrospective operation to its decision. The financial position of the petitioners was not such as to lead to their collapse as a sequel to the enactment of the provisions of the Act and the decision of the Wage Board.

Regarding alleged infringement of Art. 19(1)(a), I submit that the legislation should be examined in order to determine whether it is legislation directly in respect to the fundamental rights mentioned in the Constitution. The principle enunciated by the Supreme Court in several decisions is that when a legislation is attacked on the ground of contravention of a fundamental right, the Court must first examine whether it directly deals with the fundamental right. If the legislation is not one directly with respect to a fundamental right no further question arises, (*A. K. Gopalan v. The State of Madras*, [1950] S. C. R. 88, per Kania, C. J., *Ram Singh v. State of Delhi*, [1951] S. C. R. 451, 455). The Supreme Court has also in this connection invoked the doctrine of "pith and substance". The fact that a legislation, directed in its pith and substance to regulate gambling, incidentally placed certain restrictions on business was held not to make the law violative of the fundamental right to carry on business. (*State of Bombay v. R. M. D. Chamarbaugwala*, [1957] S. C. R. 874). The provisions of the Act are clearly designed to regulate the conditions of service of journalists and not the freedom of expression or speech, and therefore no question of the infringement of fundamental right under Art. 19(1)(a) arises. The contention of the petitioners based on American decisions, e. g., *Minnesota Ex Rel. Olson* (75 L. Ed. 1357) cannot be sustained. First, the provisions of the American Constitution are substantially different; secondly, the American Courts have adopted the same view as our Supreme Court in *A. K. Gopalan v. The State of Madras*, [1950] S. C. R. 88, and other cases. (*The Associated Press v. The National Labour Relations Board*, 81 L. Ed. 953, 960-966; *Mabee v. White Plains Publishing Co.*, 90 L. Ed. 607, 613—where application of U. S. Fair Labour Standards Act, 1938, to newspaper undertakings was held not to

infringe freedom of speech; *Oklahoma Press Publishing Co. v. Walling*, 90 L. Ed. 614, 621; *Murdock v. Pennsylvania*, 87 L. Ed. 1292).

The restrictions under Art. 19(6) on the freedom to carry on business under Art. 19(1)(g) will not cease to be reasonable even if such restrictions resulted in prohibition of carrying on business in certain cases. Such restrictions can be imposed if they are in the interest of the general public. Having regard to the Report of the Committee on Fair Wages appointed by the Government of India and the practice prevailing in other countries, the Act has not adopted any unusual procedure in constituting a Wage Board for the determination of rates of wages of working journalists. The Act follows the recommendations of the Press Commission for the most part. The only important deviation it has made is that whereas the Press Commission had recommended fixation of a minimum wage, the Act provides for fixation of all wages. Under the directive principles of State Policy (Art. 43 of the Constitution) the goal was not merely a minimum wage but a fair wage and a living wage. We have to march to that goal.

[*Gajendragadkar, J.*—True, but in marching to that goal we have to consider the capacity to pay.]

Yes, capacity to pay region-wise and capacity to pay country-wise but not capacity to pay unit-wise, that is, according to each newspaper's capacity.

The Court has to consider what the Legislature intended. The term "minimum wage" has been understood in two different senses, the first being an "industrial minimum wage" and the second a "statutory minimum wage". Is it an "industrial minimum", or is it a "statutory minimum"? An "industrial minimum" is a subsistence wage that has to be paid by any unit if it wishes to exist; a "statutory minimum" is something more than a subsistence level wage and may be any level which the Legislature thinks fit to impose. The statutory minimum wage need not be confined to fixing a single determinate amount but can legitimately include the fixing of a scale of wage. "Wages" has been defined

1958

Express Newspapers (Private) Ltd., & Another

v.

The Union of India & Others

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

very comprehensively in s. 2(rr) of the Industrial Disputes Act, 1947, and in the Third and Fourth Schedule to that Act wages are stated to include the period and mode of payment.

[*Sinha, J.* Does it refer to scales?]

Wages include in its ambit the scales. It was on this basis that various Industrial Tribunals have fixed scales. Even the Supreme Court decided that way.

[*Sinha, J.* My point is whether the question has been raised and decided or has it been only assumed?]

The matter, so far as I know, has not been raised and decided. It has only been assumed.

“Wages” in ss. 9 and 8 of the Act has been used in a comprehensive sense. The correct approach is to see what the term “wages” means and to see whether the word “rates” cuts down that meaning. In order to construe the section it will not be legitimate to see what happened in the Legislature, what was said in the Bill and how the word “Minimum” was dropped. One of the criteria specified in s. 9(1) of the Act is the prevalent rates of wages for comparable employments. This has no reference to minimum wage (*Nellimarla Jute Mills*, (1953) 1 L. L. J. 666). It shows that s. 9(1) contemplates fixation of rates of wages which are higher than the bare subsistence or industrial minimum wage. The criterion “the circumstances relating to newspaper industry in different regions of the country” in s. 9(1) can have no other meaning than the capacity to pay region-wise. The discretion given to the Wage Board to consider “any other circumstances which to the Board may seem relevant” is no doubt subjective. It is the Board which has to decide what is relevant and what is not. Such power is neither unreasonable nor arbitrary. The general policy with regard to the Wage Board was that they were given the widest discretion and there was no question of their discretion being fettered. Even if the Legislature left the fixation of wage to the Board without laying down any criteria it would have been a competent legislative Act because of the nature of the

Board. In fact, three criteria have been laid down in s. 9(1) of the Act. Having regard to the variety and complexity of the matters involved it was not possible for the Legislature itself to visualise or indicate the various circumstances which might be relevant.

There is nothing unusual or arbitrary in leaving to the Wage Board a wide discretion in the matter of its procedure. In U. K. the Central Co-ordinating Committee under the Wage Councils Act, 1945, and the Agricultural Wages Board under the Agricultural Wages Regulation Act, 1924, are authorised to regulate their own proceedings. No formal procedure has been prescribed for Wage Boards in Australia.

The inclusion of proof-readers in the definition of "Working Journalist" in s. 2(1) of the Act is not unreasonable. Proof-readers occupy a very important position in the editorial staff of a newspaper (Kemsley—Manual of Journalism, p. 337, B. Sen Gupta—Journalism as a Career (1955 Edn.). There is nothing unreasonable in the period of notice for retrenchment in s. 3(2) of the Act. (Halsbury's Laws of England, 2nd Edn., Vol. 22, p. 150, para. 249 foot-note (e)). The retrospective operation of compensation in certain cases given by s. 4 of the Act is designed to meet the few cases of retrenchment by the management anticipating the implementation of the recommendation of the Press Commission and cannot be said to be unreasonable. There is nothing unusual in s. 5 of the Act which provides for a gratuity. Gratuity is recognised by Industrial Tribunals (*Ahmedabad Municipal Corporation*, [1955] L. A. C. 155, 158; *Nundydroog Mines Ltd.*, [1956] L. A. C. 265, 267). Under the law of various countries payment of indemnity to an employee who voluntarily resigns is provided for (Legislation for Press, Film and Radio in the World Today (1957) UNESCO publication at p. 404; Collective Agreement between the Geneva Press Association and the Geneva Union of Newspaper Publishers dated April 1, 1948). Even in India Labour Courts have awarded gratuity on voluntary resignation (*Cipla Ltd.*, (1955) II L. L. J. 355, 358; *Indian Oxygen and Acetylene Co. Ltd.*, (1956) I L. L. J. 435). The hours of work provided in s. 6 of

1958

Express News-
papers (Private)
Ltd., & Another

v.

The Union of India
& Others

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

the Act cannot be said to be unreasonable having regard to the nature of work to be done by a working journalist. Such hours of work are fixed by s. 54 of the Factories Act, 1948, (See also, Mines Act, 1952; Shops and Establishments Acts of different States in India). Sections 8 to 11 deal with the constitution of the Wage Board and the fixation of rates of wages by the Board. The Wage Board was to consist of an equal number of representatives of employers and employees and an independent chairman. There is nothing unreasonable in the constitution of the Board. The principles for the guidance of the Wage Board in the matter of fixation of wages have been laid down by the Act. It cannot, therefore, be said that these provisions are unreasonable. Section 17 of the Act relates only to the mode of recovery of money from an employer and does not impose any financial burden; therefore it could not be said that it infringes Art. 19(1)(g).

Article 14 of the Constitution does not forbid reasonable classification for the purpose of legislation (*Budhan Choudhry v. The State of Bihar*, [1955] 1 S. C. R. 1045, 1048). The work of a journalist is peculiar and demands a high degree of general education and some kind of specialised training (Report of the Press Commission, para. 512; Legislation for Press, Film and Radio in the World Today (1951) UNESCO publication at p. 403). The working journalists are a class by themselves apart from the other employees of the newspaper establishments and also employees in other industries. They can be singled out for the purpose of ameliorating their conditions of service. There would be no discrimination if special legislation is enacted for the benefit of this class and a special machinery is created for fixing the rates of its wages different from the machinery for other workmen. Even if the Act be considered as a social welfare measure the State can only make a beginning somewhere. Such a measure need not be all embracing. There is nothing unreasonable in s. 12 of the Act which makes the decision of the Board binding on the employers only. A provision which has for its object the protection of

employees cannot be said to be repugnant to Art. 14 on the ground that it discriminates against the employers (*South Bank Ltd. v. Pichuthayappan*, A. I. R. 1954 Madras 377). Section 17 of the Act is for the benefit of the working journalist. It enables him to realise the money due from an employer under the Act. Similar provision is to be found in s. 33C of the Industrial Disputes Act. There is nothing discriminatory in a provision which governs employees in other industries being extended to working journalists. The object sought to be achieved by the Act is the amelioration of the conditions of service of working journalists. The classification is based on intelligible differentiae which distinguish them from other employees of the newspaper establishments and also in other industries. These differentiae have a rational basis. The legislation amply fulfils the conditions of permissible classification.

It is "fantastic" to contend that the Act infringes Art. 32 of the Constitution. The Act does not prohibit the Wage Board from giving a reason for its decision. No question therefore arises of the infringement of the fundamental right of the petitioners under Art. 32.

Assuming any provision of the Act is void then the question will be whether it is severable. If it is severable then the whole Act will not be void but only the section. Similarly, if the court finds that the Act is constitutional but a decision of the Wage Board is *ultra vires* the Act or unconstitutional the Court will strike down such decision. That will not affect the validity of the Act. (*State of Bombay v. F. N. Balsara*, [1951] S. C. R. 682; *State of Bombay v. The United Motors (India) Ltd.*, [1953] S. C. R. 1069 and *R. M. D. Chamarbaugwala v. The Union of India*, [1957] S. C. R. 930).

In regard to the decisions of the Wage Board the Court has to consider first, whether the decisions are *intra vires* the Act—since an authority to whom the power of subordinate legislation is delegated cannot act contrary to the statute, and secondly, do the decisions being a part of the Act in any way contravene the Constitution. These are the only questions which

1958

Express Newspapers (Private) Ltd., & Another
v.
The Union of India & Others

1958

—

Express News-
papers (Private)
Ltd., & Another

v.

The Union of India
& Others

arise in regard to the decisions of the Wage Board. No question arises of its procedure being in accordance with the principles of the natural justice nor of the application of *audi alteram partem*.

[*Bhagwati, J.*—They say it is contrary to the principles of natural justice—*audi alteram partem*.]

That is a maxim about which we have heard so much. It has no application to this case of delegated legislation.

[*Bhagwati, J.*—Can it not be urged, having regard to s. 11, that the Legislature did not contemplate that the Wage Board was to function as delegated authority because it gives the choice of the provisions of the Industrial Disputes Act being followed by the Board ?]

No, even for a subordinate legislative authority there are procedures to be followed for arriving at certain conclusions.

[*Kapur, J.*—Is it not necessary to hear everybody who may be affected by the decisions of the Board ?]

No question of hearing arises. It is a question of a subordinate legislative authority gathering such information as it wants and it is obliged to take into consideration all the relevant circumstances.

Certiorari and prohibition lie only in respect of judicial or quasi-judicial acts. (Halsbury's Laws of England, 3rd Edn. Vol. 11, p. 55, para. 114). The principle *audi alteram partem* also applies only to judicial or quasi-judicial proceedings. (*Patterson v. Dist. Commr. of Accrator*, [1948] A. C. 341). For a distinction between judicial and legislative functions, See Cooley's Constitutional Limitations, 8th Edn. Vol. 1, p. 185; *Prentis v. Atlantic Coast Co. Ltd.*, 211 U. S. 210, 226-227, Per Holmes J.; *Mitchell Coal Co. v. Pennsylvania*, 57 L. Ed. 1479, 1482; *Louisville and Nashville Railroad Co. v. Green Garrett*, 58 L. Ed. 229, 239). The functions of the Wage Board in the United Kingdom have been characterised by writers as legislative in character. (Robson's Justice and Administrative Law, 3rd Edn. p. 608; Griffith's Principles of Administrative Law, p. 39; Barbara Wootton, Social Foundations of Wage Policy, Modern methods of

Wage determination, p. 88). This is also the case in Australia. (*Federated Saw Mills Case*, 8 C. L. R. 465; *Australian Boot Trade Employees Federation v. Whybrow and Co.*, 10 C. L. R. 266, 289, 317, per Isaacs, J.). The Labour and Industry Act, 1953, of Victoria (Australia) in s. 39(2) gives statutory recognition to the decisions in 8 C. L. R. 365 and 10 C. L. R. 266, by providing that every determination shall have force, validity and effect as if enacted in the Act. The very constitution of the Wage Board under the impugned Act, with an equal number of representatives of employers and employees with an independent chairman is against its being judicial or quasi-judicial in character, for, no man should be judge in his own cause. (*Franklin v. Minister of Town and Country Planning*, [1948] A. C. 87, 103).

It is incorrect to infer that once the Wage Board is constituted under s. 8 of the Act the power of the Government under the Act is exhausted and nothing more can be done. The power to constitute the Board can by virtue of s. 14 of the General Clauses Act, 1897, be used from time to time as the occasion demands. There was nothing wrong in the Central Government reconstituting the Board on the resignation of Shri K. P. Keshava Menon. The decision by majority is provided by Rules framed by the Central Government under s. 20 of the Act which became a part of the Act. Hence a decision by a majority in conformity with the Rules under the Act cannot be impeached.

In examining the decisions of the Wage Board the Court will attach to them the same consideration and weight as to a decision by a legislature. (*Pacific States Box and Basketing Co. v. White*, 80 L. Ed. 138; 296 U. S. 170).

Under s. 11 of the Act the Wage Board "may" exercise the powers and follow the procedure laid down under the Industrial Disputes Act, 1947. There is nothing to warrant the provision being read as obligatory or mandatory. The provisions of the Industrial Disputes Act are basically enacted for the adjudication of disputes between two parties and they are on

1958

Express News-
papers (Private)
Ltd., & Another
v.

The Union of India
& Others

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

their face inapplicable to the Wage Board. That is precisely why the Board was given the option to exercise some of the powers conferred by the Industrial Disputes Act or to follow procedures prescribed in that Act.

It is not incumbent under the Act on the Wage Board to give any reasons for its decisions. The Board would be perfectly within its right if it chose not to give any reasons.

While judging the reasonableness of the wage structure for the whole industry it would be entirely fallacious to see how it hit a particular newspaper or a unit. Multiple units or chains could be classified on the basis of the total gross revenues of all the constituent units because economies would be possible in group operations resulting in the reduction of the cost of production. There is nothing in the Act which prohibits the Wage Board from grouping into chains or multiple units. Further, there is nothing in the Act to prohibit the treating of several newspaper establishments publishing one or more newspapers though in different parts of the country as one establishment for fixing rates of wages.

Some sort of classification was inevitable when the newspaper establishments all over the country had to be considered for fixing the rates of wages. If the Wage Board adopted gross revenue as a workable basis for classification there was nothing wrong and that fact could not vitiate its decision. Profits of newspaper establishments were vague and difficult to ascertain as many things are mixed up in calculating profit. It would be dangerous to go by the profit and loss of individual concerns to ascertain their capacity to pay. Even the Bank Award has taken the "turnover" or the aggregate resources as the basis of the classification. The basis of gross revenue was the only proper and convenient method of ascertaining the actual status of a newspaper establishment for fixing a wage structure.

Wage-structure recommended by the Board would show that compared with the scales and salaries obtaining now in many of the newspaper establishments the scales given by the Board were not exorbitant or

unreasonable. What is to be considered is the industry region-wise and not individual units. It may be that individual units may suffer hardship or even go out of existence but that would not be a relevant consideration.

[*Gajendragadkar, J.*—If the decisions are to be attacked effectively under Art. 19(1)(g), petitioners have to show that A or B or C class of paper will cease to exist, or, taken as a class they cannot bear the burden.]

That is the way the matter should be approached. The figures in individual statements of the petitioners furnish no evidence whatsoever of the unreasonableness of the wage fixation.

The decision is given retrospective effect from the date of constitution of the Board. The Act itself in s. 13 contemplates interim relief. Instead of granting any interim relief the Board decided to give retrospective effect to its decision.

A. V. Viswanatha Sastri, S. Viswanathan, B. R. L. Iyengar, J. B. Dadachanji, S. N. Andley and Rameshwar Nath, for respondent No. 3 in Petition No. 91 of 1957. The balance sheets and profit and loss accounts of the petitioner company for several years when analysed show that with normally prudent management the earnings of the Indian Express group of newspapers admit of payment to working journalists on the scale fixed by the Wage Board and the decision of the Wage Board was legally valid and just having regard to the several factors to be taken into consideration in fixing a fair wage.

N. C. Chatterjee, A. S. R. Chari, S. Viswanathan, A. N. Sinha, J. B. Dadachanji, S. N. Andley and Rameshwar Nath, for the Indian Federation of Working Journalists in all the Petitions, and for the Delhi Union of Journalists in Petition No. 103 of 1957. It is open to Parliament to delegate to the Wage Board the power to legislate with regard to certain subjects. The so-called decision of the Wage Board was a valid exercise of such power by a subordinate legislative body functioning under specified conditions under Parliamentary mandate with the limits prescribed by the Constitution.

1958

Express Newspapers (Private) Ltd., & Another

v.

The Union of India & Others

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Even if the Wage Board is held to be a quasi-judicial body, it acted according to the principle of *audi alteram partem* and no prerogative writ should be issued to disturb findings arrived at by such a body.

M. K. Nambiar, in reply. The Wage Board was not intended to exercise powers of legislation but those of a judicial nature. Under s. 10 of the Working Journalists Act the Board has to make a "decision", and this term has been used in several enactments to indicate a determination by a judicial tribunal. Under s. 8 the decision of the Board has to be made in accordance with the provisions of the Act and therefore the Board had the function of applying the law and not making a law. The Wage Board is required under s. 11 to adopt the law procedure as is adopted by Industrial Tribunals. The decision of the Board is declared to be binding only on some persons and not all. It can be executed in the same manner as the award of an Industrial Tribunal. Its character is identical to that of an award made by an industrial tribunal and the Supreme Court has held that a tribunal does not exercise legislative functions. Parliament did not intend to confer any powers of subordinate legislation on the Board. This is clear from the rules of business of the Lok Sabha read with the Statement of Objects and Reasons to the Bill. In the memorandum regarding delegated legislation appended to the Bill the constitution of the Wage Board in the matter of fixation of wages had not been shown as a piece of delegated legislation. (The Rules of Procedure and Conduct of Business in Lok Sabha (1957)—Rule 70). The decision of the Wage Board was not to be laid before both the Houses of Parliament. This would have been so had the fixation of wages by the Board was a delegated legislation (*Ibid* Rule 317). The Wage Board was not constituted as sub-legislative authority. The question is not what the legislature could have enacted but whether by virtue of powers of the Wage Board under the Act as enacted, it is a legislative body or a tribunal with adjudicatory functions. The Board does not possess any powers of delegated legislation. It has been given all the trappings which

were necessary to characterize it as a judicial body. In interpreting the Act the Court is entitled to take into consideration the surrounding circumstances, the object of the legislation and also whether a particular term used in legislation was considered by the legislature at the time of enactment. The court ought to take into consideration the entire background and the effect of dropping of the term "minimum" from the enactment. The Press Commission had directed its attention exclusively to the question of fixing minimum wage and the Act in s. 9 followed the pattern and purported to implement the recommendations of the Press Commission. The Press Commission in considering minimum wage ignored the capacity to pay. The Act, similarly, being based on the Report of the Press Commission has made no provision for considering the capacity to pay. This omission which was appropriate with regard to minimum wages rendered the fixation of wages at a different level unreasonable and therefore void. The content of the term "minimum wage" would not be changed by merely calling it a "statutory" minimum.

Section 14 of the General Clauses Act, 1897, can apply if the enactment does not rule it out by necessary implication. The entire scheme of the impugned Act shows that only one Wage Board and one decision is contemplated. It is not open to the Government to reconstitute the Wage Board as and when they desire.

Munshi, in reply. The doctrine of "pith and substance" can be applied only to determine the jurisdiction of the legislature to enact a certain legislation. Whether or not the Act imposes a direct burden, the Court should see if the Act is a special law singling out an industry for laying the burden on it. If it does so, as in the present Act, it will amount to a direct burden. If it is a general law it would not be a direct burden.

The Act stands alone in being arbitrary and excessive and is without parallel in any other country. The Act is unique in that (1) it provides for gratuity even on voluntary resignation, (2) it gives power to the Wage Board to fix indeterminate wages investing them with attributes of minimum wages, and (3) it confers on the Board power to fix wages (i) without specifying

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

1953

Express News-
papers (Private)
Ltd., & Another

v.

The Union of India
& Others

essential standards, (ii) without casting a duty to follow a reasonable procedure, (iii) without any control by an appellate tribunal or court, and (iv) without providing any opportunity to the parties concerned to be heard on the merits of the proposal it makes. In other countries there are various safeguards and checks against arbitrary wage decisions. (U. K. Wage Councils Act, 1945 ; U. S. Fair Labour Standards Act, 1938 ; Factories and Shops Act, 1905, new Act of 1928 of Victoria, Australia).

[*Sinha, J.* All these criticisms would be out of place if it is held that the work of the Wage Board was legislative and not judicial].

No. If the mechanism of the Act itself is such that it is unreasonably restrictive of rights to trade then the Act has to be struck down as void under Art. 19 (1)(g).

Even if it is held that there was no excessive delegation, it is still open to the Court to see whether the restrictions impinged on the Constitutional safeguards under Art. 19 (1)(g).

Fixation of scales of wages on the basis of gross-revenue without taking into account the liability of newspapers is a devastating doctrine in industrial relations.

The Wage Board is not a sub-legislative body ; but even if it is, it has to act judicially and is subject to writs of *certiorari*. Even if its decisions become assimilated in the Act it must be considered to be a quasi-judicial body, since it is expected to carry out a preliminary investigation before recording its findings.

The functions of the Wage Board cannot be characterised either exclusively legislative or exclusively judicial. The functions performed by administrative agencies do not fall in water tight compartments. They may be partly legislative, partly judicial and partly administrative (Stason and Cooper, Cases and other Materials on Administrative Tribunals). The Court has to consider whether the administrative agency performs a predominantly legislative or judicial function and determine its character accordingly (*Village of Saratoga Springs v. Saratoga Gas Electric Light and Power Co.*, (1908) 191 New York 123 ; *People*

ex rel. Central Park North and East River Co. v. Willcox, (1909) 194 New York 383). In the United Kingdom the decisions of the Wage Councils in the shape of wage regulations proposal acquires legislative character from the order made by the Minister giving effect to the proposals. In Australia the Factories and Shops Act, 1905, and the Labour and Industry Act, 1953, — Section 39(2) of Victoria by express provision invests the determination of the Special Board with the characteristics of a legislative act. Under the Fair Labour Standards Act, 1938, of U. S. A. the Wage orders ultimately approved by the Administrator are subject to judicial review. In India under the Minimum Wages Act, 1948, the recommendations of the Committees are forwarded to the appropriate Government who by notification as a token of approval, in the official Gazette, fix minimum wages in respect of each scheduled employment. Under the recent amendment of the Bombay Industrial Relations Act, 1946, the Wage Boards constituted under the Act are to follow the procedure of the Industrial Court in respect of arbitration proceedings and it cannot be said that they perform any legislative function. The Wage Board under the impugned Act, in spite of its being an administrative body or sub-legislative body may nevertheless be exercising quasi-judicial functions if certain conditions are fulfilled (Halsbury's Laws of England, 3rd Edn., Vol. 11, pp. 55-56; *Rex v. Manchester Legal Aid Committee*, *Ex-parte R. A. Brand and Co. Ltd.*, [1952] 2 Q. B. 413, 428; *Rex v. The London County Council*, *Ex-parte the Entertainments Protection Association Ltd.*, [1931] 2 K. B. 215, 233-234; *Board of Education v. Rice*, [1911] A.C. 179, 182; Allen C. K. — Law and Order — 1956 Edn., pp. 102, 256, 257).

The Wage Board has not given any attention to the paramount consideration of capacity to pay as it should, in reason, have done. At no time was any question asked as to the wage burden the Wage Board's scales would impose on the industry as a whole or on a particular unit. The specific burden which the Board proposed to impose has never been

1958

*Express News-
papers (Private)
Ltd., & Another
v.
The Union of India
& Others*

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

put even indirectly. At no time has it been considered what would be the potential burden on the industry if the non-journalists in newspaper establishments made similar demands. No consideration has ever been given about the effect on the industry or on a unit of the retrospective operation of the wage scales.

A. S. R. Chari, S. Viswanathan, B. R. L. Iyengar, J. B. Dadachanji and S. N. Andley, for the Federation of Press Trust of India Employees' Union, Bombay Union of Journalists and Gujrat Working Journalists Union.

R. Ganapathy Iyer and G. Gopalakrishnan, for the appellants in C. A. No. 699 of 1957.

L. K. Jha, S. S. Shukla and R. J. Joshi, for the appellants in C. A. Nos. 700 to 702 of 1957.

S. P. Sinha, Harbans Singh and R. Patnaik, for the appellants in C. A. No. 703 of 1957.

B. Sen and R. H. Dhebar, for respondent No. 1 in all the appeals.

N. C. Chatterjee, J. B. Dadachanji and S. N. Andley, for the Indian Federation of Working Journalists in all appeals, respondent No. 2 in C. A. No. 700 of 1957 and respondent No. 3 in C. A. No. 703 of 1957.

B. R. L. Iyengar, J. B. Dadachanji, S. N. Andley and Rameshwar Nath, for respondent No. 3 in C. A. 699 of 1957.

1958. March 19. The Judgment of the Court was delivered by

Bhagwati J.

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

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

The newspaper industry in India did not originally start as an industry, but started as individual

newspapers founded by leaders in the national, political social and economic fields. During the last half a century, however, it developed characteristics of a profit making industry in which big industrialists invested money and combines controlling several newspapers all over the country also became the special feature of this development. The working journalists except for the comparatively large number that were found concentrated in the big metropolitan cities, were scattered all over the country and for the last ten years and more agitated that some means should be found by which those working in the newspaper industry were enabled to have their wages and salaries, their dearness allowance and other allowances, their retirement benefits, their rules of leave and conditions of service, enquired into by some impartial agency or authority, who would be empowered to fix just and reasonable terms and conditions of service for working journalists as a whole.

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

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

The Committees aforesaid made their reports on the respective dates March 31, 1949, and March 27, 1948, making certain recommendations. The All-India problem, however, remained to be tackled and during the debate in Parliament on the Constitution (First Amendment) Bill, 1951, the Prime Minister said that he was prepared to appoint a committee or a commission, including representatives of the Press, to examine

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

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

The terms of reference inter alia were:—

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

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

The Commission completed its enquiry and submitted its report on July 14, 1954. Amongst other things it found that out of 137 concerns about whom information was available only 59 were returning profits and 68 showed losses. The industry taken as a whole had returned a profit of about 6 lakhs of rupees on a capital investment of about 7 crores, or less than 1 per cent. per annum. It found that proof-readers as a class could not be regarded as working journalists, for there were proof-readers even in presses doing job work. It came to the conclusion that if a person had been

employed as a proof-reader only for the purpose of making him a more efficient sub-editor, then it was obvious that even while he was a proof-reader, he should be regarded as a working journalist but in all other instances, he would not be counted as a journalist but as a member of the press staff coming within the purview of the Factories Act.

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

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

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

—
Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

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

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

“A journalist occupies a responsible position in life and has powers which he can wield for good or evil. It is he who reflects and moulds public opinion. He has to possess a certain amount of intellectual equipment and should have attained a certain educational standard without which it would be impossible for him to perform his duties efficiently. His wage and his conditions of service should therefore be such as to attract talent. He has to keep himself abreast of the development in different fields of human activity—even in such technical subjects as law, and medicine. This must involve constant study, contact with personalities and a general acquaintance with world's problems.”

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

minimum wage in respect of each area. It endorsed the concept of a minimum wage which has been adopted by the Bank Award :—

“Though the living wage is the target, it has to be tempered, even in advanced countries, by other considerations, particularly the general level of wages in other industries and the capacity of the industry to pay.....In India, however, the level of the national income is so low at present that it is generally accepted that the country cannot afford to prescribe a minimum wage corresponding to the concept of a living wage. However, a minimum wage even here must provide not merely for the bare subsistence of living, but for the efficiency of the worker. For this purpose, it must also provide for some measure of education, medical requirements and amenities.”

and suggested that the basic minimum wage all over India for a working journalist should be Rs. 125 with Rs. 25 as dearness allowance making a total of Rs. 150. It also suggested certain dearness allowance and City allowance in accordance with the location of the areas in which the working journalists were employed. It compared the minimum wage recommended by it with the recommendations of the Uttar Pradesh and Madhya Pradesh Committees and stated that its recommendations were fairly in line with the recommendations of those Committees particularly having regard to the rise in the cost of living which had taken place since those reports were made.

It then considered the applicability of the Industrial Disputes Act to the working journalists and after referring to the award of the Industrial Tribunal at Bombay in connection with the dispute between “Jam-e-Jamshed” and their workmen and the decision of the Patna High Court in the case of *V. N. Sinha v. Bihar Journals Limited* ⁽¹⁾, it came to the conclusion that the working journalists did not come within the definition of workman as it stood at that time in the Industrial Disputes Act nor could a question with regard to them be raised by others who were admittedly governed by the Act. It thereafter con-

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

(1) (1955) I. L. R. 32 Pat. 688.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

sidered the questions as to the tenure of appointment and the minimum period of notice for termination of the employment of the working journalists, hours of work, provision for leave, retirement benefits and gratuity, made certain recommendations and suggested legislation for the regulation of the newspaper industry which should embody its recommendations with regard to (i) notice period; (ii) bonus; (iii) minimum wages; (iv) Sunday rest; (v) leave, and (vi) provident fund and gratuity.

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

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

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

The application of the Industrial Disputes Act, 1947, to the working journalists was not, however, deemed sufficient to meet the requirements of the situation. There was considerable agitation in Parliament for the implementation of the recommendations

of the Press Commission, and on November 30, 1955, the Union Government introduced a Bill in the Rajya Sabha, being Bill No. 13 of 1955. It was a Bill to regulate conditions of service of working journalists and other persons employed in newspaper establishments. The recommendations of the Press Commission in regard to minimum period of notice, bonus, Sunday rest, leave, and provident fund and gratuity, etc., were all incorporated in the Bill; the fixation of the minimum rates of wages however was left to a minimum wage Board to be constituted for the purpose by the Central Government. The provisions of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946) and the Employees' Provident Funds Act, 1952 (19 of 1952) were also sought to be applied in respect of establishments exceeding certain minimum size as recommended by the Commission.

1958
—
Express Newspapers (Private) Ltd., & Another
v.
The Union of India & Others
—
Bhagwati J.

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

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

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

The relevant provisions of the Act may now be referred to. It was an Act to regulate certain conditions of service of working journalists and other persons employed in newspaper establishments. "Newspaper establishment" was defined in s. 2 (d) to mean "an establishment under the control of any person or body of persons, whether incorporated or not, for the production or publication of one or more

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

newspapers or for conducting any news agency or syndicate". The definition of "working journalist" was almost in the same terms as that in the Working Journalists (Industrial Disputes) Act, 1955, and included a proof reader. All words and expressions used but not defined in this Act and defined in the Industrial Disputes Act, 1947, were under s. 2 (g) to have the meanings respectively assigned to them in that Act. Section 3 applied the provisions of the Industrial Disputes Act, 1947, as it was in force for the time being, to working journalists as they applied to, or in relation to workmen within the meaning of that Act subject to the modification that s. 25 (F) of that Act in its application to working journalists in regard to the period of notice in relation to the retrenchment of a workman was to be construed as substituting six months in the case of the retrenchment of an editor and three months, in the case of any other working journalist. The period which lapsed between the publication of the report and the enactment of the Working Journalists (Industrial Disputes) Act, 1955, viz., from July 14, 1954, to March 12, 1955, was sought to be bridged over by s. 4 enacting special provisions in respect of certain cases of retrenchment during that period. Section 5 provided for the payment of gratuity, inter alia, to a working journalist who had been in continuous service, whether before or after the commencement of the Act, for not less than three years in any newspaper establishment even when he voluntarily resigned from service of that newspaper establishment. Section 6 laid down that no working journalist shall be required or allowed to work in any newspaper establishment for more than one hundred and forty-four hours during any period of four consecutive weeks, exclusive of the time for meals. Every working journalist was under s. 7 entitled to earned leave and leave on medical certificate on the terms therein specified without prejudice to such holidays, casual leave or other kinds of leave as might be prescribed. After thus providing for retrenchment compensation, payment of gratuity, hours of work, and leave, ss. 8 to 11 of the Act provided

for fixation of the rates of wages in respect of working journalists. Section 8 authorised the Central Government by notification in the Official Gazette to constitute a Wage Board for fixing rates of wages in respect of the working journalists in accordance with the provisions of the Act, which Board was to consist of an equal number of persons nominated by the Central Government to represent employers in relation to the newspaper establishments and working journalists, and an independent person appointed by the Central Government as the Chairman thereof. Section 9 laid down the circumstances which the Wage Board was to have regard to in fixing rates of wages and these circumstances were the cost of living, the prevalent rates of wages for comparable employments, the circumstances relating to the newspaper industry in different regions of the country and to any other circumstance which to the Board may seem relevant. The decision of the Board fixing rates of wages was to be communicated as soon as practicable to the Central Government and this decision was under s. 10 to be published by the Central Government in such manner as it thought fit within a period of one month from the date of its receipt by the Central Government and the decision so published was to come into operation with effect from such date as may be specified, and where no date was so specified on the date of its publication. Section 11 prescribed the powers and procedure of the Board and stated that subject to any rules of procedure which might be prescribed the Board may, for the purpose of fixing rates of wages, exercise the same powers and follow the same procedure as an Industrial Tribunal constituted under the Industrial Disputes Act, 1947, exercised or followed for the purpose of adjudicating an industrial dispute referred to it. The decision of the Board under s. 12 was declared to be binding on all employers in relation to newspaper establishments and every working journalist was entitled to be paid wages at a rate which was to be in no case less than the rate of wages fixed by the Board. Sections 14 and 15 applied the provisions of the Industrial Employment (Standing Orders)

1958

Express News-
papers (Private)
Ltd., & Another
v.

The Union of India
& Others

Bhagwati J.

1958

Express News-
papers (Private)
Ltd., & Another

v.

The Union of India
& Others

Bhagwati J.

Act, 1946, as it was in force for the time being and also the provisions of the Employees' Provident Funds Act, 1952, as it was in force for the time being, to every newspaper establishment in which twenty or more persons were employed. Section 17 provided for the recovery of money due from an employer and enacted that where any money was due to a newspaper employee from an employer under any of the provisions of the Act, whether by way of compensation, gratuity or wages, the newspaper employee might, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the money due to him, and if the State Government or such authority as the State Government might specify in this behalf was satisfied that any money was so due, it shall issue a certificate for that amount to the collector and the collector shall proceed to recover that amount in the same manner as an arrear of land revenue. Section 20 empowered the Central Government by notification in the Official Gazette to make rules to carry out the purposes of the Act and in particular and without prejudice to the generality of the foregoing power, such rules were to provide inter alia for the procedure to be followed by the Board in fixing rates of wages. All rules made under this section, as soon as practicable after they were made were to be laid before both Houses of Parliament. The Working Journalists (Industrial Disputes) Act, 1955, was repealed by s. 21 of the Act.

In pursuance of the power given under s. 20 of the Act the Central Government published by a notification in the Gazette of India—Part II—Section 3, dated July 30, 1956, "The Working Journalists Wage Board Rules, 1956". Rule 8 provided that every question considered at a meeting of the Board was to be decided by a majority of the votes of the members present and voting. In the event of equality of votes the Chairman was to have a casting vote. Rule 13 provided for the resignation of the Chairman or any member from his office or membership, as the case may be. The seat held by them was to be deemed to have fallen vacant with effect from the date the

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

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

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

1958

Express News-
papers (Private)
Ltd., & Another

v.

The Union of India
& Others

Bhagwati J.

1958

Express News-
papers (Private)
Ltd., & Another
v. •
The Union of India
& Others
—
Bhagwati J.

The first meeting of the Board was held on May 26, 1956, in the Bharatiya Vidya Bhavan at Bombay. Sri Kesava Menon and Shri G. Narasimhan were not present at this meeting. It was a preliminary meeting at which the Board set up a sub-committee consisting of Shri A. R. Bhat and Shri G. N. Acharya to draft a *questionnaire* for issue to the various journals and organisations concerned, with a view to eliciting factual data and other relevant information required for the fixation of wages for the working journalists. The sub-committee was requested to bear in mind, while framing the *questionnaire* the need for: (1) obtaining detailed accounts of newspaper establishments; (2) proper evaluation of the nature of and the work of various categories of working journalists; and (3) proper classification of the country into different areas on the basis of certain criteria like population, cost of living, etc. The *questionnaire* drafted by the sub-committee was to be finalised by the chairman and circulated to all concerned by the end of June, 1956.

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

At the outset the Board pointed out that except where the question itself indicated a different period or point of time, the reporting period for purposes of parts "B" and "C" of the *questionnaire* was the financial years (April 1 to March 31) 1952-53, 1953-54, and 1954-55, or in any establishments which followed a different accounting year, a period of three years as near thereto as possible. It further pointed out that under s. 11 of the Act the Board had the powers of an Industrial Tribunal constituted under the Industrial Disputes Act. In Part "A" of the *questionnaire* under the heading "Cost of Living", cost of living

index for the respective centres were called for and a special question was addressed whether the basic minimum wage, dearness allowance and metropolitan allowance in the table attached to paragraph 546 of the Press Commission was acceptable to the party questioned and, if not, what variations would the party suggest and why. Comparable employment suggested included (a) Higher secondary school teachers; (b) College and university teachers; (c) Journalists employed as publicity and public relations officers in the information departments of the Central and State Governments; (d) Journalistic employees of the news service division of All India Radio and (e) Research personnel of the economic and social research departments of Central Government ministries like finance, labour and commerce. Under the heading "Special Circumstances", the only question addressed was question No. 7: "Are there in your region any special conditions in respect of the newspaper industry which affect the fixing of rates of wages of working journalists? If so, specify the conditions and indicate how they affect the question of wages." As regards the principles of wage fixation the party questioned was to categorise the different newspaper establishments and in doing so consider the following factors, among others: (a) Invested capital; (b) Gross revenue; (c) Advertisement revenue; (d) Circulation; (e) Periodicity of publication; (f) The existence of chains, multiple units and combines; and (g) Location.

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

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

1958

Express News-
papers (Private)
Ltd., & Another

v.

The Union of India
& Others

—
Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

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

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

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

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

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

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

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

1958

Express News-
papers (Private)
Ltd., & Another
v.
The Union of India
& Others
Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another
v.
The Union of India
& Others*
Bhagwati J.

discuss various issues among themselves in the afternoon and on the following days.

After considerable discussion on March 25, 1957, and March 26, 1957, in which the representatives of the newspapers and of working journalists had joint sittings, unanimous decisions were arrived at on (i) classification of newspapers, (ii) classification of centres and (iii) classification of employees, except on one point, namely, classification of group, multiple units and chains on the basis of their total gross revenue. This was agreed to by a majority decision. The chairman and the representatives of the working journalists voted in favour while the representatives of the employers voted against. Regarding scales of pay, the chairman suggested at the meeting of March 27, 1957, that pending final settlement of the issue the parties should submit figures of scales based on both assumptions, namely, consolidated wages and basic scales with separate dearness allowance. Both sides agreed to submit concrete suggestions on the following day. At the Board's meeting on March 28, 1957, the representatives of the employers stated that the term "rates of pay" did not include scales of pay; therefore, the Board was not competent to fix scales of working journalists and they submitted a written statement signed by all of them to the chairman in support of their contention. The representatives of the working journalists argued that the Board was competent to fix scales of pay. The chairman adjourned the sitting of the Board to study this issue. A copy of the written statement submitted by the representatives of the employers was given to the representatives of the working journalists and they submitted a written reply the same afternoon contending that the Board was competent to fix scales of pay of various categories of working journalists. At its meeting on March 29, 1957, the Board discussed its own competency to fix scales of pay. The chairman expressed his opinion in writing, whereby he held that the Board was competent to fix scales of pay. On a vote being taken according to r. 8 of the Working Journalists Wage Board Rules, 1956, the chairman

and the representatives of the working journalists voted in favour of the competence of the Board to fix scales of pay, while the representatives of the employers voted against it. Thereafter, several suggestions were made on this question, but since there was no possibility of any agreement on this issue, the chairman suggested that members should submit their specific scales to him for his study to which the members agreed. It was also decided that the chairman would have separate discussions with representatives of working journalists in the morning and with representatives of employers in the afternoon of March 30, 1957. It was also decided that the Board should meet again on March 31, 1957, for further discussions. No final decision was however arrived at in the meeting of the Board held on March 31, 1957, on scales of pay, allowances, date of operation of the decision, etc. It was decided that the Board should meet again on April 22, 1957, to take final decisions.

A meeting of the Board was accordingly held from April 22 to 24, 1957, in the office of the Wage Board at Bombay. It was unanimously agreed that the word "decision" should be used wherever the word "report" occurred. The question of the nature of the decisions which should be submitted to the Government was then considered. It was agreed that reasons need not be given for each of the decisions, and that it would be sufficient only to record the decisions. The members then requested the chairman to study the proposals regarding scales of pay, etc., submitted by both the parties and to give his own proposals so that they may take a final decision. Accordingly, the chairman circulated to all the members his proposals regarding pay scales, dearness allowance, location allowance and retainer allowance.

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

1. For the purpose of fixation of wages of working

1958

*Express. News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

1958

Express Newspapers (Private) Ltd., & Another
v.
The Union of India & Others
—
Bhagwati J.

journalists, newspaper establishments should be grouped under different classes.

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

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

4. *Classification of Newspaper Establishments:*

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

Class	Gross Revenue
“ A ”	over Rs. 25 lakhs
“ B ”	over Rs. 12½ to 25 lakhs
“ C ”	over Rs. 5 to 12½ lakhs
“ D ”	over Rs. 2½ to 5 lakhs
“ E ”	Rs. 2½ lakhs and below

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

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

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

12. A newspaper establishment will be classified as:—

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

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

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

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

(a) Full time employees :

Group I : Editor

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

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

—
Bhagwati J.

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

Group IV : Proof Readers.

(b) Part time employees :

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

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

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

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

1958	1. <i>Dailies.</i>				
Express News- papers (Private) Ltd., & Another v. The Union of India & Others — Bhagwati J.	Class of News- papers	Group of Employees	Starting Pay	Scale	
	E	IV } III }	90	No Scale	
		II } I }	150	No Scale	
	D	IV	100	100—5—165 (13 Yrs.)	
				EB—7—200—(5 Yrs.)	
		III	115	115—7½—205 (12 Yrs.)	
				EB—15—295 (6 Yrs.)	
		II } I }	200	200—20—400 (10 Yrs.)	
	C	IV	100	100—5—165 (13 Yrs.)	
				EB—7—200—(5 Yrs.)	
		III	125	125—10—245 (12 Yrs.)	
				EB—12½—320 (6 Yrs.)	
		II	225	225—20—385 (8 Yrs.)	
				EB—30—445 (2 Yrs.)	
		I	350	350—25—550 (8 Yrs.)	
				—40—630 (2 Yrs.)	
	B	IV	100	100—5—165 (13 Yrs.)	
				EB—7—200 (5 Yrs.)	
		III	150	150—12½—300 (12 Yrs.)	
				EB—20—420 (6 Yrs.)	
		II	350	350—20—510 (8 Yrs.)	
				EB—30—570 (2 Yrs.)	
		I	500	500—30—740 (8 Yrs.)	
				—40—820 (2 Yrs.)	
	A	IV	125	125—7½—215 (12 Yrs.)	
				EB—10—275 (6 Yrs.)	
		III	175	175—20—415 (12 Yrs.)	
				EB—25—515 (4 Yrs.)	
		II	500	500—40—820 (8 Yrs.)	
				EB—50—920 (2 Yrs.)	
		I	1000	1000—50—1300 (6 Yrs.)	
				—75—1600 (4 Yrs.)	

Dearness allowance, location allowance and part time employees remuneration were also majority decisions.—
The chairman and the representatives of the working

journalists voting for and the representatives of the employers voting against.

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

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

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

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

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

41. The Government of India should constitute a Wage Board under the Act, to review the effect of the decisions of the Board on the newspaper establishments and the working journalists, after the expiry of 3 years but not later than 5 years from the date of the publication of the decisions of the Board.

These decisions were recorded on April 30, 1957, but the representatives of the employers thought fit to append a minute of dissent and the chairman also put on record a note on the same day explaining the

1958

Express Newspapers (Private) Ltd., & Another
v.

The Union of India & Others

Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

reasons for the decisions thus recorded. These documents are of vital importance in the determination of the issues before us.

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

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

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

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

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

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

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

(f) The proposals, which the majority had made, clearly showed that, according to it the dominating principle of wage fixation was the need of the worker as conceived by them, irrespective of its effect on the industry. The Board had not before it sufficient data needed for the proper assessment of the paying capacity of the industry. The profit and loss statements of the daily newspaper establishments for the year 1954-55 as submitted to the Board revealed that while 43 of them had shown profits 40 had incurred losses. The condition of the newspaper industry in the country as a whole could not be considered satisfactory. The proposals embodied in the decision made by the majority were therefore unduly high. They would immediately throw a huge burden on many papers, a burden which would progressively grow for some

1958

Express Newspapers (Private) Ltd., & Another

v.

The Union of India & Others

Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

years, and would be still bigger when its impact takes place on the wages of employees of its other sections. All this will in its turn add to the burden of provident fund, gratuity, etc., when the full impact of the burden took place and the wages of the entire newspaper establishments went up, it would throw out of gear the economy of most of the newspapers. It might be that there may not be many closures immediately, because many of the newspapers would not be in a position to meet the liability of retrenchment compensation, gratuity, etc., resulting from such a step, newspapers would try to meet the liability by borrowing to the extent possible and when their credit was exhausted, they must close down. So far as new newspaper promotions were concerned, they would be few and far between, with the result that after a few years it would be found that the number of daily newspapers in the country had not increased but had gone down. Such an eventuality was not in the interests of the country both from the point of view of employment as well as of freedom of expression.

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

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

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

teachers and employees in commercial firms and banks should be taken into consideration, but the majority had rejected this view.

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

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

“ In fixing the rates of wages, we have based them on the condition of the newspaper industry as a whole and not on the effect which they will produce on a particular newspaper. We can only proceed on the average gross income of a newspaper falling under the same class and not on the lowest unit in that class. Otherwise, there will be no improvement in any unit of the same class, and the status quo might remain. With the extremely divergent conditions obtaining in both English as well as Indian language newspapers, it is impossible to try to avoid any small or medium newspaper being adversely affected. When the tone and condition of journalism in India has to be brought on a higher level it is inevitable that in doing so, more or less burden will fall on several newspapers ; I realise that in cases where wages are very low and dearness allowance is also low or even non-existent and there are no scales

1958

Express Newspapers (Private) Ltd., & Another

v.

The Union of India & Others

Bhagwati J.

1958

—
*Express News-
 papers (Private)
 Ltd., & Another*
 v.

*The Union of India
 & Others*
 —

Bhagwati J.

at all, the reaction to our wage schedule will be one of resentment by the proprietors. Some anomalies may also be pointed out; but it must be remembered that we had no data of all the newspapers before us and where we had, it was in many cases not satisfactory. Under these circumstances, we cannot satisfy all newspapers as well as journalists. However, we have tried to proceed on the basis of accepted principles also keeping in view the recommendations of the Press Commission and not on the editorial expenditure of each newspaper. I am also of the opinion that by rational management there is great scope for increasing the income of newspapers and we have evidence before us that the future of the Indian language newspapers is bright, having regard to increasing literacy and the growth of political consciousness of the reading public. When there are wide disparities, there cannot be any adjustment which might satisfy all persons interested. We hope no newspaper is forced to close down as a result of our decision. But if there is a good paper and it deserves to exist, we hope the Government and the public will help it to continue."

The chairman then proceeded to observe :

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

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

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

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

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

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

1958

Express Newspapers (Private) Ltd., & Another

v.

The Union of India & Others

Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

—
Bhagwati J.

work out with any degree of precision, the economic and other effects of our decisions on the newspaper industry as a whole.”

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

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

The Express Newspapers (Private) Ltd., the petitioners in Petition No. 91 of 1957, otherwise termed

the "Express Group", are the biggest chain in the newspaper world in India. They publish (i) Indian Express, an English Daily, from Madras, Bombay, Delhi and Madurai, (ii) Sunday Standard, an English Weekly, from three centres—Madras, Bombay and Delhi, (iii) Dinmani, a Tamil Daily from Madras and Madurai, (iv) Dinmani Kadir, a Tamil Weekly from Madras, (v) Lokasatta, a Maratha Daily, and Sunday Lokasatta, a Maratha Weekly, from Bombay, (vi) Screen, an English Weekly from Bombay and (vii) Andhra Prabha, a Telugu Daily and Weekly. The total number of working journalists employed by them are 331, out of whom there are 123 proof readers, as against 1570 who form the other members of the staff. The present emoluments of the working journalists in their employ amount to Rs. 9,77,892, whereas if the decision of the Wage Board were given effect to they would go up to Rs. 15,21,282·12 thus increasing the wage bill of the working journalists annually by Rs. 5,43,390·12. They would also have to pay remuneration to the part-time correspondents on the basis of retainer as well as payment for news items on column basis. That would involve an additional burden of about Rs. 1 lakh a year. The retrospective operation of the Wage Board's decision with effect from May 2, 1956, in their case would further involve a payment of Rs. 5,16,337·20. This would be the extra burden not taking account the liability for past gratuity and the recurring gratuity as awarded under the provisions of the Act and also the increased burden which would have to be borne by reason of the impact of the provisions in regard to reduced hours of working, increase in leave, etc., provided therein. If, moreover, the members of the staff who are not included in the definition of working journalists made similar demands for increasing their emoluments and bettering their conditions of service then there would be an additional burden which is estimated at Rs. 9,92,443·68.

The Press Trust of India Ltd., the petitioners in Petition No. 99 of 1957, are a non-profit making co-operative organization of newspaper proprietors. They

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*
v.
*The Union of India
& Others*
—
Bhagwati J.

employ 820 employees in all, out of whom 170 are working journalists and 650 do not come within that definition. Their total wage bill is Rs. 21,00,000 per year (approximately) out of which the annual salary of the working journalists is Rs. 9,00,000. The increase in their wage bill due to increase in the salary of the working journalists as per the decision of the Wage Board would come to Rs. 4,05,600 and they would have to pay by way of arrears by reason of the retrospective operation of the decision another sum of Rs. 4,05,600 to the working journalists. There would also be an additional financial burden of Rs. 60,000 every year by reason of the recurring increments in the monthly salaries of the working journalists employed by them. If the benefits of the Wage Board decision were extended to the other members of the staff who are not working journalists within the definition of that term but who have also made similar demands on them, a further annual burden would be imposed on the petitioners which is estimated at Rs. 3,90,000. If perchance the petitioners not being able to run their concern except at a loss intended to close down the same, the amount which they would have to pay to the working journalists under the provisions of the Act and the decision of the Wage Board would be Rs. 23,68,500 as against the old scale liability of Rs. 11,62,500 and the other members of the staff who do not fall within the category of working journalists would have to be paid a further sum of Rs. 15,50,000. The total liability of the petitioners in such an event would amount to Rs. 39,18,000 as against the old liability of Rs. 27,12,500.

The Indian National Press (Bombay) Private Ltd., otherwise known as the Free Press Group, are petitioners in Petition No. 100 of 1957. They publish (i) Free Press Journal, a morning English Daily (ii) Free Press Bulletin, an evening English Daily (iii) Bharat Jyoti, an English Weekly (iv) Janashakti, a morning Gujarati Daily and (v) Navashakthi, a Marathi Daily—all from Bombay. They employ 442 employees including part-time correspondents out of whom 65 are working journalists and 21 are proof readers and the

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

The Saurashtra Trust, the petitioners in Petition No. 101 of 1957, are another chain of newspapers and they publish (i) Janmabhoomi, a Gujarati Daily from Bombay, (ii) Janmabhoomi and Pravasi, a Gujarati Weekly from Bombay, (iii) Lokmanya, a Marathi Daily from Bombay, (iv) Vyapar, a Gujarati Weekly commercial paper from Bombay, (v) Fulchhab, a Gujarati Daily from Rajkot, (vi) Pratap, a Gujarati

1958

Express News-
papers (Private)
Ltd., & Another
v.

The Union of India
& Others

Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*
v.

*The Union of India
& Others*

Bhagwati J.

Daily from Surat, (vii) Cuttecha Mitra, a Gujrati Daily from Bhuj (Cutch) and, (viii) Nav Bharat, a Gujrati Daily from Baroda. They employ 445 employees out of whom 60 are working journalists and 12, proof readers and the rest belong to the other members of the staff. The effect of the Wage Board decision on them would be to impose on them a burden of Rs. 1,59,528 by reason of the retrospective operation of the decision and an annual increase in the wage bill of Rs. 1,59,528 for the first year and an annual recurring increase of Rs. 22,000. The operation of ss. 6 and 7 of the Act in regard to reduced hours of work and provision for increased leave would impose an additional burden of Rs. 42,000 per year. The liability for pastgratuity would be Rs. 93,376 and the recurring annual increase in gratuity would be Rs. 11,000. If similar benefits were also given to the other members of the staff who were not working journalists the annual burden will increase by Rs. 5,18,964, by reason of their classification as "A" class newspaper establishment on a chain basis, all the component units have got to be treated as "A" class newspapers, whereas if they were classified on a computation of the gross revenue of their component units Vyapar would fall within Class "B" the Janmabhoomi and Lokmanya would fall within Class "C" and the Cuttecha Mitra, Fulchhab and Pratap would fall within Class "E". The inequity of this measure is, moreover, sought to be augmented by their pointing out that whereas the Janmabhoomi from Bombay is placed in the "A" class, Bombay Samachar (Bombay), a morning Gujrati Daily from Bombay, which has a larger gross revenue than Janmabhoomi taken as a single unit is placed in Class B. Similarly, the Pratap from Surat is placed in Class A, whereas the Gujrat Mitra from Surat which has a larger gross revenue than the Pratap is placed in Class "B" because of its being treated as a unit by itself; and the Fulchhab from Rajkot is also placed in Class "A", whereas the Jaihind from Rajkot, which has a larger gross revenue than the Fulchhab, is placed in Class "C" for an identical reason. The total cost of closing down the concern, if perchance

the petitioners have to so close down owing to their inability to carry on the business except at a loss, is worked out at Rs. 6,13,921 for the working journalists as against the old basis of Rs. 1,00,890. The figure for the rest of the staff who are not working journalists is computed at Rs. 3,08,112 with the result that the total cost of closing down on the new basis under the provisions of the Act and the decision of the Wage Board would be Rs. 9,22,033 as against what otherwise would have been a sum of Rs. 4,09,002.

The Hindustan Times Ltd., New Delhi, the petitioners in Petition No. 103 of 1957, otherwise called "the Hindustan Times Group", publish (i) Hindustan Times, an English (morning) Daily, (ii) Hindustan Times (Evening News) an English (evening) Daily, (iii) Overseas Hindustan Times, an English Weekly, (iv) Hindustan, a Hindi Daily, and (v) Saptahik Hindustan, a Hindi Weekly—all from Delhi. They employ a total number of 695 employees out of whom 79 are working journalists, 14 are proof readers and the rest, viz., 602 are other members of the staff. The wages paid to the working journalists absorb about one-third of the total wage bill as against 602 other members of the staff whose wage bill constitutes the remaining two-thirds. If the decision of the Wage Board is given effect to the petitioners would be subjected to the following additional liabilities in respect of working journalists alone : (i) Increase in the annual wage bill Rs. 2,16,000 (Approx.) (ii) Arrears of payments from May 2, 1956, to April 30, 1957, Rs. 1,89,000 (iii) Past liability in respect of gratuity as on March 31, 1957, Rs. 2,65,000 (iv) Recurring annual liability of gratuity Rs. 28,000. The total liability thus comes to Rs. 6,98,000. The above figures do not include increased liability on account of the petitioners' contribution towards provident fund, leave rules and payment to part-time correspondents. There would also be a further recurring increase in the wage bill by reason of the increments which would have to be given to the various categories of working journalists on the scales of wages prescribed by the Wage Board. If other members of the staff (who are not "working journalists") were to be considered for

1958

*Express News-
papers (Private)
Ltd., & Another
v.*

*The Union of India
& Others*

Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

increase in their emoluments, etc., there will be a further burden on the petitioners computed as under:

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

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

The Sandesh Ltd., the petitioners in Petition No. 117 of 1957, otherwise styled, the Sandesh Group, Ahmedabad, publish (i) Sandesh, a morning Gujarati Daily, (ii) Sevak, an evening Gujarati Daily, (iii) Bal Sandesh, a Gujarati Weekly, and (iv) Aram, and (v) Sat Sandesh, Gujarati Monthlies—all from Ahmedabad. They employ a total staff of 205 employees out of whom there are 11 working journalists, 7 proof readers and the rest 187 constitute the other members of the staff. The increase in the wage bill of the working journalists under the provisions of the Act would be Rs. 24,807 per year besides a similar liability for Rs. 24,807 by reason of the retrospective operation of the decision. There will be an increase in expenditure to the tune of Rs. 30,900 by reason of the reduced working hours and increase in leave and holidays, a liability of Rs. 31,597 for past gratuity and Rs. 24,807 every year for recurring gratuity as also Rs. 1,530 for recurring increase in wages of the working journalists. The financial burden in the case of proof-readers who

are included in the definition of working journalists under the terms of the Act would be Rs. 5,724 per year. If similar benefits were to be given to the other members of the staff who are not working journalists the annual increase in the burden will be Rs. 1,89,816. The total costs of closing down if such an eventuality were contemplated would be Rs. 1,08,997 for the working journalists only as against a liability of Rs. 22,755 on the old basis. The other members of the staff would have to be paid Rs. 1,46,351 and the total cost of closing down the whole concern would thus come to Rs. 2,55,349 under the new dispensation as against Rs. 1,69,106 as of old.

The Jansatta Karyalaya, Ahmedabad, petitioners in Petition No. 118 of 1957 bring out (i) Jansatta, a Gujarati Daily and (ii) Chandni a Gujarati Monthly from Ahmedabad. They employ 15 working journalists, 6 proof-readers and 87 other members of the staff thus making a total number of 108 employees. The increase in the wage-bill of the working journalists would come to Rs. 29,808. The liability for past gratuity would be Rs. 6,624 and the recurring annual gratuity would be Rs. 2,303 and the annual recurring increase in wages would come to Rs. 2,280. The financial burden in case of proof-readers would be Rs. 6,480 per year as per the decision of the Wage Board. If similar benefits had to be given to the other members of the staff who are non-working journalists the annual burden will increase by Rs. 48,720. The total cost of closing down, if such a contingency ever arose, would come to Rs. 1,00,798 under the provisions of the Act and the Wage Board decision as against Rs. 45,206 on the old basis.

All these petitions filed by the several petitioners as above followed a common pattern. After succinctly reciting the history of the events narrated above which led to the enactment of the impugned Act and the decision of the Wage Board, they challenged the vires of the Act and the decision of the Wage Board. The vires of the Act was challenged on the ground that the provisions thereof were violative of the fundamental rights guaranteed by the Constitution under Art. 19(1)(a),

1958

Express News-
papers (Private)
Ltd., & Another
v.
The Union of India
& Others
Dhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

Art. 19(1)(g), and Art. 14; but in the course of the arguments before us another Article, viz., Art. 32 was also added as having been infringed by the Act. The decision of the Wage Board was challenged on various grounds which were in pari materia with the objections that had been urged by the representatives of the employers in the Wage Board in their minute of dissent above referred to. It was also contended that the implementation of the decision would be beyond the capacity of the petitioners and would result in their utter collapse. The reply made by the respondents was that none of the fundamental rights guaranteed under Art. 19(1)(a), Art. 19(1)(g), Art. 14 and/or Art. 32 were infringed by the impugned Act, that the functions of the Wage Board were not judicial or quasi-judicial in character, that the fixation of the rates of wages was a legislative act and not a judicial one, that the decision of the Wage Board had been arrived at after taking into consideration all the criteria for fixation of wages under s. 9(i) of the Act and the material as well as the evidence led before it, that a considerable portion of the decisions recorded by the Wage Board were unanimous, that the Wage Board had the power and authority also to fix the scales of wages and to give retrospective operation to its decision, and that the financial position of the petitioners was not such as to lead to their collapse as a result of the impact of the provisions of the impugned Act and the decision of the Wage Board.

The petitioners in Petitions Nos. 91 of 1957, 99 of 1957, 100 of 1957, 101 of 1957 and 103 of 1957 also filed petitions for special leave to appeal against the decision of the Wage Board being Petitions Nos. 323, 346, 347, 348 and 359 of 1957 respectively and this Court granted the special leave in all these petitions under Art. 136 of the Constitution subject to the question of the maintainability of the appeals being open to be urged at the hearing. Civil Appeals arising out of these special leave petitions were ordered to be placed along with the Writ Petitions aforesaid for hearing and final disposal and Civil Appeals Nos. 699 of 1957, 700 of 1957, 701 of 1957, 702 of 1957 and 703 of 1957

arising therefrom thus came up for hearing and final disposal before us along with the Writ Petitions under Art. 32 mentioned above. We took up the hearing of the Writ Petitions first as they were more comprehensive in scope than the Civil Appeals filed by the respective parties and heard counsel at considerable length on the questions arising for our determination therein.

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

The concept of the living wage :

"The concept of the living wage which has influenced the fixation of wages, statutorily or otherwise, in all economically advanced countries is an old and well-established one, but most of the current definitions are of recent origin. The most expressive definition of the living wage is that of Justice Higgins of the Australian Commonwealth Court of Conciliation in the Harvester case. He defined the living wage as one appropriate for "the normal needs of the average employee, regarded as a human being living in a civilized community". Justice Higgins has, at other places, explained what he meant by this cryptic pronouncement. The living wage must provide not merely for absolute essentials such as food, shelter and clothing but for "a condition of frugal comfort estimated by current human standards." He explained himself further by saying that it was a wage "sufficient to insure the workmen food, shelter, clothing frugal comfort, provision for evil days, etc., as well as regard for the special skill of an artisan if he is one". In a subsequent case he observed that "treating marriage as the usual fate of adult men, a wage which does not allow of the matrimonial condition and the maintenance of about five persons in a home would not be treated as a living wage". According to the South Australian Act of 1912, the living wage means "a sum

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

sufficient for the normal and reasonable needs of the average employee living in a locality where work under consideration is done or is to be done." The Queensland Industrial Conciliation and Arbitration Act provides that the basic wage paid to an adult male employee shall not be less than is "sufficient to maintain a well-conducted employee of average health, strength and competence and his wife and a family of three children in a fair and average standard of comfort, having regard to the conditions of living prevailing among employees in the calling in respect of which such basic wage is fixed, and provided that in fixing such basic wage the earnings of the children or wife of such employee shall not be taken into account". In a Tentative Budget Inquiry conducted in the United States of America in 1919 the Commissioner of the Bureau of Labour Statistics analysed the budgets with reference to three concepts, viz.,

(i) the pauper and poverty level,

(ii) the minimum of subsistence level, and,

(iii) the minimum of health and comfort level,

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

"This represents a slightly higher level than that of subsistence, providing not only for the material needs of food, shelter, and body covering, but also for certain comforts, such as clothing sufficient for bodily comfort, and to maintain the wearer's instinct of self-respect and decency, some insurance against the more important misfortunes—death, disability and fire—good education for the children, some amusement, and some expenditure for self-development."

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

(i) the poverty level,

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

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

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

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

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

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

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

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

1958

Express News-
papers (Private)
Ltd., & Another

v.

The Union of India
& Others

—
Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another
v.*

*The Union of India
& Others*

Bhagwati J.

requirements of essential social needs, and a measure of insurance against the more important misfortunes including old age.”⁽¹⁾

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

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

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

The concept of the minimum wage :

“ The International Convention of 1928 prescribes the setting up of minimum wage-fixing machinery in industries in which “no arrangements exist for the effective regulation of wages by collective agreement or otherwise and wages are exceptionally low”.....

“ As a rule, though the living wage is the target, it has to be tempered, even in advanced countries, by other considerations, particularly the general level of wages in other industries and the capacity of industry to pay. This view has been accepted by the Bombay Textile Labour Inquiry Committee which says that “the living wage basis affords an absolute external standard for the determination of the minimum” and that “where a living wage criterion has been used in the giving of an award or the fixing of a wage, the decision has always been tempered by other considerations of a practical character.”

“ In India, however, the level of the national income is so low at present that it is generally accepted that the country cannot afford to prescribe by law a minimum wage which would correspond to the concept of the living wage as described in the preceding paragraphs. What then should be the level of minimum wage which can be sustained by the present stage of the country’s economy? Most employers and some

(1) Report of the Committee on Fair Wages (1947 to 1949), pp. 5-7, paras. 6 & 7.

Provincial Governments consider that the minimum wage can at present be only a bare subsistence wage. In fact, even one important All-India organisation of employees has suggested that "a minimum wage is that wage which is sufficient to cover the bare physical needs of a worker and his family." Many others, however,.....consider that a minimum wage should also provide for some other essential requirements such as a minimum of education, medical facilities and other amenities. We consider that a minimum wage must provide not merely for the bare sustenance of life but for the preservation of the efficiency of the worker. For this purpose, the minimum wage must also provide for some measure of education, medical requirements, and amenities." (1)

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

"The basic wage there approximates to a bare minimum subsistence wage and no normal adult male covered by an award is permitted to work a full standard hours week at less than the assessed basic wage rate. The basic wage is expressed as the minimum at which normal adult male unskilled workers may legally be employed, differing from the amounts fixed as legal minima for skilled and semi-skilled workers, piece workers and casual workers respectively..... The minimum wage is the lowest rate at which members of a specified grade of workers may legally be employed." (2)

There is also a distinction between a bare subsistence or minimum wage and a statutory minimum wage. The former is a wage which would be sufficient to cover the bare physical needs of a worker and his family, that is, a rate which has got to be paid to the worker irrespective of the capacity of the industry to

1958

Express News-
papers (Private)
Ltd., & Another
v.

The Union of India
& Others

Bhagwati J.

(1) Report of the Committee on Fair Wages, pp. 7-9, paras. 8-10.

(2) O.D.R. Feenander Industrial Regulation in Australia (1947), Ch. XVII,
p. 155.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

pay. If an industry is unable to pay to its workmen at least a bare minimum wage it has no right to exist. As was observed by us in *Messrs. Crown Aluminium Works v. Their Workmen* ⁽¹⁾ :

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

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

The concept of the fair wage :

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

.....
“The Indian National Trade Union Congress.....

(1) [1958] S.C.R 651.

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

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

While the lower limit of the fair wage must obviously be the minimum wage, the upper limit is equally set by what may broadly be called the capacity of industry to pay. This will depend not only on the present economic position of the industry but on its future prospects. Between these two limits the actual wages will depend on a consideration of the following factors and in the light of the comments given below:

- (i) the productivity of labour;
- (ii) the prevailing rates of wages in the same or

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati /

similar occupations in the same or neighbouring localities ;

(iii) the level of the national income and its distribution ; and

(iv) the place of the industry in the economy of the country. ".....(1).

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

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

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

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

(1) Report of the Committee on Fair Wages, pp. 4, 9-11, paras, 11-15.

It must however be remembered that whereas the bare minimum or subsistence wage would have to be fixed irrespective of the capacity of the industry to pay, the minimum wage thus contemplated postulates the capacity of the industry to pay and no fixation of wages which ignores this essential factor of the capacity of the industry to pay could ever be supported.

Fixation of Scales of Wages :—

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

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

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

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

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

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

determined according to a rule or basis; a standard; a class or rank; manner or mode”.

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

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

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

Similar observations were made in the case of the *Union Drug Co. Ltd.*⁽²⁾:

“For before incremental scales can be imposed by adjudication, it is essential to see whether employer would be able to bear its burden. The financial condition of the Company must be such as to lead to the conclusion that it would be able to pay the increments year by year for an appreciable number of

(1) [1954] 1 L. L. J. 651, 654.

(2) [1954] 1 L. L. J. 766, 767.

years, for wage scales when settled are intended to be long term schemes."

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

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

The capacity of the industry to pay :

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

(i) the capacity of a particular unit (marginal, representative or average) to pay,

(ii) the capacity of a particular industry as a whole to pay or

(iii) the capacity of all industries in the country to pay.

"Ideas on this subject have varied from country to country. In New Zealand and Australia the capacity to pay is calculated with reference to all industries in the country and no special concessions are shown to depressed industries. In Australia the Arbitration Court considered that "in view of the absence of clear means of measuring the general wage-paying capacity of total industry, the actual wage upon which well-situated labourers were at the time maintaining the average family unit could justifiably be taken as the criterion of what industry could probably pay to all labourers". This is at best a secondary definition of capacity, for it could only serve to show that certain industries or units could afford to pay as much as certain others."

"The Bombay Textile Labour Inquiry Committee

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

came to the conclusion that it was not possible to define the term "capacity to pay" in a precise manner and observed as follows:

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

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

"In determining the capacity of an industry to pay it would be wrong to take the capacity of a particular unit or the capacity of all industries in the country. The relevant criterion should be the capacity of a particular industry in a specified region and, as far as possible, the same wages should be prescribed for all units of that industry in that region. It will obviously not be possible for the wage fixing board to measure the capacity of each of the units of an industry in a region and the only practicable method is to take a fair cross-section of that industry." (1)

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

(1) Report of the Committee on Fair Wages, pp. 13-15, paras. 21 & 23.

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

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

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

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

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

.....
The objective is not merely to determine wages which are fair in the abstract, but to see that employment at existing levels is not only maintained but, if possible, increased. From this point of view, it will be clear that the level of wages should enable the industry to maintain production with efficiency. The capacity of industry to pay should, therefore, be assessed in the light of this very important consideration. The wages board should also be charged with the duty of seeing that fair wages so fixed for any particular industry are not very much out of line with wages in other industries in that region. Wide disparities would inevitably lead to movement of labour, and consequent industrial unrest not only in the industry concerned but in other industries." (1)

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

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

- (1) The selling price of the product ;
- (2) The volume of the output ;
- (3) the profit and loss in the business ;

(1) Report of the Committee on Fair Wages, p. 14, para. 24.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

1958

Express News-
papers (Private)
Ltd., & Another

v.

The Union of India
& Others

Bhagwati J.

(4) the rates which have been agreed to by a large majority of the employers;

(5) the amount of unemployment brought about or likely to be brought about by the imposition of the increased wage, etc.

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

"It would be necessary to inquire *inter alia* into the elasticity of demand for the product, for on this depends the extent to which employers could transfer the burden of the increased wage to consumers. It would also be necessary to inquire how far the enforced payment of a higher wage would lead employers to tighten up organisation and so pay the higher wage without difficulty.

.....

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

.....

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

The principles which emerge from the above discussion are:

(1) that in the fixation of rates of wages which

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

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

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

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

The machinery for fixations of wages :

The fixation of wages may form the subject matter of reference to industrial tribunals or similar machinery under the Labour Relations Law. But this machinery is designed for the prevention and settlement of industrial disputes which have either arisen or are apprehended, disputes relating to wages being one of such disputes. The ensuring of an adequate wage is however a distinctive objective and it requires the setting up of some kind of wage fixing board, whether they be trade boards or general boards. It is seldom that legislative enactments themselves fix the rates of wages, though a few such instances are known. This method of regulation of wages has now become obsolete in view of its inflexibility.” (1)

“The Constitution of Boards falls naturally into two main groups. On the one hand, there are those not representatives of one but of all trades, workers in

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

(1) The Report of the Committee on Fair Wages. p. 26, para. 49.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J

general and employers in general being represented. This group includes among others the Industrial Welfare Commission of Texas, consisting of the Commissioner of Labour, the representative of employers of labour on the Industrial Accidents Board and the State Superintendent of Public Instruction; the Minimum Wage Board of Manitoba, composed of two representatives of employers, and two of workers (one of each to be a woman) and one disinterested person; and the South Australian Board of Industry, consisting of a President and four Commissioners, two of whom are to be nominated by the South Australian Employers' Federation and two by the United Trades and Labour Council of the State. On the other hand are those Boards representative of one trade only or of part of a trade, or of a group of allied trades. An attempt is made to obtain a body of specialists and the membership of the Board reflects this intention. It will contain an equal number of representatives of employers and workers, together with an impartial chairman, and in some cases members of the public as well. Of this type are the British Trade Boards; the South Australian, Victorian and Tasmanian Wages Boards; and the Advisory or Wages Boards set up by many of the Central Commissioners in the United States and Canada." (1)

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

"In the United Kingdom where trade boards, and not general boards, have been set up, the Minister of Labour appoints a board if he is satisfied that no adequate machinery exists in a particular trade or industry for effectively regulating the wages and that it is necessary to provide such machinery. The trade board is a fairly large body consisting of an equal number of representatives of employers and workers with a few independent members including the Chairman. Although appointments are made by the Minister, the representatives of employers and workers

(1) "Wages & The State" by E. M. Burns at p. 187.

are appointed on the recommendation of the associations concerned. The trade board publishes a notice announcing its tentative proposals for the fixation or revision of a wage rate and invites objections or comments. After a two months' notice the board takes a final decision and submits a report to the Minister who must confirm the rate unless, for any special reasons, he returns the recommendations to the board for further consideration." (1)

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

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

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

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

(1) The Report of the Committee on Fair Wages, pp. 25-26, para. 50.

1958

Express News-
papers (Private)
Ltd., & Another
v.
The Union of India
& Others
—
Bhagwati J.

the recommendations have to be submitted to the Lieutenant Governor who issues orders.

“In the United States of America some state laws prescribe that the representatives of employers and workers should be elected, but in the majority of States the administrative authorities are authorised to make direct appointments. The boards so set up are empowered to make enquiries, to call for records, to summon witnesses and to make recommendations regarding minimum wages. Some of the American laws lay down a time-limit for the submission of proposals. The administrative authority may accept or reject a report and refer it back for reconsideration, or form a new board for considering the matter afresh. Some of the laws provide that if the report is not accepted, the matter must be submitted again to the same wages board or a new wages board.”⁽¹⁾

The whole procedure for the determination of wages in the United States of America is described in two decisions of the Supreme Court : (i) *Interstate Commerce Com. v. Louisville & M. R.* ⁽²⁾ and (ii) *Opp. Cotton Mills Inc. v. Administration* ⁽³⁾.

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

In Australia also there are provisions in various states for the appointment of wage boards the details of which we need not go into. We may only refer to the wage board system in Victoria which was established

(1) Report of the Committee on Fair Wages, p. 26, para. 50.

(2) (1912) 227 U.S. 83; 57 L. Ed. 431.

(3) (1940) 312 U.S. 126; 85 L. Ed. 624.

in 1896 as a means of directly regulating wages and working conditions in industries subject to "sweating", and was not intended to control industrial relations as such.

"Under the Factories and Shops Act, 1924, wage boards are set up for the various industries with a court of Industrial Appeals to decide appeals from a determination of a wage board. Industries for which there is no special wage board are regulated by the General Wages Board, which consists of two employers' representatives nominated by the Victorian Chamber of Manufacturers, two employees' representatives nominated by the Melbourne Trade Hall Council, and a chairman, agreed upon by these four members or nominated by the minister for labour."⁽¹⁾

It may be noted that in the majority of cases these wage boards are constituted of equal number of representatives of employers and employees and one or more independent persons, one of whom is appointed the chairman.

The position in India has been thus summarised :

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

"The first enactment specifically to regulate wages in this country is the Minimum Wages Act, 1948.

(1) Kenneth F. Walker, "Industrial Relations in Australia".

1958

Express News-
papers (Private)
Ltd., & Another
v.

The Union of India
& Others

—
Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

This Act is limited in its operation to the so-called sweated industries in which labour is practically unorganised and working conditions are far worse than in organised industry. Under that Act the appropriate Government has either to appoint a Committee to hold enquiries and to advise it in regard to the fixation of minimum rates of wages or, if it thinks that it has enough material on hand, to publish its proposals for the fixation of wages in the official gazette and to invite objections. The appropriate Government finally fixes the minimum rates of wages on receipt of the recommendations of the Committee or of objections from the public. There is no provision for any appeal. There is an advisory board in each province to co-ordinate the work of the various committees. There is also a Central Advisory Board to co-ordinate the work of provincial boards. Complaints of non-payment of the minimum rates of wages fixed by Government may be taken to claims authorities. Breaches of the Act are punishable by criminal courts.”⁽¹⁾

It is worthy of note that these committee, sub-committees, advisory board and central advisory board are to consist of persons to be nominated by the Central Government representing employers and employees in the scheduled employments, who shall be equal in number, and independent persons not exceeding one-third of its total number of members; one of such independent persons shall be appointed the chairman by the appropriate Government.

“Under a recent amendment to the Bombay Industrial Relations Act, 1946, wage boards can be set up in the Province of Bombay either separately for each industry or for a group of industries. The wage board is to consist of an equal number of representatives of employers and employees and some independent persons including the Chairman, all of whom are nominated by the Government. The board decides disputes relating to reduction in the number of persons employed, rationalisation or other efficiency systems of work, wages and the period and mode of payment, hours of work and leave with or without

(1) Report of the Committee on Fair Wages, pp. 26-27. para. 51, 52.

pay. When a matter has been referred to a wages board, no proceedings may be commenced or continued before a conciliator, conciliation board, labour court or industrial court. The wages boards are authorised to form committees for local areas for the purpose of making enquiries. It is obligatory on Government to declare the decisions of the wages boards binding, but where Government feel that it will be inexpedient on public grounds to give effect to the whole or any part of the decision, the matter has to be placed before the Provincial Legislature, the decision of which will be binding. There is provision for the filing of appeals from the decisions of the wages boards to the Industrial Court.” (1)

Those wage boards moreover are under the superintendence of the Industrial Court.

We may also notice here Recommendation 30, being the recommendation concerning the application of Minimum Wage-Fixing Machinery made by the International Labour Office, 1949 (2):

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

“(2) (a) To secure greater authority for the rates that may be fixed, it should be the general policy that the employers and workers concerned through representatives equal in number or having equal voting strength, should jointly take a direct part in the deliberations and decisions of the wage-fixing body; in any case, where representation is accorded to one side, the other side should be represented on the same footing. The wage-fixing body should also include one or more independent persons whose votes can ensure

1958

Express Newspapers (Private) Ltd., & Another
v.

The Union of India & Others

Bhagwati J.

(1) Report of the Committee on Fair Wages, p. 27, para. 52.

(2) Extracts from Conventions & Recommendations, 1919-49, published by International Labour Office (1949).

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

effective decisions being reached in the event of the votes of the employers' and workers' representatives being equally divided. Such independent persons should, as far as possible, be selected in agreement with or after consultation with the employers' and workers' representatives on the wage fixing body.

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

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

.....
The following appraisalment of the system of establishing trader boards by the committee on fair wages may be noted in this context:

"A trade board has the advantage of expert knowledge of the special problems of the trade for which it has been set up and is, therefore, in a position to evolve a scheme of wages suited to the conditions obtaining in the trade. The system, however, suffers from the limitation that there is no one authority to co-ordinate the activities of the various boards with the result that wide disparities may arise between the scales sanctioned for similar industries. A general board ensures due co-ordination but is far less competent than a trade board to appreciate the special problems of each trade. The Bombay Textile Labour Inquiry Committee have stated in their report that the trade board system is the best suited to Indian conditions, particularly because the very manner of

functioning of trade boards is such that wages are arrived at largely by discussion and conciliation and that it is only in exceptional cases that the deciding votes of the Chairman and of the independent members have to be given." (1)

It is clear therefore that a wage board relating to a particular trade or industry constituted of equal number of representatives of employers and employees, with an independent member or members one of whom is appointed a chairman, is best calculated to arrive at the proper fixation of wages in that industry.

Principles for guidance.

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

"As will be clear from the analysis of legislation given earlier in this monograph, the fundamental principle of the Australian system, both in the Commonwealth and in the State sphere, is that of the living wage. Even in those cases where the law contains no reference to this principle its importance is in practice great.....As a criterion of wage regulation the principle of the living wage is however no more than a vague and general indication of the purpose of the legislation. It leaves the broadest possible discretion in practice to the wage fixing tribunals. In the case of the Commonwealth laws indeed the Court is left completely free to determine the principles on which the basic or living wage is to be assessed. Under certain of the State laws specific, though limited, directions are given. Thus in Queensland there is a statutory definition of the family unit on whose requirements the basic wage is to be calculated. In certain cases the general emphasis on the criterion of the workers' needs is supplemented by directions to fix wage rates that will be "fair and reasonable" and in doing so to take into account the average standard

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

(1) Report of the Committee on Fair Wages, p. 27, para. 53.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

of comfort being enjoyed by workers in the same locality or in similar occupations. Such references, it may be noted, involve at least an indirect allusion to general economic conditions and the capacity of industry to pay, since the standards currently enjoyed are closely related to these factors. In at least one case (in Queensland) the Court is specifically directed to examine the probable effects of its decisions upon industry and the community in general."

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

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

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

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

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

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

The normal rule however is to leave a wide discretion to the tribunals responsible for the fixation of wages inasmuch as they being constituted of equal numbers of representatives of the employers and the

employees are best calculated to appreciate the whole position and arrive at correct results.

Procedure to be followed :

The procedure to be followed by the wage boards is equally fluid. The wage councils and the central co-ordinating committees appointed under the Wages Council Act, 1945, as also the agricultural wages committees and the agricultural boards appointed under the Agricultural Wages Regulation Act, 1924, in the United Kingdom each of them subject, of course, to the regulations which might be made by the minister as to the meetings and procedure of these bodies including quorum, etc., is entitled to regulate its procedure in such manner as it thinks fit.

The wage boards in Australia "are called together informally by the chairman upon request of either party. No legal formalities or procedures need be complied with. Meetings of wage boards are held in the offices of the Department of Labour an officer of the department acting as secretary." (1)

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

There are, however, a number of safeguards which have been provided in order to protect the interests of the parties concerned. The wages councils established by the Minister of Labour and National Services in the United Kingdom are so established after considering objections from persons appearing to be affected thereby and wage regulation orders are also recommended by these councils after considering the written representations in regard to their proposals which are duly published in the manner prescribed. These recommendations are again in their turn considered by the minister and it is only after the minister is satisfied that these wage regulation orders are promulgated, the minister having the power in proper cases to send the same back for reconsideration by the wage

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

(1) Kenneth F. Walker "Industrial Relations in Australia", p. 24.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

councils. When these proposals are again submitted by the wage council the same procedure is followed as in the case of original proposals made by them.

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

As regards the determinations of the special boards in some of the States of the Commonwealth of Australia appeals lie against the same to the court of industrial appeals and they are also challengeable before the High Court.

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

The wage boards appointed by the amended Bombay Industrial Relations Act, 1946, are subject to the appellate jurisdiction as well as supervisory jurisdiction of the industrial courts in the State and parties affected by their decisions are entitled to file appeals against the same in the industrial courts.

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

Character of the functions performed :

There is considerable divergence of opinion in regard to the character of the functions performed by these wage boards and a controversy has arisen as to whether the functions performed by them are administrative, judicial or quasi-judicial or legislative in character. The question assumes importance on two grounds: viz., (i) whether the decisions of the wage boards are open to judicial review and (ii) whether the principle of *audi alteram partem* applies to the proceedings before the wage boards. If the functions performed by them were administrative or legislative in character they would not be subject to judicial review and not only would they not be amenable to the writs of certiorari or prohibition, under Arts. 32 and 226 of the Constitution, they would also not be amenable to the exercise of special leave jurisdiction under Art. 136. Their decisions moreover would not be vulnerable on the ground that the principle of *audi alteram partem*, i. e., no man shall be condemned unheard, was not followed in the course of the proceedings before them

1958

Express News-
papers (Private)
Ltd., & Another

v.

The Union of India
& Others

—
Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

and the procedure adopted by them was contrary to the principles of natural justice.

It is well settled that writs of certiorari and prohibition will lie only in respect of judicial or quasi-judicial acts:

“the orders of certiorari and prohibition will lie to bodies and persons other than courts *stricto sensu*. Any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, is subject to the controlling jurisdiction of the High Court of justice, exercised by means of these orders.”⁽¹⁾

The principle of *audi alteram partem* also applies only to judicial or quasi-judicial proceedings: As was observed by the Judicial Committee of the Privy Council in *Patterson v. District Commissioner of Accra* ⁽²⁾—

“On this part of the case, counsel suggested that the provisions of s. 9 were in the nature of a “mass punishment” of the inhabitants of the proclaimed district and he relied on the well-known passage from the judgment of the court in *Bonaker v. Evans* ⁽³⁾, “no proposition can be more clearly established than that a man cannot incur the loss of liberty or property for an offence by a judicial proceeding until he has had a fair opportunity of answering the charge against him, unless indeed the legislature has expressly or impliedly given an authority to act, without that necessary preliminary. This is laid down in [here a number of cases are mentioned] and many other cases, concluding with that of *Capel v. Child* ⁽⁴⁾ in which Bayley B. says he knows of no case in which you are to have a judicial proceeding, by which a man is to be deprived of any part of his property, without his having an opportunity of being heard.”.....Their Lordships have already indicated that, in their view, the section does not contemplate any judicial proceeding, and thus a decision against the appellant does not infringe the principles stated in *Bonaker v. Evans*.”⁽³⁾

(1) Halsbury's Laws of England, 3rd Edn., Vol. 11, at p. 55, para. 114.

(2) [1948] A.C. 341, 350.

(3) 16 Q.B. 162, 171.

(4) (1832) 2 C. & J. 558.

The distinction between a legislative and a judicial function is thus brought out in Cooley's Constitutional Limitations, 8th Edn., Vol. I, ch. V under the caption of "the powers which the legislative department may exercise", at p. 185 :—

"On general principles, therefore, those inquiries, deliberations, orders, and decrees, which are peculiar to such a department, must in their nature be judicial acts. Nor can they be both judicial and legislative; because a marked difference exists between the employment of judicial and legislative tribunals. The former decide upon the legality of claims and conduct, and the latter make rules upon which, in connection with the constitution, those decisions should be founded. It is the province of judges to determine what is the law upon existing cases. In fine, the law is applied by one, and made by the other. To do the first, therefore, is to compare, the claims of parties with the law of the land before established—is in its nature judicial act. But to do the last—to pass new rules for the regulation of new controversies—is in its nature a legislative act; and if these rules interfere with the past, or the present, and do not look wholly to the future, they violate the definition of a law as "a rule of civil conduct", because no rule of conduct can with consistency operate upon what occurred before the rule itself was promulgated.

"It is the province of judicial power, also to decide private disputes between or concerning persons; but of legislative power to regulate public concerns, and to make laws for the benefit and welfare of the State. Nor does the passage of private statutes, when lawful, are enacted on petition, or by the consent of all concerned; or else they forbear to interfere with past transactions and vested rights."

The following classic passage from the opinion of Holmes, J., in *Prentis v. Atlantic Coast Line Co. Ltd.*, (1), is very apposite in this context :

"A judicial inquiry investigates, declares, and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation, on the other hand

1958

Express News-
papers (Private)
Ltd., & Another
v.

The Union of India
& Others

Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

looks to the future and changes existing conditions by making a new rule, to be applied thereafter to all or some part of those subject to its power. The establishment of a rate is the making of a rule for the future, and therefore, is an act legislative not judicial in kind,....."

.....
That question depends not upon the character of the body, but upon the character of the proceedings.

.....
The nature of the final act determines the nature of the previous enquiry."

(See also *Mitchell Coal & Coke Co. v. Pennsylvania R. Co.* ⁽¹⁾ and *Louisville & Nashville Railroad Company v. Green Garrett* ⁽²⁾).

A practical difficulty however arises in thus characterising the functions as legislative or judicial because the functions performed by administrative agencies do not fall within water-tight compartments. Stason and Cooper in their treatises on "Cases and other materials on Administrative Tribunals" point out:

"One of the great difficulties of properly classifying a particular function of an administrative agency is that frequently—and, indeed; typically—a single function has three aspects. It is partly legislative, partly judicial and partly administrative. Consider, for example, the function of rate-making. It has sometimes been characterised as legislative, sometimes as judicial. In some aspects, actually, it involves merely executive or administrative powers. For example, where the Interstate Commerce Commission fixes a tariff of charges for any railroad, its function is viewed as legislative. But where the question for decision is whether a shipment of a mixture of coffee and chicory should be charged the rate established for coffee or the lower rate established for chicory, the question is more nearly judicial. On the other hand, where the problem is merely the calculation of the total freight charges due for a particular shipment, the determination can fairly be described as an administrative act."

(1) (1913) 230 U.S. 247; 57 L. Ed. 1472, 1482.

(2) (1913) 231 U.S. 298; 58 L. Ed. 229, 239.

This difficulty is solved by the Court considering in a proper case whether the administrative agency performs a predominantly legislative or judicial or administrative function and determining its character accordingly. (Vide: *Village of Saratoga Springs v. Saratoga Gas, Electric Light & Power Co.* ⁽¹⁾, and *People ex rel. Central Park, North & East River R. Co. v. Willcox* ⁽²⁾).

The function of the wage board in the United Kingdom had been characterised as legislative in character by various text-book writers.

Robson's Justice and Administrative Law, 3rd Edn., states at p. 608 (foot-note):

"An example of a subordinate body of this type is a Wage Council, which is not an administrative tribunal but a subordinate legislative authority."

Griffith's Principles of Administrative Law contains the following passage at p. 39:

"The subordinate legislation which occupies more space than any other subject relates to Wages Councils. By the Wages Councils Act, 1945, the Minister of Labour and National Service was empowered to establish by order Wages Councils to operate in industries and trades. Six such orders were made in 1947. Wages Councils, under the Act, may submit to the Minister detailed "wages regulations proposals" for fixing remuneration and making provisions for holidays. The Minister then makes orders embodying and giving effect to these proposals. In 1947, fifty-five such orders were made, covering thirty-one different trades."

Barbare Wootton in "Social Foundations of Wage Policy; Modern Methods of Wage Determination" makes the following observations at p. 88:

"Both arbitration tribunals and courts of inquiry share with—one important difference—the tripartite structure of statutory wage councils; they are composed of equal numbers of representatives of employers and of workers under an independent chairman together with (in some cases) additional independent members. The essential difference between their structure and that of statutory wage authorities is that the

1958

Express News-
papers (Private)
Ltd., & Another
v.
The Union of India
& Others
—
Jhagwati J.

(1) (1908) 191 New York 123.

(2) (1909) 194 New York 383.

1958

Express News-
papers (Private)
Ltd., & Another

v.

The Union of India
& Others

—
Bhagwati J.

representative members of the latter are chosen from within the industry concerned, whereas employers and workers on arbitration tribunal come from outside the industry whose disputes they have to resolve; if in any case technical knowledge of a particular industry is required, this is normally supplied by the help of assessors who take no part in the final award. This difference between the constitution of wage boards and that of arbitration tribunals clearly implies a corresponding distinction between the legislative function of the former and the judicial function of the latter. The wages board drafts laws for its own industry, whereas the arbitration court gives judgment on matters submitted by others. The choice of industrial arbitrators unconnected with the industries the merits of whose claims they must pledge, is evidently intended as a guarantee that they, like other judges, will be free from bias arising from personal interest”.

The High Court of the Commonwealth of Australia has taken a similar view in *Australian Boot Trade Employees Federation v. Whybrow & Co.*⁽¹⁾, in discussing an award made by the wages board empowered by a State statute to fix minimum rates of wages. The test applied for determining the character of that function may be stated in the words of Isaacs J. at p. 318:

“If the dispute is as to the relative rights of parties as they rest on past or present circumstances, the award is in the nature of a judgment, which might have been the decree of an ordinary judicial tribunal acting under the ordinary judicial power. There the law applicable to the case must be observed. If, however, the dispute is as to what shall in the future be the mutual rights and responsibilities of the parties—in other words, if no present rights are asserted or denied, but a future rule of conduct is to be prescribed, thus creating new rights and obligations, with sanctions for non-conformity—then the determination that so prescribes, call it an award, or arbitration, determination, or decision or what you will, is essentially of a legislative character, and limited only by the law which authorises it. If, again, there are neither present

(1) (1910) 10 C. L. R. 266, 318.

rights asserted, nor a future rule of conduct prescribed, but merely a fact ascertained necessary for the practical effectuation of admitted rights, the proceeding, though called an arbitration, is rather in the nature of an appraisalment or ministerial act."

1953

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Chagwati J.

As against this trend of opinion it has been urged that the decisions of the Wage Councils in the shape of wage regulation proposals submitted to the minister in Great Britain under the Wage Councils Act derive their sanction from the orders made by the minister giving effect to these proposals; but for such orders of the minister they would merely remain the determinations of the Wage Councils and would not acquire any legislative character. In regard to the determinations of the wage boards empowered by the statutes to fix the minimum rates of wages in the Commonwealth of Australia also it is pointed out that under the provisions of the Factories and Shops Act, 1905, of Victoria "Every determination of any Special Board shall unless and until so quashed.....have the like force, validity and effect as if such determination had been enacted in this Act....." thus investing the determination of the boards with the characteristics of a legislative act.

Reference is made to the provisions of the Fair Labour Standards Act of 1938 in the United States of America, where the wages orders ultimately approved by the Administrator are subject to judicial review in the Circuit Courts of Appeals or in the United States courts of appeals of the particular District and also subject to further review by the Supreme Court of the United States of America on certification.

The Minimum Wages Act, 1948, in our country also provides for the committees, sub-committees, advisory sub-committees, advisory boards and central advisory boards for fixing minimum rates of wages and the recommendations of these committees are forwarded to the appropriate Government who by notification in the official gazette fix minimum rates of wages in respect of each scheduled employment. The notification is a token of the approval by the appropriate Government

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

of these recommendations of the Committees and invests them with legal sanction.

The recent amendment of the Bombay Industrial Relations Act, 1946, empowers the State Government by notification in the official Gazette to constitute for one or more industries a wage board for the State and enjoins these wage boards to follow the same procedure as the Industrial Court in respect of arbitration proceedings before it and appeals from the decisions of these wage boards lie to the Industrial Courts which has powers of superintendence and control over these wage boards and it cannot, under the circumstances, be urged that these wage boards perform any legislative functions.

These are the two opposite points of view which have been pressed before us and it is impossible to state that the functions performed by the wage boards are necessarily of a legislative character. It is no doubt true that their determinations bind not only the employers and the employees in the present, but they also operate when accepted by the appropriate government or authorities and notified in accordance with law, to bind the future employers and employees in the industry. If that were the only consideration the dictum of Justice Holmes cited above would apply and the functions performed by these wage boards would be invested with a legislative character. This is however not all, and regard must be had to the provisions of the statutes constituting the wage boards. If on a scrutiny of the provisions in regard thereto one can come to the conclusion that they are appointed only with a view to determine the relations between the employers and the employees in the future in regard to the wages payable to the employees there would be justification for holding that they were performing legislative functions. If, however, on a consideration of all the relevant provisions of the statutes bringing the wage boards into existence, it appears that the powers and procedure exercised by them are assimilated to those of Industrial Tribunals or their adjudications are subject to judicial review at the hands of higher Tribunals exercising judicial or quasi-judicial

functions, it cannot be predicated that these wage boards are exercising legislative functions. Whether they exercise these functions or not is thus to be determined by the relevant provisions of the statutes incorporating them and it would be impossible to lay down any universal rule which would help in the determination of this question.

Even if on the construction of the relevant provisions of the statute we come to the conclusion that the functions performed by a particular wage board are not of a legislative character, the question still remains whether the functions exercised by them are administrative in character or judicial or quasi-judicial in character, because only in the latter event would their decision be amenable to the writ jurisdiction or to the special leave jurisdiction above referred to.

There is no doubt that these wage boards are not exercising purely judicial functions. They are not courts in the strict sense of the term and the functions which they perform may at best be quasi-judicial in character. The fact that they are administrative agencies set up for the purpose of fixation of wages do not necessarily invest their functions with an administrative character and in spite of their being administrative bodies they can nevertheless be exercising quasi-judicial functions if certain conditions are fulfilled.

The position in law has been thus summarised in Halsbury's Laws of England, 3rd Ed., Vol. 11, at pp. 55-56 :—

“The orders of certiorari and prohibition will lie to bodies and persons other than courts *stricto sensu*. Any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, is subject to the controlling jurisdiction of the High Court of Justice, exercised by means of these orders. It is not necessary that it should be a court; an administrative body in ascertaining facts or law may be under a duty to act judicially notwithstanding that its proceedings have none of the formalities of, and are not in accordance

1958

Express News-
papers (Private)
Ltd., & Another
v.

The Union of India
& Others

Bhagwati J

1958

Express News-
papers (Private)
Ltd., & Another

v.

The Union of India
& Others

—
Bhagwati J.

with the practice of, a court of law. It is enough if it is exercising, after hearing evidence, judicial functions in the sense that it has to decide on evidence between a proposal and an opposition. A body may be under a duty, however, to act judicially (and subject to control by means of these orders) although there is no form of *lis inter partes* before it; it is enough that it should have to determine a question solely on the facts of the particular case, solely on the evidence before it, apart from questions of policy or any other extraneous considerations."

"Moreover an administrative body, whose decision is actuated in whole or in part by questions of policy, may be under a duty to act judicially in the course of arriving at that decision. Thus, if in order to arrive at the decision, the body concerned had to consider proposals and objections and consider evidence, if at some stage of the proceedings leading up to the decision there was something in the nature of a *lis* before it, then in the course of such consideration and at that stage the body would be under a duty to act judicially. If, on the other hand, an administrative body in arriving at its decision has before it at no stage any form of *lis* and throughout has to consider the question from the point of view of policy and expediency, it cannot be said that it is under a duty at any time to act judicially."

(See also the decision of this Court in *Nagendra Nath Bora v. Commissioner of Hills Division and Appeals, Assam* ⁽¹⁾).

In order therefore to determine whether an administrative body is exercising a quasi-judicial function, it would be necessary to examine in the first instance, whether it has to decide on evidence between a proposal and an opposition and secondly, whether it is under a duty to act judicially in the matter of arriving at its decision.

"The duty to act judicially may arise in widely differing circumstances which it would be impossible to attempt to define exhaustively. The question whether or not there is a duty to act judicially must be decided

in each case in the light of the circumstances of the particular case and the construction of the particular statute, with the assistance of the general principles already set out." (Ibid, para. 115).

The decision in *R. v. Manchester Legal Aid Committee Ex parte R. A. Brand & Co. Ltd.* ⁽¹⁾, lays down when an administrative body can be said to have a duty to act judicially:

"The true view, as it seems to us, is that the duty to act judicially may arise in widely different circumstances which it would be impossible, and, indeed, inadvisable, to attempt to define exhaustively. Where the decision is that of a court, then, unless, as in the case, for instance, of justices granting excise licences, it is acting in a purely ministerial capacity, it is clearly under a duty to act judicially. When, on the other hand, the decision is that of an administrative body and is actuated in whole or in part by questions of policy, the duty to act judicially may arise in the course of arriving at that decision. Thus, if, in order to arrive at the decision, the body concerned had to consider proposals, and objections and consider evidence, then there is the duty to act judicially in the course of that inquiry. That, as it seems to us, is the true basis of the decision in *Errington v. Minister of Health* ⁽²⁾....."

(See also *Rex v. The London Country Council: Ex parte Entertainments Protection Association Ltd.* ⁽³⁾.....)

"Further, an administrative body in ascertaining facts or law may be under a duty to act judicially notwithstanding that its proceedings have none of the formalities of and are not in accordance with the practice of a court of law."

Vide Board of Education v. Rice ⁽⁴⁾:

"More recently it has been held by this Court on many occasions that certiorari will lie to quash the decision of rent control tribunals, and this notwith-

(1) [1952] 2 Q.B. 413, 428, 429, 430.

(2) [1935] 1 K.B. 249.

(3) [1931] 2 K.B. 215, 233-4.

(4) [1911] A.C. 179, 182.

1953

Express News
papers (Private)
Ltd., & Another

v.

The Union of India
& Others

Bhagwati J.

1958

Express News-
papers (Private)
Ltd., & Another
v.

The Union of India
& Others

—
Mazaguli J.

standing that such a tribunal is entitled to act on its own knowledge and information, without evidence unless submitted, and without a hearing except on notice from a party; see *Rex v. Brighton and Area Rent Tribunal* ⁽¹⁾.

“If, on the other hand, an administrative body in arriving at its decision at no stage has before it any form of *lis* and throughout has to consider the question from the point of view of policy and expediency, it cannot be said that it is under a duty at any stage to act judicially: Compare *Franklin v. Minister of Town and Country Planning*.” ⁽²⁾.

It is strenuously urged before us by learned counsel for the petitioners that if the functions which the wage boards perform in the matter of fixation of the rates of wages are considered in the light of the principles cited above, it would appear that as between the employers, on the one hand, and the employees, on the other, there is a proposition and opposition. The employees demand that a particular statutory minimum wage should be fixed and the scales of wages should also be determined in a particular manner. The employers on their part would maintain that the *status quo* should continue or that, in any event, much less than the statutory minimum wage demanded by the employees should be fixed and also that the scales of wages should be fixed on a gradation which is much less than or in any event, different from that suggested by the employees. The employees may say that certain factors which are material in the fixation of wages and which affect the employees should be considered as determinative of the rates of wages while the importance of these factors may be sought to be minimized by the employers who might put forward certain other factors affecting them, in their turn, as determinative of those rates, the importance of which may be sought to be minimized by the employees on the other hand. All these would create proposition and opposition on both sides with the result that a *lis* would arise between them. The determination of these

(1) [1950] 2 K.B. 410.

(2) [1948] A.C. 87, 102.

points at issue would have to be arrived at by the wage boards and the wage boards could only do so after collecting proper data and materials and hearing evidence in that behalf. If the functions performed by the wage board would thus consist of the determination of the issues as between a proposition and an opposition on data and materials gathered by the board in answers to the *questionnaire* issued to all parties interested and the evidence led before it, there is no doubt that there would be imported in the proceedings of the wage board a duty to act judicially and the functions performed by the wage board would be quasi-judicial in character. It has been on the other hand urged before us by the learned counsel for the respondents that the very constitution of the wage boards is against the fundamental principle of jurisprudence which postulates that no man should be a judge in his own cause. It was laid down by the House of Lords in *Franklin v. Minister of Town and Country Planning* ⁽¹⁾ at p. 103:

“My Lords, I could wish that the use of the word “bias” should be confined to its proper sphere. Its proper significance, in my opinion, is to denote a departure from the standard of even-handed justice which the law requires from those who occupy judicial office, or those who are commonly regarded as holding a quasi-judicial office, such as an arbitrator. The reason for this clearly is, that having to adjudicate as between two or more parties, he must come to his adjudication with an independent mind, without any inclination or bias towards one side or other in the dispute.”

The representatives of the employers and the representatives of the employees who are appointed on the wage board along with an independent chairman and some other members, it is submitted, would necessarily have a bias in favour of those whom they represent and therefore would not be competent to be judges and the wage board thus constituted could hardly be called a judicial body.

There is considerable force in these contentions, but

(1) [1948] A.C. 87, 102.

1958

Express News-
papers (Private)
Ltd., & Another
v.

The Union of India
& Others

Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

we do not feel called upon to express our final opinion on this question in view of the conclusion which we have hereafter reached in regard to the ultra vires character of the decision of the Wage Board itself. We are however bound to observe that whatever be the character of the functions performed by the wage boards whether they be legislative or quasi-judicial, if proper safeguards are adopted of the nature discussed earlier, e. g., provision for judicial review or the adopting of the procedure as in the case of the recommendations of the wage councils in the United Kingdom, or the reports of the advisory committees which come to be considered by the administrator under the Fair Labour Standards Act of 1938 in the United States of America, no objection could ever be urged against the determinations of the wage boards thus arrived at on the score of the principles of natural justice having been violated.

We now proceed to consider how far the impugned Act violates the fundamental rights of the petitioners.

Re : Article 19 (1)(a).

Art. 19(1)(a) guarantees to all citizens the right to freedom of speech and expression. It has, however, got to be read along with Art. 19(2) which lays down certain constitutionally permissible limitations on the exercise of that right. Art. 19(2) as substituted by the Constitution (First Amendment) Act, 1951, with retrospective effect reads as under :

“Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.”

If any limitation on the exercise of the fundamental right under Art. 19(1)(a) does not fall within the four corners of Art. 19(2) it cannot be upheld.

Freedom of speech and expression includes within its scope the freedom of the press and it would be

apposite here to refer to the following passages from "Freedom of the Press—A Framework of Principles" (Report of the Commission on Freedom of Press in the United States of America).

The General Meaning of Freedom :

To be free is to have the use of one's powers of action (i) without restraint or control from outside and (ii) with whatever means or equipment the action requires.

"The primary suggestion of the term "freedom" is the negative one, the absence of external interference whether to suppress or to constrain. To be free is essentially to be free *from* something—some arbitrary impediment to action, some dominating power or authority. And so long as it can be taken for granted that the unhindered person has all he needs to act with—which is usually the case the negative meaning remains the chief element of the conception.

"But since freedom is for action, and action is for an end, the positive kernel of freedom lies in the ability to achieve the end; to be free means to be free for some accomplishment. And this implies *command of the means* to achieve the end. Unless the equipment necessary for effective action is at hand, unrestraint may be a mockery of freedom.....Unrestraint without equipment is not liberty for any end which demands equipment." (pp. 54-55).

Resulting Conception of Freedom of the Press :

"The emerging conception of freedom of the press may be summarised as follows :

As with all freedoms, press freedom means freedom from and freedom for. A free press is free from compulsions from whatever source, governmental or social, external or internal. From compulsions, not from pressures; for no press can be free from pressures except in a moribund society empty of contending forces and beliefs. These pressures, however, if they are persistent and distorting—as financial, clerical, popular, institutional pressures may become—approach compulsion; and something is then lost from effective

1958

Express News-
papers (Private)
Ltd., & Another

v.

The Union of India
& Others

—
Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*
v.
*The Union of India
& Others*
—
Bhagwati J.

freedom which the press and its public must unite to restore.

“A free press is free for the expression of opinion in all its phases. It is free for the achievement of those goals of press service on which its own ideals and the requirements of the community combine and which existing techniques make possible. For these ends it must have full command of technical resources, financial strength, reasonable access to sources of information at home and abroad, and the necessary facilities for bringing information to the national market. The press must grow to the measure of this market.” (p. 228).

.....
There is paucity of authority in India on the nature, scope and extent of this fundamental right to freedom of speech and expression enshrined in Art. 19 (1) (a) of the Constitution. The first case which came up for decision before this court was that of *Ramesh Thaper v. The State of Madras*⁽¹⁾. It was a case of a ban on the entry and circulation of the appellant's journal in the State of Madras under the provisions of section 9 (1-A) of the Madras Maintenance of Public Order Act, 1949, and it was observed by Patanjali Sastri J. (as he then was) at p. 597 :

“There can be no doubt that freedom of speech and expression includes freedom of propagation of ideas, and that freedom is ensured by the freedom of circulation. “Liberty of circulation is as essential to that freedom as the liberty of publication. Indeed, without circulation the publication would be of little value.” : *Ex parte Jackson*⁽²⁾. See also *Lovell v. City of Griffin*⁽³⁾.

Brij Bhushan & Anr. v. The State of Delhi⁽⁴⁾ was the next case which came up for decision before this Court and it concerned the constitutionality of section 7 (i) (c) of the East Punjab Public Safety Act, 1949. It was a provision for the imposition of pre-censorship on a journal. Patanjali Sastri J. (as he then was)

(1) [1950] S.C.R. 594, 597.

(2) (1877) 96 U.S. 727; 24 L. Ed. 877.

(3) (1937) 303 U.S. 444; 82 L. Ed. 949.

(4) [1950] S.C.R. 605, 608.

who delivered the majority judgment observed at p. 608 :—

“There can be little doubt that the imposition of precensorship on a journal is a restriction on the liberty of the press which is an essential part of the right to freedom of speech and expression declared by Art. 19(1)(a). As pointed out by Blackstone in his Commentaries “the liberty of the Press consists in laying no previous restraint upon publications, and not in freedom from censure for criminal matter when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press. (Blackstone’s Commentaries, Vol. IV, pp. 151, 152).”

These are the only two decisions of this Court which involve the interpretation of Art. 19(1)(a) and they only lay down that the freedom of speech and expression includes freedom of propagation of ideas which freedom is ensured by the freedom of circulation and that the liberty of the press is an essential part of the right to freedom of speech and expression and that liberty of the press consists in allowing no previous restraint upon publication.

There is however, a considerable body of authority to be found in the decisions of the Supreme Court of the United States of America bearing on this concept of the freedom of speech and expression. Amendment I of that Constitution lays down :

“Congress shall make no law.....abridging the freedom of speech or of the press.....”

It is trite to observe that the fundamental right to the freedom of speech and expression enshrined in Art. 19(1)(a) of our Constitution is based on these provisions in Amendment I of the Constitution of the United States of America and it would be therefore legitimate and proper to refer to those decisions of the Supreme Court of the United States of America in order to appreciate the true nature, scope and extent of this right in spite of the warning administered by this Court against the use of American and other cases, (Vide *State of Travancore-Cochin & Ors. v. Bombay Co.*

1958

Express Newspapers (Private) Ltd., & Another
v.

The Union of India & Others

—
Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

The Union of India at p. 668:

& Others

Bhagwati J.

Ltd. ⁽¹⁾ and *State of Bombay v. R.M.D. Chamarbaugwala* ⁽²⁾.

Grosjean v. American Press Co. ⁽³⁾, was a case where a statute imposed a license tax on the business of publishing advertisements and it was observed

“The evils to be prevented were not the censorship of the press merely, but any action of the Government by means of which it might prevent such free and general discussion of public matters as seems absolutely essential to prepare the people for an intelligent exercise of their rights as citizens.” (Vide *Cooley’s Constitutional Limitations*, 8th Edn., Vol. II, p. 886).

The statute was there struck down as unconstitutional because in the light of its history and of its present setting it was seen to be a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public was entitled in virtue of the constitutional guarantees.

The following passage from the dissenting opinion in *The Associated Press v. The National Labour Relations Board* ⁽⁴⁾ is also instructive:

“If the freedom of the press does not include the right to adopt and pursue a policy without governmental restriction, it is a misnomer to call it freedom. And we may as well deny at once the right to the press freely to adopt a policy and pursue it, as to concede that right and deny the liberty to exercise an uncensored judgment in respect of the employment and discharge of the agents through whom the policy is to be effectuated.”

It was also observed there at p. 965:

“Due regard for the constitutional guarantee requires that the publisher or agency of the publisher of news shall be free from restraint in respect of employment in the editorial force.”

Schneider v. Irvingtor ⁽⁵⁾ was concerned with the effect of the Municipal Regulations against littering of

(1) [1952] S.C.R. 1112, 1120.

(2) [1957] S.C.R. 874, 918.

(3) (1935) 297 U.S. 233, 249; 80 L. Ed. 660, 668.

(4) (1936) 301 U.S. 103, 136; 81 L. Ed. 953, 963.

(5) (1939) 308 U.S. 147; 84 L. Ed. 155, 164.

streets. In the course of its decision the Court made the following observations at p. 164 :

“This court has characterized the freedom of speech and that of the press as fundamental personal rights and liberties. The phrase is not an empty one and was not lightly used. It reflects the belief of the framers of the Constitution that exercise of the rights lies at the foundation of free government by free press. It stresses, as do many opinions of this court, the importance of preventing the restriction of enjoyment of these liberties.”

Non-interference by the State with this right was emphasized in *Thomas v. Collins* ⁽¹⁾ at p. 448 :—

“But it cannot be the duty, because it is not the right, of the State to protect the public against false doctrine. The very purpose of the First Amendment is to foreclose public authority from assuming a guardianship of the public mind through regulating the press, speech, and religion. In this field every person must be his own watchman for truth, because the forefathers did not trust any Government to separate the true from the false for us”.....

In 93 L. Ed. at p. 1151 is given a summary of the decisions of the Supreme Court of the United States of America on this subject under the heading “The Supreme Court and the right of Free Speech and Press” and it contains at p. 1153 the following passage under the caption “Right in General: Freedom from Censorship and Punishment” :

“The freedom of speech and of press are fundamental personal rights & liberties, the exercise of which lies at the foundation of free Government by free men.....The very purpose of the first Amendment is to foreclose public authority from assuming a guardianship of the public mind through regulating the press, speech, and religion; it rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.”

The dissenting opinion of Douglas J. in *Beauharnais v. Illinois* ⁽²⁾ contains the following at p. 943 :

(1) (1944) 323 U.S. 516, 545 ; 89 L. Ed. 430, 448.

(2) (1951) 343 U.S. 250, 285 ; 96 L. Ed. 919, 943.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

“There is room for regulation of the ways and means of invading privacy. No such leeway is granted the invasion of the right of free speech guaranteed by the First Amendment. Until recent years that had been the course and direction of constitutional law. Yet recently the Court in this and other cases has engrafted the right of regulation onto the First Amendment by placing in the hands of the legislative branch the right to regulate “within reasonable limits” the right of free speech. This to me is an ominous and alarming trend. The free trade in ideas which the framers of the Constitution visualised disappears. In its place there is substituted a new orthodoxy—an orthodoxy that changes with the whims of the age or the day, an orthodoxy which the majority by solemn judgment proclaims to be essential to the safety, welfare, security, morality, or health of Society. Free speech in the constitutional sense disappears. Limits are drawn—limits dictated by expediency, political opinion, prejudices or some other desideratum of legislative action.”

It is clear from the above that in the United States of America :

(a) the freedom of speech comprehends the freedom of press and the freedom of speech and press are fundamental personal rights of the citizens ;

(b) the freedom of the press rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public ;

(c) Such freedom is the foundation of free Government of a free people ;

(d) the purpose of such a guarantee is to prevent public authorities from assuming the guardianship of the public mind and

(e) freedom of press involves freedom of employment or non-employment of the necessary means of exercising this right or in other words, freedom from restriction in respect of employment in the editorial force.

This is the concept of the freedom of speech and expression as it obtains in the United States of America

and the necessary corollary thereof is that no measure can be enacted which would have the effect of imposing a pre-censorship, curtailing the circulation or restricting the choice of employment or unemployment in the editorial force. Such a measure would certainly tend to infringe the freedom of speech and expression and would therefore be liable to be struck down as unconstitutional.

The press is however, not immune from the ordinary forms of taxation for support of the Government nor from the application of the general laws relating to industrial relations. It was observed in *Grosjean v. American Press Co.* (1):

"It is not intended by anything we have said to suggest that the owners of newspapers are immune from any of the ordinary forms of taxation for support of the Government; But this is not an ordinary form of tax but one single in kind with a long history of hostile misuse against the freedom of the press.

"The predominant purpose of the grant of immunity here invoked was to preserve an untrammelled press as a vocal source of public information. The newspapers, magazines and other journals of the country, it is safe to say, have shed and continue to shed, more light on the public and business affairs of the nation than any other instrumentality of publicity; and since informed public opinion is the most patent of all restraints upon mis-government, the suppression or abridgment of the publicity afforded by a free press cannot be regarded otherwise than with grave concern. The tax here involved is bad not because it takes money from the pockets of the appellees. If that were all, a wholly different question would be presented. It is bad: Because, in the light of its history and of its present setting, it is seen to be a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the constitutional guarantees. A free press stands as one of the great interpreters between the Government and the people. To allow it to be fettered is to fetter ourselves."

(1) (1935) 297 U.S. 233, 249; 80 L. Ed. 660, 668.

1958

Express News-
papers (Private)
Ltd., & Another

v.

The Union of India
& Others

Bhagwati J.

1958

*Express News-
papers (Private)**Ltd., & Another*

v.

*The Union of India
& Others**Bhagwati J.*

In *The Associated Press v. National Labour Relations Board* ⁽¹⁾, it was held that the freedom of the press safeguarded by the First Amendment was not abridged by the application in the case of an editor employed by the Associated Press to determine the news value of the items received and to rewrite them for transmission to members of the association throughout the United States who must function without bias and prejudice, of the provisions of the National Labour Relations Act which inhibited an employer from discharging an employee because of union activities. It was further observed at p. 960 :

“So it is said that any regulation protective of union activities, or the right collectively to bargain on the part of such employees, is necessarily an invalid invasion of the freedom of the press. We think that the contention not only has no relevance to the circumstances of the instant case but is an unsound generalization.”

Murdock v. Pennsylvania ⁽²⁾, was a case of a license fee for the sale of religious books and Mr. Justice Frankfurter in his dissenting opinion at p. 1311 observed :

“A tax upon newspaper publishing is not invalid simply because it falls upon the exercise of a constitutional right. Such a tax might be invalid if it invidiously singled out newspaper publishing for bearing the burden of taxation or imposed upon them in such ways as to encroach on the essential scope of a free press. If the Court could justifiably hold that the tax measures in these cases were vulnerable on that ground, I would unreservedly agree. But the Court has not done so, and indeed could not.”

In *Oklahoma Press Publishing Co. v. Walling* ⁽³⁾, and in *Mabee v. White Plains Publishing Co.* ⁽⁴⁾ the Federal Fair Labour Standards Act was held applicable to the press and it was observed in the former case at p. 621 :

“Here there was no singling out of the press for treatment different from that accorded other business in general. Rather the Act’s purpose was to place

(1) (1936) 301 U.S. 103, 136; 81 L. Ed. 953, 963.

(2) (1942) 319 U.S. 105, 136; 87 L. Ed. 1292, 1311.

(3) (1945) 327 U.S. 186, 194; 90 L. Ed. 614, 621.

(4) (1945) 327 U.S. 178; 90 L. Ed. 607.

publishers of newspapers upon the same plane with other businesses and the exemption for small newspapers had the same object. Nothing in the *Grosjean case* ⁽¹⁾, forbids Congress to exempt some publishers because of size from either a tax or a regulation which would be valid if applied to all."

The Constitution of the United States of America—Analysis and Interpretation—Prepared by the Legislative Reference Service, Library of Congress, summarises the position thus at p. 792 :

"The Supreme Court, citing the fact that the American Revolution "really began when..... that Government (of England) sent stamps for newspaper duties to the American colonies" has been alert to the possible uses of taxation as a method of suppressing objectionable publications. Persons engaged in the dissemination of ideas are, to be sure, subject to ordinary forms of taxation in like manner as other persons. With respect to license or privilege taxes, however, they stand on a different footing. Their privilege is granted by the Constitution and cannot be withheld by either State or Federal Government.

.....
 "The application to newspapers of the Anti-Trust Laws, the National Labour Relations Act, or the Fair Labour Standards Act, does not abridge the freedom of the press."

The Laws regulating payment of wages have similarly been held as not abridging the freedom of speech and expression and the following observations in the same publication (at p. 988) in regard to the Minimum Wage Laws are apposite :

"MINIMUM WAGE LAWS: The theory that a law prescribing minimum wages for women and children violates due process by impairing freedom of contract was finally discarded in 1937 (*West Coast Hotel Co. v. Parrish*, 300 U. S. 379). The current theory of the Court, particularly when labor is the beneficiary of legislation, was recently stated by Justice Douglas for a majority of the Court, in the following terms: "Our recent decisions make plain that we do not sit as a super-legislature to weigh the wisdom of legislation nor

1958

Express Newspapers (Private) Ltd., & Another

v.

The Union of India & Others

Bhagwati J.

(1) (1935) 297 U.S. 233, 249; 89 L. Ed. 660, 668.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

to decide whether the policy which it expresses offends the public welfare.....But the state legislatures have constitutional authority to experiment with new techniques; they are entitled to their own standard of the public welfare; they may within extremely broad limits control practices in the business-labor field, so long as specific constitutional prohibitions are not violated and so long as conflicts with valid and controlling federal laws are avoided (*Day-Brite Lighting, Inc. v. Missouri*, 342 U. S. 421, 423 (1952))."

While therefore no such immunity from the general laws can be claimed by the press it would certainly not be legitimate to subject the press to laws which take away or abridge the freedom of speech and expression or which would curtail circulation and thereby narrow the scope of dissemination of information, or fetter its freedom to choose its means of exercising the right or would undermine its independence by driving it to seek Government aid. Laws which single out the press for laying upon it excessive and prohibitive burdens which would restrict the circulation, impose a penalty on its right to choose the instruments for its exercise or to seek an alternative media, prevent newspapers from being started and ultimately drive the press to seek Government aid in order to survive, would therefore be struck down as unconstitutional.

Such laws would not be saved by Art. 19(2) of the Constitution. This Court had occasion to consider the scope of Art. 19(2) in *Brij Bhushan & Anr. v. The State of Delhi* ⁽¹⁾, where Fazl Ali J. in his dissenting judgment observed at p. 619:

"It must be recognized that freedom of speech and expression is one of the most valuable rights guaranteed to a citizen by the Constitution and should be jealously guarded by the Court. It must also be recognised that free political discussion is essential for the proper functioning of a democratic government, and the tendency of the modern jurists is to deprecate censorship though they all agree that "liberty of the press" is not to be confused with its "licentiousness".

(1) [1950] S.C.R. 605, 608.

But the Constitution itself has prescribed certain limits and this Court is only called upon to see whether a particular case comes within those limits."

Unless, therefore, a law enacted by the Legislature comes squarely within the provisions of Art. 19 (2) it would not be saved and would be struck down as unconstitutional on the score of its violating the fundamental right of the petitioners under Art. 19 (1) (a).

In the present case it is obvious that the only justification for the enactment of the impugned Act is that it imposes reasonable restrictions in the interests of a section of the general public, viz., the working journalists and other persons employed in the newspaper establishments. It does not fall within any of the categories specified in Art. 19 (2), viz.,

"In the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."

Article 19 (2) being thus out of the question the only point that falls to be determined by us is whether the provisions of the impugned Act in any way take away or abridge the petitioners' fundamental right of freedom of speech and expression.

It was contended before us by the learned Attorney-General that it was only legislation directly dealing with the right mentioned in Art. 19 (1) (a) that was protected by it. If the legislation was not a direct legislation on the subject, Art. 19 (1) (a) would have no application, the test being not the effect or result of legislation but its subject-matter. In support of his contention he relied upon the following observations of Kania C. J. in *A. K. Gopalan v. The State of Madras* (1).

"As the preventive detention order results in the detention of the applicant in a cell it was contended on his behalf that the rights specified in article 19 (1), (a), (b), (c), (d), (e) and (g) have been infringed. It was argued that because of his detention he cannot have a free right to speech as and where he desired and the

(1) [1950] S.C.R. 88, 100.

1958

*Express News-
papers (Private)
Ltd., & Another*
v.

The Union of India
& Others

Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

same argument was urged in respect of the rest of the rights mentioned in sub-clauses (b), (c), (d), (e) and (g). Although this argument is advanced in a case which deals with preventive detention, if correct, it should be applicable in the case of punitive detention also to any one sentenced to a term of imprisonment under the relevant section of the Indian Penal Code. So considered, the argument must clearly be rejected. In spite of the saving clauses (2) to (5), permitting abridgement of the rights connected with each of them, punitive detention under several sections of the Penal Code, e. g., for theft, cheating, forgery and even ordinary assault, will be illegal. Unless such conclusion necessarily follows from the article, it is obvious that such construction should be avoided. In my opinion, such result is clearly not the outcome of the Constitution. The article has to be read without any pre-conceived notions. So read, it clearly means that the legislation to be examined must be directly in respect of one of the rights mentioned in the sub-clauses. If there is a legislation directly attempting to control a citizen's freedom of speech or expression, or his right to assemble peaceably and without arms, etc., the question whether that legislation is saved by the relevant saving clause of article 19 will arise. If, however, the legislation is not directly in respect of any of these subjects, but as a result of the operation of other legislation, for instance, for punitive or preventive detention, his right under any of these sub-clauses is abridged, the question of the application of article 19 does not arise. The true approach is only to consider the directness of the legislation and not what will be the result of the detention otherwise valid, on the mode of the detenu's life. On that short ground, in my opinion, this argument about the infringement of the rights mentioned in article 19 (1) generally must fail. Any other construction put on the article, it seems to me, will be unreasonable."

This opinion was expressed by Kania C.J. alone, the other learned judges forming the Bench not expressing themselves on this question. This passage was, however, cited, with approval by a Bench of this

Court in *Ram Singh & Ors. v. The State of Delhi* ⁽¹⁾. It was held by the Full Court in that case that though personal liberty is sufficiently comprehensive to include the freedoms enumerated in Art. 19 (1) and its deprivation would result in the extinction of these freedoms, the Constitution has treated these constitutional liberties as distinct fundamental rights and made separate provisions in Arts. 19, 21 and 22 as to the limitations and conditions subject to which alone they could be taken away or abridged. Consequently, even though a law which restricts the freedom of speech and expression is not directed solely against the undermining of security of the State or its overthrow but is concerned generally in the interests of public order may not fall within the reservation of cl. (2) of Art. 19 and may therefore be void, an order of preventive detention cannot be held to be invalid merely because:

“the detention is made with a view to prevent the making of speeches prejudicial to the maintenance of public order.....”

This was also a case of detention under the Preventive Detention Act and the detention of the detenu had been ordered with a view to prevent him from making speeches prejudicial to the maintenance of public order. Public order was not one of the categories mentioned in Art. 19 (2) as it then stood, and any restriction imposed upon the freedom of speech and expression could not be justified on that ground, the only relevant ground in that connection then being undermining of the security of the State or its overthrow. A restriction on the freedom of speech and expression in the maintenance of public order would therefore not have been justified under Art. 19 (2) and if the Court had come to the conclusion that there was an infringement of the right of freedom of speech and expression the order could not have been saved under Art. 19 (2). The Court, however, took the view that the direct object of the order was preventive detention and not the infringement of the right of freedom of speech and expression, which was merely

1958

*Express News-
papers (Private)
Ltd., & Another*
v.

*The Union of India
& Others*

Bhagwati J.

(1) [1951] S.C.R. 451, 455.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

consequential upon the detention of the detenu and therefore upheld the validity of the order. It was, therefore, urged by the learned Attorney-General that the object of the impugned Act was only to regulate certain conditions of service of working journalists and other persons employed in the newspaper establishments and not to take away or abridge the right of freedom of speech and expression enjoyed by the petitioners, and that therefore the impugned Act could not come within the prohibition of Art. 19 (1)(a) read with Art. 13 (2) of the Constitution.

It was contended, on the other hand, on behalf of the petitioners that the Court has got to look at the true nature and character of the legislation and judge its substance and not its form, or in other words, its effect and operation. It was pointed out that the impugned Act viewed as a whole was one to regulate the employment of the necessary organs of newspaper publications and therefore related to the freedom of the Press and as such came within the prohibition. Reliance was placed in this behalf on the following passage in *Minnesota Ex Rel. Olson* ⁽¹⁾:

“With respect to these contentions it is enough to say that in passing upon constitutional questions the Court has regard to substance and not to mere matters of form, and that, in accordance with familiar principles, the statute must be tested by its operation and effect.”

The following observations of Mahajan J. (as he then was) in *Dwarkadas Shrinivas of Bombay v. The Sholapur Spinning and Weaving Co., Ltd.* ⁽²⁾ were also relied upon:

“In order to decide these issues it is necessary to examine with some strictness the substance of the legislation for the purpose of determining what it is that the legislature has really done; the Court, when such questions arise, is not overpersuaded by the mere appearance of the legislation. In relation to Constitutional prohibitions binding a legislature it is clear that the legislature cannot disobey the prohibitions merely

(1) (1930) 283 U.S. 697, 708; 75 L. Ed. 1357, 1363.

(2) [1954] S.C.R. 674, 683.

by employing indirect method of achieving exactly the same result. Therefore, in all such cases the court has to look behind the names, forms and appearances to discover the true character and nature of the legislation."

The impugned Act is as its long title shows an act to regulate certain conditions of service of working journalists and other persons employed in newspaper establishments and in the very forefront of the Act, the Industrial Disputes Act, 1947, is by s. 3 made applicable to working journalists with certain modification in connection with the application of s. 25F of that Act. The rest of the provisions contained in ch. II concerned themselves with the payment of gratuity, hours of work and leave and fixation of wages of the working journalists. The regulation of the conditions of service is thus the main object which is sought to be achieved by the impugned Act. Chapter III of the Act applies the provisions of the Industrial Employment (Standing Orders) Act, 1946, and the Employees' Provident Funds Act, 1952, to all the employees of the newspaper establishments wherein twenty or more newspaper employees are employed and covers working journalists as well as other employees in the employ of the newspaper establishments. The miscellaneous provisions contained in ch. IV are designed merely to implement or to carry out the provisions of the main part of the Act and they do not make any difference so far as the effect and operation of the Act is concerned. If this is the true nature of the Act, it is impossible to say that the Act was designed to affect the freedom of speech and expression enjoyed by the petitioners or that, that was its necessary effect and operation. It was conceded in the course of the arguments that if a general law in regard to the industrial or labour relations had been applied to the press industry as a whole no exception could have been taken to it. If the matter had rested with the application of the Industrial Disputes Act, 1947, to the working journalists or with the application of the Industrial Employment (Standing Orders) Act, 1946, or the Employees' Provident Funds Act, 1952, to them no exception could have been taken to this

1958

Express Newspapers (Private) Ltd., & Another

v.

The Union of India & Others

Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

measure. It was, however, urged that apart from the application of these general laws to the working journalists, there are provisions enacted in the impugned Act in relation to payment of gratuity, hours of work, leave and fixation of the rates of wages which are absolutely special to the press industry qua the working journalists and they have the effect of singling out the press industry by creating a class of privileged workers with benefits and rights which have not been conferred upon other employees and the provisions contained therein have the effect of laying a direct and preferential burden on the press, have a tendency to curtail the circulation and thereby narrow the scope of dissemination of information, fetter the petitioner's freedom to choose the means of exercising their right and are likely to undermine the independence of the press by having to seek Government aid.

It is obvious that the enactment of this measure is for the amelioration of the conditions of the workmen in the newspaper industry. It would not be possible for the State to take up all the industries together and even as a matter of policy it would be expedient to take the industries one by one. Even in regard to the workmen employed it would be equally expedient to take a class of employees who stand in a separate category by themselves for the purpose of benefiting them in the manner contemplated. This circumstance by itself would therefore not be indicative of any undue preference or a prejudicial treatment being meted out to that particular industry, the main object being the amelioration of the conditions of those workmen. It could not also be said that there was any ulterior motive behind the enactment of such a measure because the employers may have to share a greater financial burden than before or that the working of the industry may be rendered more difficult than before. These are all incidental disadvantages which may manifest themselves in the future working of the industry, but it could not be said that the Legislature in enacting that measure was aiming at these disadvantages when it was trying to ameliorate the

conditions of the workmen. Those employers who are favourably situated, may not feel the strain at all while those of them who are marginally situated may not be able to bear the strain and may in conceivable cases have to disappear after closing down their establishments. That, however, would be a consequence which would be extraneous and not within the contemplation of the Legislature. It could therefore hardly be urged that the possible effect of the impact of these measures in conceivable cases would vitiate the legislation as such. All the consequences which have been visualized in this behalf by the petitioners, viz., the tendency to curtail circulation and thereby narrow the scope of dissemination of information, fetters on the petitioners' freedom to choose the means of exercising the right, likelihood of the independence of the press being undermined by having to seek government aid; the imposition of penalty on the petitioners' right to choose the instruments for exercising the freedom or compelling them to seek alternative media, etc., would be remote and depend upon various factors which may or may not come into play. Unless these were the direct or inevitable consequences of the measures enacted in the impugned Act, it would not be possible to strike down the legislation as having that effect and operation. A possible eventuality of this type would not necessarily be the consequence which could be in the contemplation of the Legislature while enacting a measure of this type for the benefit of the workmen concerned.

Even though the impugned Act enacts measures for the benefit of the working journalists who are employed in newspaper establishments, the working journalists are but the vocal organs and the necessary agencies for the exercise of the right of free speech and expression, and any legislation directed towards the amelioration of their conditions of service must necessarily affect the newspaper establishments and have its repercussions on the freedom of Press. The impugned Act can therefore be legitimately characterized as a measure which affects the press, and if the intention or the proximate effect and operation of the Act was such

1958

Express Newspapers (Private) Ltd., & Another
v.
The Union of India & Others

Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

as to bring it within the mischief of Art. 19(1) (a) it would certainly be liable to be struck down. The real difficulty, however, in the way of the petitioners is that whatever be the measures enacted for the benefit of the working journalists neither the intention nor the effect and operation of the impugned Act is to take away or abridge the right of freedom of speech and expression enjoyed by the petitioners.

The gravamen of the complaint of the petitioners against the impugned Act, however, has been the appointment of the Wage Board for fixation of rates of wages for the working journalists and it is contended that apart from creating a class of privileged workers with benefits and rights which were not conferred upon other employees of industrial establishments, the Act has left the fixation of rates of wages to an agency invested with arbitrary and uncanalised powers to impose an indeterminate burden on the wage structure of the press, to impose such employer-employee relations as in its discretion it thinks fit and to impose such burden and relations for such time as it thinks proper. This contention will be more appropriately dealt with while considering the alleged infringement of the fundamental right enshrined in Art. 19(1) (g). Suffice it to say that so far as Art. 19(1) (a) is concerned this contention also has a remote bearing on the same and need not be discussed here at any particular length.

Re : Article (19(1) (g).

The fundamental right of the petitioners herein is the right to carry on any occupation, trade or business.

This freedom also is hemmed in by limitations which are to be found in Art. 19(6), which in so far as it is relevant for our purposes enacts:

“Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right, conferred by the said sub-clause.”

The contention under this head is thus elaborated on behalf of the petitioners :

1. The impugned Act imposes unreasonable restrictions on the freedom to carry on business :

(a) in empowering the fixation of rates of wages on criteria relevant only for fixation of minimum wages ;

(b) in empowering fixation of wages, grant of gratuity and compensation without making it incumbent on the Board to consider the major factor of the capacity of the industry to pay ;

(c) in authorizing the Board to have regard to not what is relevant for such fixation but to what the Board deems relevant for the purpose ; and

(d) in providing for a procedure which does not compel the Board to conform to the rules under the Industrial Disputes Act, 1947, thus permitting the Board to follow any arbitrary procedure violating the principle of *audi alteram partem*.

2. The restrictions enumerated above in so far as they affect the destruction of the petitioners' business exceed the bounds of permissible legislation under Art. 19(1)(g).

The unreasonableness of the restriction is further sought to be emphasized by pointing out that under s. 12 of the impugned Act, the decision of the Board is declared binding on all employers, though the working journalists are not bound by the same and are entitled, if they are dissatisfied with it, to agitate for further revision by raising industrial disputes between themselves and their employers and having them adjudicated under the Industrial Disputes Act, 1947.

The test of reasonable restrictions which can be imposed on the fundamental right enshrined in Art. 19(1)(g) has been laid down by this Court in two decisions :

In *Chintaman Rao v. The State of Madhya Pradesh* (1) Mahajan J. (as he then was) observed at p. 763 :—

"The phrase "reasonable restriction" connotes that the limitation imposed on a person in enjoyment

1958

Express Newspapers (Private) Ltd., & Another
v.

The Union of India & Others

Bhagwati J.

(1) [1950] S.C.R. 759, 763.

1958

Express News-
papers (Private)
Ltd., & Another

v.

The Union of India
& Others

Bhagwati J.

of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word "reasonable" implies intelligent care and deliberation, that is, the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in article 19(1)(g), and the social control permitted by clause (6) of article 19, it must be held to be wanting in that quality." [cited with approval in *Dwarka Prasad Laxmi Narain v. The State of Uttar Pradesh & Ors.* ⁽¹⁾ and in *Ch. Tika Ramji v. State of Uttar Pradesh & Ors.* ⁽²⁾].

The State of Madras v. V. G. Rao ⁽³⁾ was the next case in which this phrase came to be considered by this Court and Patanjali Sastri C. J. observed at p. 606:—

"This Court had occasion in *Dr. Khare's case* ⁽⁴⁾ to define the scope of the judicial review under clause (5) of Art. 19 where the phrase "imposing reasonable restrictions on the exercise of the right" also occurs and four of the five judges participating in the decision expressed the view (the other judge leaving the question open) that both the substantive and the procedural aspects of the impugned restrictive law should be examined from the point of view of reasonableness: that is to say, the Court should consider not only factors such as the duration and the extent of the restrictions but also the circumstances under which and the manner in which their imposition has been authorised. It is important in this context to bear in mind that the test of reasonableness, where-ever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion

(1) [1954] S.C.R. 803, 811.

(2) [1956] S.C.R. 393, 446.

(3) [1952] S.C.R. 597, 606, 607.

(4) [1950] S.C.R. 519.

of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict."

This criterion was approved of in *State of West Bengal v. Subodh Gopal Bose & Others* ⁽¹⁾ where the present Chief Justice further expressed his opinion that the fact of the statute being given retrospective operation may also be properly taken into consideration in determining the reasonableness of the restriction imposed in the interest of the general public [see also a recent decision of this Court in *Virendra v. State of Punjab* ⁽²⁾].

The appointment of a wage board for the purposes of fixing rates of wages could not be and was not challenged as such because the constitution of such wage boards has been considered one of the appropriate modes for the fixation of rates of wages. The Industrial Disputes Act, 1947, can only apply when an industrial dispute actually arises or is apprehended to arise between the employers and the employees in a particular industrial establishment. Though under the amendment of that Act by the Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, (36 of 1956), there is a provision for the appointment of a National Tribunal by the Central Government for the adjudication of industrial disputes which in the opinion of the Central Government involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such dispute (Vide s. 7-B) the condition precedent, however, is the existence of an industrial dispute or the apprehension of one. If the wages for the employees of a particular industry have got to be fixed without such an industrial dispute having arisen or being apprehended to arise, the only proper mode of such fixation would be the appointment of wage boards for the purpose. They take the place of Industrial Tribunals or National Industrial Tribunals and are generally constituted of equal number of representatives of the employers and the employees in that particular industry along with a quota of independent member or

1958

Express Newspapers (Private) Ltd., & Another
v.

The Union of India & Others

Bhagwati J.

(1) [1954] S.C.R. 587, 626.

(2) [1958] S.C.R. 308.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

members one of whom is appointed the chairman of the Board.

The main grievance of the petitioners, however, has been that the relevant criteria for the fixation of rates of wages were not laid down in s. 9(1) of the Act. Section 8 empowered the Central Government to constitute a wage board for fixing rates of wages in respect of working journalists in accordance with the provisions of the Act and s. 9(1) directed that in fixing such rates of wages the Board shall have regard to the cost of living, the prevalent rates of wages for comparable employments, the circumstances relating to the newspaper industry in different regions of the country and to any other circumstances which to the Board may seem relevant. These criteria, it was contended, were only relevant for fixing minimum rates of wages, though the word "minimum" which had been used in the Bill No. 13 of 1955 as introduced in the Rajya Sabha was deleted when the Act actually came to be passed and it was further contended that the capacity of the Industry to pay which was an essential circumstance to be taken into consideration in the fixation of wages was not set out as one of the circumstances to be taken into consideration by the Board in fixing rates of wages. It was also contended that the other circumstances which the Board was directed to consider in addition to those specifically enumerated in s. 9(1) were such as to the Board may seem relevant thus relegating these circumstances to the subjective determination of the Board with the necessary consequence that no Court or other authority could scrutinize the same objectively.

We do not propose to enter into any elaborate discussion on the question whether it would be competent to us in arriving at a proper construction of the expression "fixing rates of wages" to look into the Statement of Objects and Reasons attached to the Bill No. 13 of 1955 as introduced in the Rajya Sabha or the circumstances under which the word "minimum" came to be deleted from the provisions of the Bill relating to rates of wages and the Wage Board and the fact of such deletion when the Act came to be passed in its present

form. There is a consensus of opinion that these are not aids to the construction of the terms of the Statute which have of course to be given their plain and grammatical meaning [See: *Ashvini Kumar Ghosh & Anr. v. Arabinda Bose & Anr.* ⁽¹⁾ and *Provat Kumar Kar and others v. William Trevelyan Curtiez Parkar* ⁽²⁾]. It is only when the terms of the statute are ambiguous or vague that resort may be had to them for the purpose of arriving at the true intention of the legislature. No such reference is, however, necessary in the case before us, even though perchance, the expression "fixing rates of wages" be considered ambiguous in so far as it does not specify whether the "wages" there are meant to be "living wages", "fair wages", or "minimum wages". We have already stated in the earlier part of this judgment that the Act was passed with a view to implement the recommendations of the Press Commission's Report and we have already seen that the concept of minimum wage, as adopted by the Press Commission was not that of a bare subsistence or minimum wage but what it termed a minimum wage was meant to provide for not merely the bare subsistence of living, but for the efficiency of the worker, making provision also for some measure of education, medical requirements and amenities. If this was the concept of a minimum wage which the Legislature set about to implement, that minimum was certainly higher than the bare subsistence or minimum wage, and, in any event, required a consideration by the Wages Board of the capacity of the industry to pay, even though the Press Commission itself did not think it necessary, to do so, it having expressed the opinion that if a newspaper industry could not afford to pay to its employees a minimum wage which would enable them to live decently and with dignity, that newspaper had no right to exist.

This was the concept of a minimum wage which was sought to be implemented by the legislature and for that purpose the capacity of the industry to pay was an essential circumstance to be taken into consideration and the deletion of the word "minimum", if at

1958

*Express News-
papers (Private)
Ltd., & Another*
v.

*The Union of India
& Others*

—
Bhagwati J.

(1) [1953] S.C.R. 1.

(2) A.I.R. 1950 Cal. 116.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

all, had the effect of widening the scope of the enquiry before the Wage Board. If the word "minimum" had been used in relation to the rates of wages and the Wage Board in the impugned Act, the Wage Board in its deliberations would have been necessarily confined to a consideration of that aspect alone. But, by the deletion of that word from the context the Wage Board was invested with a power to determine the question of the fixation of rates of wages unfettered by any such limitations and to fix the rates of wages in any proper manner having regard to the circumstances of the case, whether the resultant wages would be a statutory minimum wage or would approximate to a standard of wage, though having regard to the economic conditions of our country at present they could not find it within their power to fix living wages for the working journalists. The criteria which were specified in s. 9(1) of the Act comprised also the prevalent rates of wages for comparable employments. This criterion had no relation whatever to minimum wages. Reference may be made in this connection to a decision of the Industrial Court in the case of *Nellimarla Jute Mills* (1), where it was held that the comparison with rates of wages in other concerns could be undertaken for determining fair wage and the upper limit of wages but not for determining the minimum or floor level of wages which should depend on the minimum requirements of the workers' family consisting of three consumption units. This criterion was no doubt taken into consideration by the members of the Committee on Fair Wages as also by the Press Commission and even though the Press Commission considered that to be an essential ingredient of the minimum wage as contemplated by it, we are not inclined to stress that circumstance so much and come to the conclusion that what was contemplated in s. 9(1) was merely a minimum wage and no other.

If, therefore, the criterion of the prevalent rates of wages for comparable employments can on a true construction of s. 9(1) be considered consistent only with the fixation of rates of wages which are higher than

(1) [1953] 1 L.L.J. 666.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

the bare subsistence or minimum wage whether they be statutory minimum wage or fair wage or even living wage, it could not be urged that the criteria specified in s. 9(1) of the Act were relevant only for fixation of minimum wages. The capacity of the industry to pay was therefore one of the essential circumstances to be taken into consideration by the Wage Board whether it be for the fixation of rates of wages or the scales of wages which, as we have observed before, were included within the expression "rates of wages". This was by no means an unimportant circumstance which could be assigned a minor role. It was as important as the cost of living, and the prevalent rates of wages for comparable employments and ought to have been specifically mentioned in s. 9(1). The Legislature however, was either influenced in not mentioning it as such by reason of the view taken by the Press Commission in that behalf or thought that the third criterion which was specified in s. 9(1), viz., the circumstances relating to the newspaper industry in different regions of the country was capable of including the same. Even here, there is considerable difficulty in reconciling oneself to this mode of construction. The capacity of the industry to pay, can only be considered on an industry-cum-region basis and this circumstance from that point of view would be capable of being included in this criterion, viz., the circumstances relating to the newspaper industry in different regions of the country. Even if it were thus capable of being included, the minor role assigned to it along with literacy of the population, the popularity of the newspapers, predilections of the population in the matter of language and other circumstances of the like nature prevailing in the different regions of the country would make it difficult to imagine that this circumstance of the capacity of the industry to pay was really in the mind of the Legislature, particularly when it is remembered that the Press Commission attached no significance to the same. From that point of view, the criticism of the petitioners would appear to be justified, viz., :—that it was not made incumbent on the Board to consider the major factor of the capacity of the

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

industry to pay as an essential circumstance in fixing the rates of wages. It is, however, well-recognized that the Courts would lean towards the constitutionality of an enactment and if it is possible to read this circumstance as comprised within the category of circumstances relating to the newspaper industry in different regions of the country, the court should not strike down the provisions as in any manner whatever unreasonable and violative of the fundamental right of the petitioners.

We are therefore of opinion that s. 9(1) did not eschew the consideration of this essential circumstance, viz., the capacity of the industry to pay and it was not only open but incumbent upon the Wage Board to consider that essential circumstance in order to arrive at the fixation of the rates of wages of the working journalists.

The last criterion enumerated in s. 9(1) of the Act was "any other circumstance which to the Board may seem relevant" and it was urged that this was left merely to the subjective determination of the Board and the Board was at liberty to consider the circumstances, if any, falling within this category in its own absolute discretion which could not be controlled by any higher authority. If the matters were left to be objectively determined then it would certainly be enquired into and the existence or otherwise of such circumstances would be properly scrutinized in appropriate proceedings. The manner in which, however, this criterion was left to be determined by the Board on its subjective satisfaction was calculated to enable the Board to exercise arbitrary powers in regard to the same and that was quite unreasonable in itself. The case of *Thakur Raghubir Singh v. Court of Wards, Ajmer & Ors.* ⁽¹⁾, was pointed out as an illustration of such an arbitrary power having been vested in the Court of Wards which could in its own discretion and on its subjective determination assume the superintendence of the property of a landed proprietor who habitually infringed the rights of his tenants. The provision was there struck down because such subjective

(1) [1953] S. C. R. 1049, 1052.

determination which resulted in the superintendence of the property of a citizen being assumed could not be scrutinized and the propriety thereof investigated by higher authorities.

This argument, however, does not help the petitioners because this criterion is on a par with or ejusdem generis with the other criteria which have been specifically enumerated in the earlier part of the section. The major and important criteria have been specifically enumerated and it would be impossible for the Legislature exhaustively to enumerate the other circumstances which would be relevant to be considered by the Board in arriving at the fixation of the rates of wages. In the course of the enquiry the Board might come across other relevant circumstances which would weigh with it in the determination of the rates of wages and it would not be possible for the Legislature to think of them or to enumerate the same as relevant considerations and it was therefore, and rightly in our opinion, left to the Board to determine the relevancy of those circumstances and take them into consideration while fixing the rates of wages. If the principles which should guide the Board in fixing the rates of wages were laid down with sufficient clarity and particularity and the criteria so far as they were of major importance were specifically enumerated there was nothing wrong in leaving other relevant considerations arising in the course of the enquiry to the subjective satisfaction of the Board. The Board was, after all, constituted of equal numbers of representatives of employers and the employees and they were best calculated to take into account all the relevant circumstances apart from those which were specifically enumerated in the section.

It was, however, contended that the procedure to be followed by the Board for fixing the rates of wages was not laid down and it was open to the Board to follow any arbitrary procedure violating the principle of *audi alteram partem* and as such this also was unreasonable. Section 20 (2) (d) of the impugned Act gave power to the Central Government to make rules

1958

Express News-
papers (Private)
Ltd., & Another

v.

The Union of India
& Others

Bhagwati J.

1958

Express News-
papers (Private)
Ltd., & Another

v.

The Union of India
& Others

Bhagwati J.

inter alia in regard to the procedure to be followed by the Board in fixing rates of wages and s. 11 provided that subject to any rules which might be prescribed the Board may, for the purpose of fixing rates of wages, exercise the same powers and follow the same procedure as an Industrial Tribunal constituted under the Industrial Disputes Act, 1947, exercises or follows for the purpose of adjudicating an industrial dispute referred to it. This was, however, an enabling provision which vested in the Board the discretion whether to exercise the same powers and follow the same procedure as an Industrial Tribunal. The Board was at liberty not to do so and follow its own procedure which may be arbitrary or violative of the principle of *audi alteram partem*.

It has to be remembered, however, that in the United Kingdom the Wage Councils and the Central Co-ordinating Committees under the Wages Councils Act, 1945, and the Agricultural Wages Board under the Agricultural Wages Regulations Act, 1924, also are empowered to regulate their proceeding in such manner as they think fit. The Wage Boards in Australia have also no formal procedure prescribed for them, though the Wage Boards which are established under the amended Bombay Industrial Relations Act, 1946, are enjoined to follow the same procedure as an industrial court in respect of industrial proceedings before it. It would not therefore be legitimate to hold that the procedure to be followed by the wage board for fixing rates of wages must necessarily be prescribed by the statute constituting the same. It is no doubt contemplated in each of these statutes that rules of procedure may be prescribed; but even though they may be so prescribed, it is left to the discretion of the wage boards to regulate their procedure in such manner as they think fit, subject of course to the rules thus prescribed. A wide discretion is thus left with the wage boards to prescribe their own rules of procedure, but it does not therefore follow that they are entitled to follow any arbitrary rules of procedure. The wage boards are responsible bodies entrusted with the task of gathering data and materials relevant for the

determination of the issues arising before them and even though they are not judicial tribunals but administrative agencies they would elicit all relevant information and invite answers to the questionnaire or representations from the parties concerned, hear evidence and arrive at their determination after conforming to the principles of natural justice. Even though they may perform, quasi-judicial functions, the exercise of arbitrary powers by them would not be countenanced by any court or higher authority.

In the present case, however, we have in the forefront of the impugned Act a provision as to the application of the Industrial Disputes Act, 1947, to working journalists. No doubt certain specific provisions as to payment of gratuity, hours of work and leave are specifically enacted, but when we come to the fixation of rates of wages we find that a wage board has been constituted for the purpose. The principles to be followed by the Wage Board for fixing rates of wages are also laid down and the decision of the Board is to be published in the same manner as awards of industrial courts under the Industrial Disputes Act. Then follows s. 11 which talks of the powers and procedure of the Board and there also, subject to any rules of procedure which may be prescribed by the Central Government, the Board is empowered to exercise the same powers and follow the same procedure as an Industrial Tribunal constituted under the Industrial Disputes Act. If regard be had to this provision it is abundantly clear that the intention of the Legislature was to assimilate the Wage Board thus constituted as much as possible to an Industrial Tribunal constituted under the Industrial Disputes Act, 1947, and it was contemplated that the Board may for fixing rates of wages exercise the same powers and follow the same procedure. The decision of the Board was to be binding on all the employers, though the working journalists were at liberty to further agitate the question under the Industrial Disputes Act if they were not satisfied with the decision of the Wage Board and wanted a further increase in their rates of wages, thus determined. All these

1958

Express News-
papers (Private)
Ltd., & Another
v.
The Union of India
& Others
Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

circumstances point to the conclusion that even though the Board was not bound to exercise the same powers and follow the same procedure as an industrial tribunal constituted under the Industrial Disputes Act, the Board was, in any event, not entitled to adopt any arbitrary procedure violating the principles of natural justice.

If on the construction of the relevant sections of the statute the functions which the Wage Board was performing would be tantamount to laying down a law or rule of conduct for the future so that all the employers and the employees in the industry not only those who were participating in it in the present but also those who would enter therein in the future would be bound by it, the dictum of Justice Holmes would apply and the functions performed by the wage board could be characterised as legislative in character. Where, however, as in the present case, the constitution of the Wage Board is considered in the background of the application of the provisions of the Industrial Disputes Act to the working journalists and the provisions for the exercise of the same powers and following the same procedure as an industrial tribunal constituted under the Industrial Disputes Act, it would be possible to argue that the Wage Board was not exercising legislative functions but was exercising functions which were quasi-judicial in character.

In this connection, it was also pointed out that the Legislature itself while enacting the impugned Act did not consider these functions as legislative at all. The Rules of Procedure and Conduct of Business in Lok Sabha (1957) provide in Rule No. 70 for a Bill involving proposals for the delegation of legislative power shall further be accompanied by a memorandum explaining such proposals and drawing attention to their scope and stating also whether they are of normal or exceptional character. There is also a committee on subordinate legislation which is established for scrutinizing and reporting to the House whether the powers to make regulations, rules, sub-rules, by-laws, etc., conferred by the Constitution or delegated by Parliament are being properly exercised within such

delegation (vide Rule 317 *ibid*). The constitution by the Legislature of the Wages Board in the matter of the fixation of rates of wages was not considered as a piece of delegated legislation in the memorandum regarding delegated legislation appended to the draft Bill No. 13 of 1955 introduced in the Rajya Sabha on September 28, 1955, and the only reference that was made there was to Cl. 19 of the Bill which empowered the Central Government to make rules in respect of certain matters specified therein and it was stated that these were purely procedural matters of a routine character and related *inter alia* to prescribing hours of work, payment of gratuity, holidays, earned leave or other kinds of leave and the procedure to be followed by the Minimum Wages Board in fixing minimum wages and the manner in which its decisions may be published. Clause 19(3) of the Bill further provided that all rules made under this section shall as soon as practicable after they are made, be laid before both Houses of Parliament. These clauses were ultimately passed as s. 20 of the impugned Act but they were the only piece of delegated legislation contemplated by the Legislature and were covered by the memorandum regarding the same which was appended to the Bill. The decision of the Wage Board was not to be laid before both the Houses of Parliament which would have been the case if the fixation of rates of wages was a piece of delegated legislation. It was only to be published by the Central Government after it was communicated to it by the Wage Board in such manner as the Central Government thought fit, a provision which was akin to the publication of awards of the Industrial Tribunals by the appropriate Government under the provisions of the Industrial Disputes Act, 1947. This circumstance also was pointed out as indicative of the intention of the Legislature not to constitute the Wage Board a sub-legislative authority. While recognising the force of these contentions we may observe that it is not necessary for our purposes to determine the nature and character of the functions performed by the Wage Board here. It is sufficient to say that the Wage Board was not empowered or

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

1958

Express News-
papers (Private)
Ltd., & Another

v.

The Union of India
& Others

—
Bhagwati J.

authorised to adopt any arbitrary procedure and flout the principles of natural justice.

It was next contended that the restrictions imposed on newspaper establishments under the terms of the impugned Act were unreasonable in so far as they would have the effect of destroying the business of the petitioners and would therefore exceed the bounds of permissible legislation under Art. 19(6). It was urged that the right to impose reasonable restrictions on the petitioners' right to carry on business did not empower the legislature to destroy the business itself and reliance was placed in support of this proposition on *Stone v. Farmers Loan and Trust Co.* (1), where it was observed:—

“From what has thus been said it is not to be inferred that this power of limitation or regulation is itself without limit. This power to regulate is not a power to destroy, and limitation is not the equivalent of confiscation.”

Similar observations of the Judicial Committee of the Privy Council in the *Municipal Corporation of the City of Toronto v. Virgo* (2) and the *Attorney General for Ontario v. Attorney General for the Dominion* (3) were also relied upon and particularly the following observations in the former case:—

“But their Lordships think there is a marked distinction to be drawn between the prohibition or prevention of a trade and the regulation or governance of it and indeed a power to regulate and govern seems to imply the continued existence of that which is sought to be regulated or governed.”

These observations were considered by this Court in *Saghir Ahmed v. State of U. P. & Ors.* (4) and after considering the various cases which were cited by both sides, this Court observed:

“Be that as it may, although in our opinion the normal use of the word “restriction” seems to be in the sense of “limitation” and not “extinction”, we would on this occasion prefer not to express any final

(1) [1885] 116 U. S. 307, 331; 29 L. Ed. 636, 644.

(2) [1896] A.C. 88, 93. (J.C.)

(3) [1896] A.C. 348, 363.

(4) [1955] 1 S.C.R. 707, 724.

opinion on this matter" and the Court ultimately wound up by saying that "whether the restrictions are reasonable or not would depend to a large extent on the nature of the trade and the conditions prevalent in it."

Even if the provisions of the impugned Act would not necessarily have the effect of destroying the business of the petitioners but of crippling it and making it impossible for the petitioners to continue the same except under onerous conditions, they would have the effect of curtailing their circulation and drive them to seek government aid and thereby impose an unreasonable burden on their right to carry on business and would come within the ban of Art. 19(1) (g) read with Art. 13(2) of the Constitution.

Several provisions of the impugned Act were referred to in this context. Section 2(f) of the Act which defines "working journalist" so as to include "proof-reader" was pointed out in this connection and it was urged that even though the Press Commission Report recommended the exclusion of certain class of proof-readers from the definition of working journalists the Legislature went a step further and included all proof-readers within that definition thereby imposing upon the newspaper establishments an unreasonable burden far in excess of what they were expected to bear. The provision as to the notice in relation to the retrenchment of working journalist was also extended beyond the limitations specified in s. 25F of the Industrial Disputes Act, 1947, and was extended to six months in the case of an Editor and three months in the case of any other working journalist. The provision with regard to retrenchment was also made applicable retrospectively to all cases of retrenchment which had occurred between July 14, 1954, and March 12, 1955; so also the payment of gratuity was ordered not only in the cases usually provided for but also in cases where a working journalist who had been in continuous service for not less than three years voluntarily resigned from service from a newspaper establishment. The hours of work prescribed were 144 hours only during any period of four consecutive weeks and they were

1958

Express Newspapers (Private) Ltd., & Another

v.

The Union of India & Others

Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

far less in number than the hours of work recommended by the Press Commission Report. The fixation of rates of wages was entrusted to the Wage Board which could fix any wages which it thought proper irrespective of the capacity of the industry to pay and might be such as the industry could not bear. These provisions taken each one by itself may not have the effect of destroying the petitioners' business altogether or even crippling it in the manner indicated but taken cumulatively along with the provisions contained in ss. 14 and 15 of the impugned Act which applied the provisions of the Industrial Employment (Standing Orders) Act, 1946, and the Employees' Provident Funds Act, 1952, to newspaper establishments would certainly bring about that result and would therefore constitute an unreasonable restriction on the petitioners' right to carry on business.

We shall deal with these contentions one by one.

There is no doubt that "proof-readers" were not all recommended by the Press Commission to be included in the definition of working journalists, but it has to be remembered that proof-readers occupy a very important position in the editorial staff of a newspaper establishment. B. Sen Gupta in his "Journalism as a Career" (1955) talks of the position of the proof-reader as follows:

"The proof-reader is another important link in the production of a newspaper. On him depends, not to a small extent, the reputation of a paper. He has to be very careful in correcting mistakes and pointing out any error of fact or grammar that has crept into any news item or article through oversight or hurry on the part of the sub-editor. He has not only to correct mistakes but also to see that corrections are carried out", and the Kemsley Manual of Journalism has the following passage at p. 337:

"Having thus seen the proof-reader in action, let us consider in detail what proof-reading denotes. It is primarily the art and practice of finding mistakes in printed matter before publication and of indicating the needed corrections. It includes the detection of variations between the type and the copy from which it was

set, mis-statements of facts, figures or dates, errors in grammar, inaccuracies in quotations, and other defects. Often, too, it happens that, though the proof-reader does not feel justified in himself making a correction, he takes other action. If he thinks there is a mistake but is not sure, he must query the proof so that the editorial staff may decide. He may spot a libel, or think he has. In either case it is important that the matter shall be queried and passed back to editorial authority.

"It is obvious from this that proof-readers should be men of exceptional knowledge and sound-judgment. They should be conversant with current affairs, familiar with names of public men and quite sure how they should be spelled. Some specialize in different branches of sport, others in theatre, the cinema, music and so on. This saves much time in looking up books of reference, though, of course, the books are there."

As a matter of fact, the Wage Board in the Schedule to its decision defines "proof reader" as "a person who checks up printed matter or "Proof" with edited copy to ensure strict conformity of the former with the latter. Factual discrepancies, slips of spelling, grammar and syntax may also be discovered by him and either corrected or get them corrected."

If this is the important role played by the proof-readers then no wonder that the Legislature in spite of the recommendations of the Press Commission included them also in the definition of working journalist. No doubt they would be entitled to higher wages by reason of the fixation of rates of wages by the Wage Board but that would by itself be no ground for holding the inclusion of proof-readers within the definition of working journalist an unreasonable burden on newspaper establishments.

The provisions in regard to notice cannot be said to be *per se* unreasonable. Apart from the recommendations of the Press Commission in that behalf, Halsbury's Laws of England, Vol. 22, 2nd Edn., p. 150,

1958

Express Newspapers (Private) Ltd., & Another

v.

The Union of India & Others

Bhagwati J.

1958

Express News-
papers (Private)
Ltd., & Another

v.

The Union of India
& Others

Bhagwati J.

para. 249, foot note (e), contains the following statement in regard to the periods of reasonable notice to which persons of various employments have been found entitled:—

Newspaper editor, from six months (*Fox-Bourne v. Vernon & Co. Ltd.*, (1894) 10 T. L. R. 647); to twelve months (*Grundy v. Sun Printing and Publishing Association*, (1916) 33 T. L. R. 77, C. A.).

Sub-editor of a newspaper, six months (*Chamberlain v. Bennett*, (1892) 8 T. L. R. 234).

Foreign correspondent to The Times, six months period (*Lowe v. Walter*, (1892) 8 T. L. R. 358).

The Press Commission also recommended that the period of notice for the termination of services should be based on the length of the service rendered and the nature of the appointment. There could be no hard and fast rule as to what the notice period should be. The practice upheld by law or by collective bargaining varies from country to country. In England the practice established by some judicial decisions is that the editor is entitled to a year's notice and an assistant editor to six months' notice. After examining the provisions in regard to notice which are in vogue in England, the Commission also noticed a decision in Bombay (Suit No. 735 of 1951 in the City Civil Court) where the judge concerned held that in the circumstances of the particular case the plaintiff, an assistant editor was entitled to a notice of four months although in normal times, he said, the rule adopted in England of six months should be the correct rule to adopt in India and a longer period of notice was suggested for editors because it was comparatively much more difficult to secure another assignment for a journalist of that seniority and standing in the profession.

The period of six months, in the case of an editor, and three months, in the case of any other working journalists prescribed under s. 3(2) of the impugned Act was therefore not open to any serious objection.

The retrospective operation of this provision in regard to the period between July 14, 1954, and March 12, 1955, was designed to meet the few cases of those employees in the editorial staff of the newspaper

establishments who had been retrenched by the managements anticipating the implementation of the recommendations of the Press Commission. There was nothing untoward in that provision also.

When we come however to the provision in regard to the payment of gratuity to working journalists who voluntarily resigned from service from newspaper establishments, we find that this was a provision which was not at all reasonable. A gratuity is a scheme of retirement benefit and the conditions for its being awarded have been thus laid down in the Labour Court decisions in this country.

In the case of *Ahmedabad Municipal Corporation* ⁽¹⁾ it was observed at p. 158 :—

“The fundamental principle in allowing gratuity is that it is a retirement benefit for long services, a provision for old age and the trend of the recent authorities as borne out from various awards as well as the decisions of this Tribunal is in favour of double benefit.....We are, therefore, of the considered opinion that Provident Fund provides a certain measure of relief only and a portion of that consists of the employees' wages, that he or his family would ultimately receive, and that this provision in the present day conditions is wholly insufficient relief and two retirement benefits when the finances of the concern permit ought to be allowed.” (See also *Nundydroog Mines Ltd.* ⁽²⁾).

These were cases however of gratuity to be allowed to employees on their retirement. The Labour Court decisions have however awarded gratuity benefits on the resignation of an employee also. In the case of *Cipla Ltd.* ⁽³⁾, the Court took into consideration the capacity of the concern and other factors therein referred to and directed gratuity on full scale..... which included.....(2) on voluntary retirement or resignation of an employee after 15 years continuous service.

Similar considerations were imported in the case of

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

(1) (1955) L.A.C. 55, 58.

(2) (1956) L.A.C. 265, 267.

(3) [1955] 2 L.L.J. 355, 358.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

the *Indian Oxygen & Acetylene Co., Ltd.* ⁽¹⁾, where it was observed :

“ It is now well-settled by a series of decisions of the Appellate Tribunal that where an employer company has the financial capacity the workmen would be entitled to the benefit of gratuity in addition to the benefits of the Provident Fund. In considering the financial capacity of the concern what has to be seen is the general financial stability of the concern. The factors to be considered before granting a scheme of gratuity are the broad aspects of the financial condition of the concern, its profit earning capacity, the profit earned in the past, its reserves and the possibility of replenishing the reserves, the claim of capital put having regard to the risk involved, in short the financial stability of the concern.

There also the court awarded gratuity under ground No. 2, viz., on retirement or resignation of an employee after 15 years of continuous service and 15 months' salary or wage.

It will be noticed from the above that even in those cases where gratuity was awarded on the employee's resignation from service, it was granted only after the completion of 15 years continuous service and not merely on a minimum of 3 years service as in the present case. Gratuity being a reward for good, efficient and faithful service rendered for a considerable period (Vide Indian Railway Establishment Code, Vol. I at p. 614—Ch. XV, para. 1503), there would be no justification for awarding the same when an employee voluntarily resigns and brings about a termination of his service, except in exceptional circumstances.

One such exception is the operation of what is termed “ The conscience clause ”. In Fernand Terrou and Lucion Solal's *Legislation for Press, Film and Radio in the World to-day* (a series of studies published by UNESCO in 1951) the following passage occurs in relation to “ Journalists' Working Conditions and their Moral Rights ”, at p. 404 :

(1) [1956] 1 L.L.J. 435.

“ Among the benefits which the status of professional journalist may confer (whether it stems from the law or from an agreement) is one of particular importance, since it goes to the very core of the profession. It concerns freedom of information. It is intended to safeguard the journalist's independence, his freedom of thought and his moral rights. It constitutes what has been called in France the “ conscience clause ”. The essence of this clause is that when a journalist's integrity is seriously threatened, he may break the contract binding him to the newspaper concern, and at the same time receive all the indemnities which are normally payable only if it is the employer who breaks the contract. In France, accordingly, under the law of 1935, the indemnity for dismissal which, as we have seen, may be quite substantial, is payable even when the contract is broken by a professional journalist, in cases where his action is inspired by “ a marked change in the character or policy of the newspaper or periodical, if such change creates for the person employed a situation prejudicial to his honour, his reputation, or in a general way his moral interests.

“ This moral right of a journalist is comparable to the moral right of an author or artist, which the law of 1935 was the first to recognize, has since been acknowledged in a number of countries. It was stated in the collective contract of January 31, 1938, in Poland in this form: “ The following are good and sufficient reasons for a journalist to cancel his contract without warning ; (a) the exertion of pressure by an employer upon a journalist to induce him to perform an immoral action ; (b) a fundamental change in the political outlook of the journal, proclaimed by public declaration or otherwise made manifest, if the journalist's employment would thereafter be contrary to his political opinions or the dictates of his conscience.”

A similar clause is to be found in Switzerland, in the collective agreement signed on April 1, 1948, between the Geneva Press Association and the Geneva Union of Newspaper Publishers :

“ If a marked change takes place in the character

1958

Express Newspapers (Private) Ltd., & Another
v.

The Union of India & Others

Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*
v.
*The Union of India
& Others*
—
Bhagwati J.

or fundamental policy of the newspaper, if the concern no longer has the same moral, political or religious character that it had at the moment when an editorial employee was engaged and if this change is such as to prejudice his honour, his reputation or, in a general way, his moral interests, he may demand his instant release. In these circumstances he shall be entitled to an indemnity.....This indemnity is payable in the same manner as was the salary."

The other exception is where the employee has been in continuous service of the employer for a period of more than 15 years.

Where however an employee voluntarily resigns from service of the employer after a period of only three years, there will be no justification whatever for awarding him a gratuity and any such provision of the type which has been made in s. 5(1)(a)(iii) of the Act would certainly be unreasonable. We hold therefore that this provision imposes an unreasonable restriction on the petitioners' right to carry on business and is liable to be struck down as unconstitutional.

The provision in regard to the hours of work also cannot be considered unreasonable having regard to the nature and quality of the work to be done by working journalists.

That leaves the considerations of fixation of rates of wages by the Wage Board. As we have already observed, the Wage Board is constituted of equal numbers of representatives of the newspaper establishments and the working journalists with an independent chairman at its head and principles for the guidance of the Wage Board in the fixation of such rates of wages directing the Wage Board to take into consideration amongst other circumstances the capacity of the industry to pay have also been laid down and it is impossible to say that the provisions in that behalf are in any manner unreasonable. It may be that the decision of the Wage Board may be arrived at ignoring some of these essential criteria which have been laid down in s. 9(1) of the Act or that the procedure followed by the Wage Board may be contrary to the principles of natural justice. But that would

affect the validity of the decision itself and not the constitution of the Wage Board which as we have seen cannot be objected to on this ground.

The further provision contained in s. 17 of the Act in regard to the recovery of money due from an employer empowering the State Government or any such authority appointed in that behalf to issue a certificate for that amount to the collector in the same manner as an arrear of land revenue was also impeached by the petitioners on this ground. That provision, however, relates only to the mode of recovery and not to the imposition of any financial burden as such on the employer. We shall have occasion to deal with this provision in connection with the alleged infringement of the fundamental right under Art. 14 hereafter. We do not subscribe to the view that such a provision infringes the fundamental right of the petitioners to carry on business under Art. 19(1)(g).

This attack of the petitioners on the constitutionality of the impugned Act under Art. 19(1)(g), viz., that it violates the petitioners' fundamental right to carry on business, therefore, fails except in regard to s. 5(1)(a)(iii) thereof which being clearly severable from the rest of the provisions, can be struck down as unconstitutional without invalidating the other parts of the impugned Act.

Re. Article 14.

The question as formulated is that the impugned Act selected the working journalists for favoured treatment by giving them a statutory guarantee of gratuity, hours of work and leave which other persons in similar or comparable employment had not got and in providing for the fixation of their salaries without following the normal procedure envisaged in the Industrial Disputes Act, 1947. The following propositions are advanced :—

1. In selecting the Press industry employers from all industrial employers governed by the ordinary law regulating industrial relations under the Industrial Disputes Act, 1947, and Act I of 1955, the impugned Act subjects the Press industry employers to discriminatory treatment.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

2. Such discrimination lies in

(a) singling out newspaper employees for differential treatment;

(b) saddling them with a new burden in regard to a section of their workers in matters of gratuities, compensation, hours of work and wages;

(c) devising a machinery in the form of a Pay Commission for fixing the wages of working journalists;

(d) not prescribing the major criterion of capacity to pay to be taken into consideration;

(e) allowing the Board in fixing the wages to adopt any arbitrary procedure even violating the principle of *audi alteram partem*;

(f) permitting the Board the discretion to operate the procedure of the Industrial Disputes Act for some newspapers and any arbitrary procedure for others;

(g) making the decision binding only on the employers and not on the employees, and

(h) providing for the recovery of money due from the employers in the same manner as an arrear of land revenue.

3. The classification made by the impugned Act is arbitrary and unreasonable, in so far as it removes the newspaper employers vis-a-vis working journalists from the general operation of the Industrial Disputes Act, 1947, and Act I of 1955.

The principle underlying the enactment of Art. 14 has been the subject-matter of various decisions of this Court and it is only necessary to set out the summary thereof given by Das J. (as he then was) in *Budhan Choudhry & Others v. The State of Bihar* ⁽¹⁾ :—

“The provisions of article 14 of the Constitution have come up for discussion before this Court in a number of cases, namely, *Chiranjit Lal Chowdhuri v. The Union of India* ⁽²⁾, *The State of Bombay v. F. N. Balsara* ⁽³⁾, *The State of West Bengal v. Anwar Ali*

(1) [1955] 1 S.C.R. 1045, 1048.

(2) [1950] S.C.R. 869.

(3) [1951] S.C.R. 682.

Sarkar ⁽¹⁾, *Kathi Raning Rawat v. The State of Saurashtra* ⁽²⁾, *Lachmandas Kewalram Ahuja v. The State of Bombay* ⁽³⁾, *Quasim Razvi v. The State of Hyderabad* ⁽⁴⁾, and *Habeeb Mohamad v. The State of Hyderabad* ⁽⁵⁾. It is, therefore, not necessary to enter upon any lengthy discussion as to the meaning, scope and effect of the article in question. It is now well-established that while article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well-established by the decisions of this Court that article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

It is in the light of these observations that we shall now proceed to consider whether the impugned Act violates the fundamental right of the petitioners guaranteed under Art. 14 of the Constitution.

We have already set out what the Press Commission had to say in regard to the position of the working journalists in our country. A further passage from the Report may also be quoted in this context:

"It is essential to realise in this connection that the work of a journalist demands a high degree of general education and some kind of specialised training. Newspapers are a vital instrument for the education of the masses and it is their business to protect the rights of the people, to reflect and guide

(1) [1952] S.C.R. 284.

(2) [1952] S.C.R. 435.

(3) [1952] S.C.R. 710.

(4) [1953] S.C.R. 581.

(5) [1953] S.C.R. 661.

1958

Express News-
papers (Private)
Ltd., & Another

v.

The Union of India
& Others

Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

public opinion and to criticize the wrong done by any individual or organization however high placed. They thus form an essential adjunct to democracy. The profession must, therefore, be manned by men of high intellectual and moral qualities. The journalists are in a sense creative artists and the public rightly or wrongly, expect from them a general omniscience and a capacity to express opinion on any topic that may arise under the sun. Apart from the nature of their work the conditions under which that work is to be performed, are peculiar to this profession. Journalists have to work at very high pressure and as most of the papers come out in the morning, the journalists are required to work late in the night and round the clock. The edition must go to press by a particular time and all the news that breaks before that hour has got to find its place in that edition. Journalism thus becomes a highly specialized job and to handle it adequately a person should be well-read, have the ability to size up a situation and to arrive quickly at the correct conclusion, and have the capacity to stand the stress and strain of the work involved. His work cannot be measured, as in other industries, by the quantity of the output, for the quality of work is an essential element in measuring the capacity of the journalists. Moreover, insecurity of tenure is a peculiar feature of this profession. This is not to say that no insecurity exists in other professions but circumstances may arise in connection with profession of journalism which may lead to unemployment in this profession, which would not necessarily have that result in other professions. Their security depends to some extent on the whims and caprices of the proprietors. We have come across cases where a change in the ownership of the paper or a change in the editorial policy of the paper has resulted in a considerable change in the editorial staff. In the case of other industries a change in the proprietorship does not normally entail a change in the staff. But as the essential purpose of a newspaper is not only to give news but to educate and guide public opinion, a change in the proprietorship or in the editorial policy of the paper may result

and in some cases has resulted in a wholesale change of the staff on the editorial side. These circumstances, which are peculiar to journalism must be borne in mind in framing any scheme for improvement of the conditions of working journalists." (para. 512).

These were the considerations which weighed with the Press Commission in recommending the working journalists for special treatment as compared with the other employees of newspaper establishments in the matter of amelioration of their conditions of service.

We may also in this connection refer to the following passage from the Legislation for Press, Film and Radio in the world to-day (a series of studies published by UNESCO in 1951) (supra) at p. 403 :—

"Under certain systems, special advantages more extensive than those enjoyed by ordinary employees are conferred upon journalists. These may be sanctioned by the law itself. For instance, certain Latin American countries have enacted legislation in favour of journalists which is in some cases very detailed and far-reaching and offers special benefits, more particularly in the form of protection against the risk of sickness or disability, dismissal or retirement. In Brazil, professional journalists, who must be of Brazilian birth and nationality, enjoy very considerable tax exemptions.

"In France, the law of 29 March, 1935, conferred on journalists substantial advantages which at the time were far in advance of general social legislation. Thus, for example, this law gives all professional journalists the right to an annual holiday with pay. One month's holiday is granted to journalists who have been working for a newspaper or periodical for at least one year, and five weeks to journalists whose contract has been in force for 10 years at least. Should a contract of indefinite duration be terminated, the journalist is entitled to one or two month's notice and also to an indemnity for dismissal which may not be less than one month's salary per year or part of a year of service, at the most recent rate of pay. However, if the period of service exceeds 15 years, the

1958

Express Newspapers (Private) Ltd., & Another

v.

The Union of India & Others

Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

amount of the indemnity is fixed, as we have seen, by an arbitral committee."

The working journalists are thus a group by themselves and could be classified as such apart from the other employees of newspaper establishments and if the Legislature embarked upon a legislation for the purpose of ameliorating their conditions of service there was nothing discriminatory about it. They could be singled out thus for preferential treatment against the other employees of newspaper establishments. A classification of this type could not come within the ban of Art. 14. The only thing which is prohibited under this article is that persons belonging to a particular group or class should not be treated differently as amongst themselves and no such charge could be levelled against this piece of legislation. If this group of working journalists was specially treated in this manner there is no scope for the objection that that group had a special legislation enacted for its benefit or that a special machinery was created, for fixing the rates of its wages different from the machinery employed for other workmen under the Industrial Disputes Act, 1947. The payment of retrenchment compensation and gratuities, the regulation of their hours of work and the fixation of the rates of their wages as compared with those of other workmen in the newspaper establishments could also be enacted without any such disability and the machinery for fixing their rates of wages by way of constituting a wage board for the purpose could be similarly devised. There was no industrial dispute as such which had arisen or was apprehended to arise as between the employers and the working journalists in general, though it could have possibly arisen as between the employers in a particular newspaper establishment and its own working journalists. What was contemplated by the provisions of the impugned Act however, was a general fixation of rates of wages of working journalists which would ameliorate the conditions of their service and the constitution of a wage board for this purpose was one of the established modes of achieving that object. If, therefore, such a

machinery was devised for their benefit, there was nothing objectionable in it and there was no discrimination as between the working journalists and the other employees of newspaper establishments in that behalf. The capacity of the industry to pay was certainly to be taken into consideration by the Wage Board, as we have already seen before, and the procedure of the Board also was assimilated to that adopted by an industrial tribunal under the Industrial Disputes Act, 1947, or was, in any event, to be such as would not be against the principle of *audi alteram partem* or the principles of natural justice. There was no occasion, if the Wage Board chose to exercise the same powers and follow the same procedure as the Industrial Tribunal under the Industrial Disputes Act, 1947, for it to discriminate between one set of newspaper establishments and others. If it in fact assumed unto itself the powers of the Industrial Tribunal it would be bound to follow the procedure prescribed under the Industrial Disputes Act, 1947, and if it were thus to follow the same, no discrimination could ever be made in the manner suggested. The decision of the Wage Board was no doubt made binding only on the employers and the working journalists were at liberty to agitate the question of increase in their wages by raising an industrial dispute in regard thereto. Once the rates of wages were fixed by the Wage Board, it would normally follow that they would govern the relationship between the employers and the working journalists, but if liberty was reserved to the working journalists for further increase in their wages under the provisions of the Industrial Disputes Act there was nothing untoward in that provision and that did not by itself militate against the position that what was done for the benefit of the working journalists was a measure for the amelioration of their conditions of service as a group by themselves. There could not be any question of discrimination between the employers on the one hand and the working journalists on the other. They were two contesting parties ranged on opposite sides and the fact that one of them was treated in a different manner from the other in the

1958

Express Newspapers (Private) Ltd., & Another.

v.

The Union of India & Others

Bhagwati J.

1958

Express News-
papers (Private)
Ltd., & Another

v.

The Union of India
& Others

Bhagwati J.

matter of the amelioration of the conditions of service of the weaker party would not necessarily vitiate the decision of the Wage Board. The weaker of the two parties could certainly be treated as a class by itself and the conferment of special benefits in the matter of trying to ameliorate their conditions of service could certainly not be discriminatory.

The provisions contained in s. 17 of the Act in regard to the recovery of money due from the employers in the same manner as an arrear of land revenue also was not discriminatory. In the conflict between the employers and the employees it very often came about that the employers did not implement the measures which had been enacted for the benefit of the employees and the employees were thus hard put to realise and cash those benefits. Even the Industrial Disputes Act, 1947, contained a like provision in s. 33C thereof (vide the amendment incorporated therein by Act 36 of 1956) which in its turn was a reproduction of the old s. 25-1 which had been inserted therein by Act 43 of 1953. It may be remembered that if the provisions of the Industrial Disputes Act, 1947, which was a general Act, had been made applicable to the working journalists there would have been no quarrel with the same. Much less there could be any quarrel with the introduction of s. 17 into the impugned Act when the aim and object of such provision was to provide the working journalists who were a group by themselves from amongst employees employed in the newspaper establishments with a remedy for the recovery of the monies due to them in the same manner as the workmen under the Industrial Disputes Act, 1947. We do not see anything discriminatory in making such a provision for the recovery of monies due by the employers to these working journalists.

Similar is the position in regard to the alleged discrimination between Press industry employers on the one hand and the other industrial employers on the other. The latter would certainly be governed by the ordinary law regulating industrial relations under the Industrial Disputes Act, 1947. Employers qua the working journalists again would be a class by them-

selves and if a law was enacted to operate as between them in the manner contemplated by the Act that could not be treated as discriminatory. If measures have got to be devised for the amelioration of the conditions of working journalists who are employed in the newspaper establishments, the only way in which it could be done was by directing this piece of legislation against the Press Industry employers in general. Even considering the Act as a measure of social welfare legislation the State could only make a beginning somewhere without embarking on similar legislations in relation to all other industries and if that was done in this case no charge could be levelled against the State that it was discriminating against one industry as compared with the others. The classification could well be founded on geographical basis or be according to objects or occupations or the like. The only question for consideration would be whether there was a nexus between the basis of classification and the object of the Act sought to be challenged. In our opinion, both the conditions of permissible classification were fulfilled in the present case. The classification was based on an intelligible differentia which distinguished the working journalists from other employees of newspaper establishments and that differentia had a rational relation to the object sought to be achieved, viz., the amelioration of the conditions of service of working journalists.

This attack on the constitutionality of the Act also therefore fails.

Re. Article 32 :—

In regard to the infringement of Art. 32, the only ground of attack has been that the impugned Act did not provide for the giving of the reasons for its decision by the Wage Board and thus rendered the petitioners' right to approach the Supreme Court for enforcement of their fundamental right nugatory. It is contended that the right to apply to the Supreme Court for a writ of certiorari required an order infringing a fundamental right, that such a right was itself a fundamental right and any legislation which attempted to restrict or defeat this right was an infraction of

1958

Express Newspapers (Private) Ltd., & Another
v.

The Union of India & Others

Bhagwati J.

1958

Express News-
papers (Private)
Ltd., & Another

v.

The Union of India
& Others

Bhagwati J.

Art. 32 and was as such void. It is further contended that a writ of certiorari could effectively be directed only against a speaking order, i. e., an order disclosing reasons, and if a statute enabled the passing of an order that need give no reasons such statute attempted to sterilize the powers of this Court from investigating the validity of the order and was therefore violative of Art. 32.

Learned Counsel for the petitioners has relied upon a decision of the English Court in *Rex v. Northumberland Compensation Appeal Tribunal, Ex parte Shaw* ⁽¹⁾ where Lord Goddard C. J. observed at p. 718:—

“Similarly anything that is stated in the order which an inferior court has made and which has been brought up into this court can be examined by the court, if it be a speaking order, that is to say, an order which sets out the grounds of the decision. If the order is merely a statement of conviction that there shall be a fine of 40s., or an order of removal or quashing a poor rate, there is an end of it, this court cannot examine further. If the inferior court tells this court why it had done what it has and makes it part of its order, this court can examine it.”

This decision was affirmed by the Court of Appeal (and the decision of the Court of Appeal is reported in *Rex v. Northumberland Compensation Appeal Tribunal, Ex parte Shaw* ⁽²⁾) and while doing so Denning L. J. (as he then was) discussed at p. 352, what was it that constituted the record:—

“What, then, is the record?.....Following these cases I think the record must contain at least the document which initiates the proceedings; the pleadings if any; and the adjudication; but not the evidence, nor the reasons, unless the tribunal chooses to incorporate them. If the tribunal does state its reasons, and these reasons are wrong in law, certiorari lies to quash the decision.”

This decision only affirmed that certiorari could lie only if an order made by the inferior tribunal was a speaking order. It did not lay down any duty on the inferior tribunal to set out the reasons for its order but

(1) [1951] 1 K. B. 711, 718.

(2) [1952] 1 K. B. 338.

only pointed out that if no reasons were given it would be impossible for the High Court to interfere by exercising its prerogative jurisdiction in the matter of certiorari.

A more relevant decision on this point is that of this Court in *A. K. Gopalan v. The State of Madras and Anr.* (1). In that case the provision of law which was impugned amongst others was one which prevented the detenu on pain of prosecution from disclosing to the Court the grounds of his detention communicated to him by the detaining authority. This provision was struck down as ultra vires and void. The reason given by Mahajan J. (as he then was) is stated at p. 243:

“This Court would be disabled from exercising its functions under article 32 and adjudicating on the point that the grounds given satisfy the requirements of the sub-clause if it is not open to it to see the grounds that have been furnished. It is a guaranteed right of the person detained to have the very grounds which are the basis of the order of detention. This Court would be entitled to examine the matter and to see whether the grounds furnished are the grounds on the basis of which he has been detained or they contain some other vague or irrelevant material. The whole purpose of furnishing a detained person with the grounds is to enable him to make a representation refuting these grounds and of proving his innocence. In order that this Court may be able to safeguard this fundamental right and to grant him relief it is absolutely essential that the detenu is not prohibited under penalty of punishment to disclose the grounds to the Court and no injunction by law can be issued to this Court disabling it from having a look at the grounds. Section 14 creates a substantive offence if the grounds are disclosed and it also lays a duty on the Court not to permit the disclosure of such grounds. It virtually amounts to a suspension of a guaranteed right provided by the Constitution inasmuch as it indirectly by a stringent provision makes administration of the law by this Court impossible and at the same

1958

Express News-
papers (Private)
Ltd., & Another

v.

The Union of India
& Others

—
Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*
v.
The Union of India
& Others
—
Bhagwati J.

time it deprives a detained person from obtaining justice from this Court. In my opinion, therefore, this section when it prohibits the disclosure of the grounds contravenes or abridges the rights given by Part III to a citizen and is *ultra vires* the powers of Parliament to that extent."

It is no doubt true that if there was any provision to be found in the impugned Act which prevented the Wage Board from giving reasons for its decision, it might be construed to mean that the order which was thus made by the Wage Board could not be a speaking order and no writ of certiorari could ever be available to the petitioners in that behalf. It is also true that in that event this Court would be powerless to redress the grievances of the petitioners by issuing a writ in the nature of certiorari and the fundamental right which a citizen has of approaching this Court under Art. 32 of the Constitution would be rendered nugatory.

The position, however, as it obtains in the present case is that there is no such provision to be found in the impugned Act. The impugned Act does not say that the Wage Board shall not give any reason for its decision. It is left to the discretion of the Wage Board whether it should give the reasons for its decision or not. In the absence of any such prohibition it is impossible for us to hold that the fundamental right conferred upon the petitioners under Art. 32 was in any manner whatever sought to be infringed. It may be noted that this point was not at all urged in the petitions which the petitioners had filed in this Court but was taken up only in the course of the arguments by the learned Counsel for the petitioners. It appears to have been a clear after-thought; but we have dealt with the same as it was somewhat strenuously urged before us in the course of the arguments. We are of the opinion that the Act cannot be challenged as violative of the fundamental right enshrined in Art. 32 of the Constitution.

In regard to the constitutionality of the Act therefore we have come to the conclusion that none of the provisions thereof is violative of the fundamental

rights enshrined in Arts. 19(1)(a), 19(1)(g), 14 and/or 32 save the provision contained in s. 5(1)(a)(iii) of the Act which is violative of the fundamental right guaranteed under Art. 19(1)(g) of the Constitution and is therefore unconstitutional and should be struck down.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

Apart from challenging the vires of the Act dealt with above, the petitioners contend that the decision of the Wage Board itself is illegal and void because:

(1) Re-constitution of the Board was ultra vires and unauthorised by the Act as it stood at the time, the rules having been published only on July 30, 1956.

(2) The decision by a majority was unwarranted by the Act and since there was no provision in the Act, the Rules providing for the same went beyond the Act and were therefore ultra vires.

(3) The procedure followed by the Board offended the principles of natural justice and was therefore invalid;

(4) The decision was invalid, because

(a) no reasons were given,

(b) nor did it disclose what considerations prevailed with the Board in arriving at its decision;

(5) Classification on the basis of gross revenue was illegal and unauthorised by the Act.

(6) Grouping into chains or multiple units was unauthorised by the Act.

(7) The Board was not authorised by the Act to fix the salaries of journalists except in relation to a particular industrial establishment and not on an All-India basis of all newspapers taken together;

(8) The decision was bad as it did not disclose that the capacity to pay of any particular establishment was ever taken into consideration.

(9) The Board had no authority to render a decision which was retrospective in operation.

(10) The Board had no authority to fix scales of pay for a period of 3 years (subject to review by the Govt. by appointing another Wage Board at the end of these 3 years) and

(11) The Board was handicapped for want of Cost of Living Index.

1958

Express News-
papers (Private)
Ltd., & Another

v.

The Union of India
& Others

Bhagwati J.

The position in law is that the decision would be illegal on any of the following three grounds, viz.,

(A) Because the Act under which it was made was ultra vires; [See *Mohammad Yasin v. Town Area Committee, Jalalabad & anr.* ⁽¹⁾ and *Himmatlal Harilal Mehta v. State of Madhya Pradesh* ⁽²⁾].

(B) Because the decision itself infringed the fundamental rights of the petitioners. [See *Bidi Supply Co. v. Union of India & ors.* ⁽³⁾].

(C) Because the decision was ultra vires the Act. [See *Pandit Ram Narain v. State of Uttar Pradesh & ors.* ⁽⁴⁾].

The decision of the Wage Board before us cannot be challenged on the grounds that the impugned Act under which the decision is made is ultra vires or that the decision itself infringes the fundamental rights of the petitioners. In the circumstances, the challenge must be confined only to the third ground, viz., that the decision is ultra vires the Act itself.

Re. (1).

The first ground of attack is based on the circumstance that Shri K. P. Kesava Menon who was originally appointed a member of the Wage Board resigned on or about June 21, 1956, which resignation was accepted by the Central Government by a notification dated July 14, 1956, and by the same notification the Central Government appointed in his place Shri K. M. Cherian and thus reconstituted the Wage Board. There was no provision in the Act for the resignation of any member from his membership or for the filling in of the vacancy which thus arose in the membership of the Board. A provision in this behalf was incorporated only in the Working Journalists Wage Board Rules, 1956, which were published by a notification in the Gazette of India Part II-Section 3 on date July 31, 1956. It was, therefore, contended that such re-constitution of the Board by the appointment of Shri K. M. Cherian in place of Shri K. P. Kesava Menon was unauthorised by the Act as it then stood

(1) [1952] S.C.R. 572, 578.

(2) [1954] S.C.R. 1122, 1127.

(3) [1956] S.C.R. 267.

(4) [1956] S.C.R. 664.

and the Board which actually published the decision in question was therefore not properly constituted.

It is necessary to remember in this connection that s. 8 of the Act empowered the Central Government by notification in the Official Gazette to constitute a Wage Board. This power of constituting the Wage Board must be construed having regard to s. 14 of the General Clauses Act, 1897, which says that where by any Central Act or Regulation made after the commencement of the Act, any power is conferred then, unless a different intention appears that power may be exercised from time to time as occasion arises. If this is the true position there was nothing objectionable in the Central Government re-constituting the Board on the resignation of Shri K. P. Kesava Menon being accepted by it. The Wage Board can in any event be deemed to have been constituted as on that date, viz., July 14, 1956, when all the 5 members within the contemplation of s. 8(2) of the Act were in a position to function. Shri K. P. Kesava Menon had not attended the preliminary meeting of the Board which had been held on May 26, 1956, and the real work of the Wage Board was done after the appointment of Shri K. M. Cherian in his place and stead and it was only after July 14, 1956, that the Wage Board as a whole constituted as it was on that date really functioned as such. The objection urged by the petitioners in this behalf is too technical to make any substantial difference in regard to the constitution of the Wage Board and its functioning.

Re. 2.

This ground ignores the fact that the Working Journalists Wage Board Rules, 1956, which were published on July 31, 1956, were made by the Central Government in exercise of the power conferred upon it by s. 20 of the Act. That section empowered the Central Government to make rules to carry out the purposes of the Act, in particular to provide for the procedure to be followed by the Board in fixing rates of wages. Rule 8 provided that every question considered at a meeting of the Board was to be decided by a majority of the votes of the members present and

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

voting. In the event of equality of votes the Chairman was to have a casting vote.....This Rule therefore prescribed that the decision of the Board could be reached by a majority and this was the rule which was followed by the Board in arriving at its decision. The rule was framed by the Central Government by virtue of the authority vested in it under s. 20 of the Act and was a piece of delegated legislation which if the rules were laid before both the Houses of Parliament in accordance with s. 20(3) of the Act acquired the force of law. After the publication of these rules, they became a part of the Act itself and any decision thereafter reached by the Wage Board by a majority as prescribed therein was therefore lawful and could not be impeached in the manner suggested.

Re. (3).

This ground has reference to the alleged violation by the Wage Board of the principles of natural justice. It is urged that the procedure established under the Industrial Disputes Act was not in terms prescribed for the Wage Board, the Board having been given under s. 11 of the Act the discretion for the purpose of fixing rates of wages to exercise the same powers and follow the same procedure as an Industrial Tribunal constituted under the Industrial Disputes Act, 1947, while adjudicating upon an industrial dispute referred to it. On two distinct occasions, however, the Wage Board definitely expressed itself that it had the powers of an Industrial Tribunal constituted under the Industrial Disputes Act. The first occasion was when the *questionnaire* was issued by the Wage Board and in the *questionnaire* it mentioned that it had such powers under s. 11 of the Act. The second occasion arose when a number of newspapers and journals to whom the *questionnaire* was addressed failed to send their replies to the same and the Wage Board at its meeting held on August 17, 1956, reiterated the position and decided to issue a Press Note requesting the newspapers and journals to send their replies as soon as possible, inviting their attention to the fact that the Board had powers of an Industrial Tribunal under the

Act and if newspapers failed to send their replies, the Board would be compelled to take further steps in the matter. This is clearly indicative of the fact that the Wage Board did seek to exercise the powers under the terms of s. 11 of the Act. Even though, the exercise of such powers was discretionary with the Board, the Board itself assumed these powers and assimilated its position to that of an Industrial Tribunal constituted under the Industrial Disputes Act, 1947. If, then, it assumed those powers, it only followed that it was also bound to follow the procedure which an Industrial Tribunal so constituted was bound to follow.

It is further urged that in the whole of the *questionnaire* which was addressed by the Wage Board to the newspaper establishments, there was no concrete proposal which was submitted by the Wage Board to them for their consideration. The only question which was addressed in this behalf was Question No. 4 in Part "A" which asked the newspaper establishments whether the basic minimum wage, dearness allowance and metropolitan allowance suggested by the Press Commission were acceptable to them and if not, what variations would they suggest and why. The question as framed would not necessarily focus the attention of the newspaper establishments to any proposal except the one which was the subject-matter of that question, viz., the proposal of the Press Commission in that behalf and the newspaper establishments to whom the questionnaire was addressed would certainly not have before them any indication at all as to what was the wage structure which was going to be adopted by the Wage Board. Even though the Wage Board came to the conclusion, as a result of its having collected the requisite data and gathered sufficient materials, after receiving the answers to the *questionnaire* and examining the witnesses, that certain wage structure was a proper one in its opinion, it was necessary for the Wage Board to communicate the proposals in that regard to the various newspaper establishments concerned and invite them to make their representations, if any, within a specified period. It was only after such representations were received from the interested parties

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

1958

*Express News
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

that the Wage Board should have finalized its proposals and published its decision. If this procedure had been adopted the decision of the Wage Board could not have been challenged on the score of its being contrary to the principles of natural justice.

It would have been no doubt more prudent for the Wage Board to have followed the procedure outlined above. The ground No. 8 is, in our opinion, sufficiently determinative of the question as to the *ultra vires* character of the Wage Board decision, and in view of the conclusion reached by us in regard to the same, we refrain from expressing any opinion on this ground of attack urged by the Petitioners.

Re. 4.

This ground is urged because no reasons were given by the Wage Board for its decision. As a matter of fact, the Wage Board at its meeting dated April 22, 1957, agreed that reasons need not be given for each of the decisions and it was only sufficient to record the same and accordingly it did not give any reasons for the decision which it published. In the absence of any such reasons, however, it was difficult to divine what considerations, if any, prevailed with the Wage Board in arriving at its decision on the various points involved therein. It was no doubt not incumbent on the Wage Board to give any reasons for its decision. The Act made no provision in this behalf and the Board was perfectly within its rights if it chose not to give any reasons for its decision. Prudence should, however, have dictated that it gave reasons for the decision which it ultimately reached because if it had done so, we would have been spared the necessity of trying to probe into its mind and find out whether any particular circumstance received due consideration at its hands in arriving at its decision. The fact that no reasons are thus given, however, would not vitiate the decision in any manner and we may at once say that even though no reasons are given in the form of a regular judgment, we have sufficient indication of the Chairman's mind in the note which he made on April 30, 1956, which is a contemporaneous record explaining the reasons for the decision of the majority.

This note of the Chairman is very revealing and throws considerable light on the question whether particular circumstances were at all taken into consideration by the Wage Board before it arrived at its decision.

Re. 5.

This ground concerns the classification of newspaper establishments on the basis of gross revenue. Such classification was challenged as illegal and unauthorised by the Act. The Act certainly says nothing about classification and could not be expected to do so. What the Act authorised it to do was to fix the rates of wages for working journalists having regard to the principles laid down in s. 9(1) of the Act. In fixing the wage structure the Wage Board constituted under the Act was perfectly at liberty if it thought necessary to classify the newspaper establishments in any manner it thought proper provided of course that such classification was not irrational. If the newspaper establishments all over the country had got to be considered in regard to fixing of rates of wages of working journalists employed therein it was inevitable that some sort of classification should be made having regard to the size and capacity of newspaper establishments. Various criteria could be adopted for the purpose of such classification, viz., circulation of the newspaper, advertisement revenue, gross revenue, capital invested in the business, etc., etc. Even though the proportion of advertisement revenue to the gross revenue of newspaper establishments may be a relevant consideration for the purpose of classification, we are not prepared to say that the Wage Board was not justified in adopting this mode of classification on the basis of gross revenue. It was perfectly within its competence to do so and if it adopted that as the proper basis for classification it cannot be said that the basis which it adopted was radically wrong or was such as to vitiate its decision. If the need for classification is accepted, as it should be, having regard to the various sizes and capacities of newspaper establishments all over the country it was certainly necessary to adopt a workable test for such classification and if the Wage Board

1958

Express Newspapers (Private) Ltd., & Another

v.

The Union of India & Others

Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

had adopted classification on the basis of the gross revenue, we do not see any reason why that decision of its was in any manner whatever unwarranted.

It may be remembered in this connection that the Newspaper Industry Inquiry Committee in U. P. had suggested in its report dated March 31, 1949, classification of newspapers in the manner following:—

“ A ” Class—Papers with

- (1) a circulation of 10,000 copies or above or
- (2) an invested capital of rupees 3 lakhs or more

or

- (3) an annual income of rupees 3 lakhs or more ;

“ B ” Class—Papers with

- (1) a circulation below 10,000 but above 5,000 copies or

- (2) an invested capital between rupees one lakh and 3 lakhs or

- (3) an annual income between rupees one lakh and 3 lakhs ;

“ C ” Class—Papers with

- (1) a circulation below 5000 copies or (2) an invested capital below rupees one lakh or (3) an annual income below rupees one lakh.

The classification on the basis of gross revenue was attacked by the petitioners on the ground that in the gross revenue which is earned by the newspaper establishments, advertisement revenue ordinarily forms a large bulk of such revenue and the revenue earned by circulation of newspapers forms more often than not a small part of the same, though in regard to language newspapers the position may be somewhat different. Unless, therefore, the proportion of advertisement revenue in the gross revenue of newspaper establishments were taken into consideration, it would not be possible to form a correct estimate of the financial status of that newspaper establishment with a view to its classification. The petitioners on the other hand suggested that the profit and loss of the newspaper establishments should be adopted as the proper test and if that were adopted a different

picture altogether would be drawn. The balance-sheets and the profit and loss accounts of the several newspaper establishments would require to be considered and it was contended that even if the gross revenue of a particular newspaper establishment were so large as to justify its inclusion on the basis of gross revenue in Class "A" or Class "B" it might be working at a loss and its classification as such would not be justified.

We have already referred in the earlier part of this judgment to the unsatisfactory nature of the profit and loss test. Even though the profit and loss accounts and the balance-sheets of the several limited companies may have been audited by their auditors and may also have been accepted by the Income-tax authorities, they would not afford a satisfactory basis for classification of these newspaper establishments for the reasons already set out above.

As a matter of fact, even before us attempts were made by the respondent, the Indian Federation of Working Journalists to demonstrate that the profit and loss accounts and the balance-sheets of several petitioners were manipulated and unreliable. We are not called upon to decide whether the profit and loss test is one which should be accepted; it is sufficient for our purpose to say that if such a test was not accepted by the Wage Board, the Wage Board was certainly far from wrong in doing so.

Re. 6.

This ground relates to grouping into chains or multiple units and the ground of attack is that such grouping is unauthorised by the Act.

The short answer to this contention is that if such grouping into chains or multiple units was justified having regard to the conditions of the newspaper industry in the country, there was nothing in the Act which militated against such grouping. The Wage Board was authorised to fix the wage structure for working journalists who were employed in various newspaper establishments all over the country. If the chains or multiple units existed in the country the newspaper establishments which formed such chains

1958

Express Newspapers (Private) Ltd. & Another

v.

The Union of India & Others

Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

or multiple units were well within the purview of the inquiry before the Wage Board and if the Wage Board thus chose to group them together in that manner such grouping by itself could not be open to attack. The Act could not have expressly authorized the Wage Board to adopt such grouping. It was up to the Wage Board to consider whether such grouping was justified under the circumstances or not and unless we find something in the Act which prohibits the Wage Board from doing so, we would not deem any such grouping as unauthorised. The real difficulty, however, in the matter of grouping into chains or multiple units arises in connection with the capacity of the industry to pay, a topic which we shall discuss hereafter while discussing the ground in connection therewith.

Re. 7.

This ground is based on the definition of "newspaper establishment" found in Sec. 2 (d) of the Act. "Newspaper establishment" is there defined as "an establishment under the control of any person or body of persons, whether incorporated or not, for the production or publication of one or more newspapers or for conducting any news agency or syndicate." So, the contention put forward is that "an establishment" can only mean "an establishment" and not a group of them, even though such an individual establishment may produce or publish one or more newspapers. The definition may comprise within its scope chains or multiple units, but even so, the establishment should be one individual establishment producing or publishing a chain of newspapers or multiple units of newspapers. If such chains or multiple units were, though belonging to some person or body of persons whether incorporated or not, produced or published by separate newspaper establishments, common control would not render the constitution of several newspaper establishments as one establishment for the purpose of this definition, they would none the less be separate newspaper establishments though under common control.

Reliance was placed in support of this contention on a decision of the Calcutta High Court in *Pravat Kumar*

v. *W. T. C. Parker* ⁽¹⁾, where the expression which came up for construction before the Court was "employed in an industrial establishment" and it was observed that:—

1950

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

"Employed in an industrial establishment" must mean employed in some particular place, that place being the place used for manufacture or an activity amounting to industry, as that term is used in the Act."

A similar interpretation was put on the expression "industrial establishment" by the Madras High Court in *S. R. V. Service Ltd. v. State of Madras* ⁽²⁾, where it was observed at p. 12:—

"They referred only to a dispute between the workers and the management of one industrial establishment, the Kumbakonam branch of the S. R. V. S. Ltd. I find it a little difficult to accept the contention of the learned counsel for the Madras Union, that the Kumbakonam branch of the S. R. V. S. Ltd., is not an industrial establishment as that expression has been used in the several sections of the Act.....I need refer only to section 3 of the Act to negative the contention of the learned counsel for the Madras Union, the S. R. V. S. Ltd., with all its branches should be taken as one industrial establishment."

These decisions lend support to the contention that a newspaper establishment like an industrial establishment should be located in one place, even though it may be carrying on its activities of production or publication of more newspapers than one. If these activities are carried on in different places, e. g., in different towns or cities of different States, the newspaper establishments producing or publishing such newspapers cannot be treated as one individual establishment but should be treated as separate newspaper establishments for the purpose of working out the relations between themselves and their employees. There would be no justification for including these different newspaper establishments into one chain or multiple unit and treating them, as if they were one

(1) A. I. R. 1950 Cal. 116, 118, para. 20.

(2) A. I. R. 1956 Mad. 115, 122.

1958

*Express News
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

newspaper establishment. Here again, the petitioners are faced with this difficulty that there is nothing in the Act to prohibit such a grouping. If a classification on the basis of gross revenue could be legitimately adopted by the Wage Board then the grouping into chains or multiple units could also be made by it. There is nothing in the Act to prohibit the treating of several newspaper establishments producing or publishing one or more newspapers though in different parts of the country as one newspaper establishment for the purpose of fixing the rates of wages. It would not be illegitimate to expect the same standard of employment and conditions of service in several newspaper establishments under the control of any person or body of persons, whether incorporated or not; for an employer to think of employing one set of persons on higher scales of wages and another set of workers on lower scales of wages would by itself be inequitable, though it would be quite legitimate to expect the difference in scales having regard to the quality of the work required to be done, the conditions of labour in different regions of the country, the standard of living in those regions and other cognate factors.

All these considerations would necessarily have to be borne in mind by the Wage Board in arriving at its decision in regard to the wage structure though the relative importance to be attached to one circumstance or the other may vary in accordance with the conditions in different areas or regions where the newspaper establishments are located.

Re. 8.

We now come to the most important ground, viz., that the decision of the Wage Board has not taken into consideration the capacity to pay of any particular newspaper establishment. As we have already seen, the fixing of rates of wages by the Wage Board did not prescribe whether the wages which were to be fixed were minimum wages, fair wages, or living wages and it was left to the discretion of the Wage Board to determine the same. The principles for its guidance were, however, laid down and they prescribed the circumstances which were to be taken into consideration before

such determination was made by the Wage Board. One of the essential considerations was the capacity of the industry to pay and that was comprised within the category "the circumstances relating to newspaper industry in different regions of the country". It remains to consider, however, whether the Wage Board really understood this category in that sense and in fact applied its mind to it. At its preliminary meeting held on May 26, 1956, the Board set up a Sub-Committee to draft a *questionnaire* to be issued to the various journals and organisations concerned, with a view to eliciting factual data and other relevant information required for the fixation of wages. The Sub-committee was requested to bear in mind the need *inter alia* for proper classification of the country into different areas on the basis of certain criteria like population, cost of living, etc. This was the only reference to this requirement of s. 9(1) and there was no reference herein to the capacity of the industry to pay which we have held was comprised therein. The only question in the *questionnaire* as finally framed which had any reference to this criterion was Question No. 7 in Part "A" under the heading "Special Circumstances" and that question was: "Are there in your regions any special conditions in respect of the newspaper industry which affect the fixing of rates of wages of working journalists? If so, specify the conditions and indicate how they affect the question of wages." But here also it is difficult to find that the capacity of the industry to pay was really sought to be included in these special conditions. The Wage Board no doubt asked for detailed accounts of newspaper establishments and also required information which would help it in the proper evaluation of the nature and quality of work of various categories of working journalists, but the capacity of the industry to pay which was one of the essential considerations was nowhere prominently brought in issue and no information on that point was sought from the various newspaper establishments to whom the *questionnaire* was going to be addressed. The answers to Question No. 7 as summarized by the Wage Board no doubt referred in some cases to the capacity

1953

*Express News-
papers (Private)
Ltd., & Another*
v.

*The Union of India
& Others*

Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J

of the industry to pay but that was brought in by the newspaper establishments themselves who answered the question in an incidental manner and could not be said to be prominent in the minds of the parties concerned.

It is pertinent to observe that even before the Press Commission the figures had disclosed that out of 127 newspapers 68 had been running into loss and 59 with profits and there was an overall profit of about 1% on a capital investment of seven crores. The profit and loss accounts and the balance sheets of the various companies owning or controlling newspaper establishments were also submitted before the Wage Board but they had so far as they went a very sorry tale to tell. The profit and loss statements for the year 1954-55 revealed that while 43 of them showed profits 40 had incurred losses. Though no scientific conclusion could be drawn from this statement it showed beyond doubt that the condition of the newspaper industry as a whole could not be considered satisfactory. Under these circumstances, it was all the more incumbent upon the Wage Board even though it discounted these profit and loss statements as not necessarily reflecting the true financial position of these newspaper establishments, to consider the question of the capacity of the industry to pay with greater vigilance.

There was again another difficulty which faced the Wage Board in that behalf and it was that out of 5,705 newspapers to whom the *questionnaire* was addressed only 312 or at best 325 had responded and the Wage Board was in the dark as to what was the position in regard to other newspaper establishments. As a matter of fact, the chairman in his note dated April 30, 1957, himself pointed out that the Wage Board had no data before it of all the newspapers and where it had, that was in many cases not satisfactory. This aspect was again emphasised by him in his note when he reiterated that the data available to the Wage Board had not been as complete as it would have wished them to be and therefore recommended in the end the establishment of a standing administrative machinery which would collect from all newspaper

establishments in the country on a systematic basis detailed information and data such as those on employment, wage rates and earnings, financial condition of papers, figures of circulation, etc., which may be required for the assessment of the effects of the decision of the Wage Board at the time of the review. The Wage Board, in fact, groped in the dark in the absence of sufficient data and information which would enable it to come to a proper conclusion in regard to the wage structure which it was to determine. In the absence of such data and materials the Board was not in a position to work out what would be the impact of its proposals on the capacity of the industry to pay as a whole or even region-wise and the chairman in his note stated that it was difficult for the Board at that stage to work out with any degree of precision, the economic and other effects of its decision on the newspaper industry as a whole. Even with regard to the impact of these proposals on individual newspaper establishments the chairman stated that the future of the Indian language newspapers was bright, having regard to increasing literacy and the growth of political consciousness of the reading public, and by rational management there was great scope for increasing the income of newspapers and even though there was no possibility of any adjustment which might satisfy all persons interested, it was hoped that no newspaper would be forced to close down as a result of its decision; but that if there was a good paper and it deserved to exist, the Government and the public would help it to continue. This was again a note of optimism which does not appear to have been justified by any evidence on the record.

Even though, the Wage Board classified the newspaper establishments into 5 classes from "A" to "E" on the basis of their gross revenue the proportion of the advertisement revenue to the gross revenue does not appear to have been taken into consideration nor was the essential difference which subsisted between the circulation and the paying capacity of the language newspapers as compared with newspapers in the

1958

Express Newspapers (Private) Ltd., & Another

v.

The Union of India & Others

Bhagwati J.

1958

Express Newspapers (Private) Ltd., & Another

v.

The Union of India & Others

Bhagwati J.

English language taken into account. If this had been done, the basis of gross revenue which the Wage Board adopted would have been modified in several respects.

The grouping of the newspapers into chains or multiple units implied that the weaker units in those groups were to be treated as on a par with the stronger units and it was stated that the loss in the weaker units would be more than compensated by the profits in the more prosperous units. The impact of these proposals on groups of newspapers was only defended on principle without taking into consideration the result which they would have on the working of the weaker units. Here also the Chairman expressed the opinion that the Board was conscious that as a result of its decision, some of the journalists in the weaker units of the same group or chain may get much more than those working in its highest income units. He however stated that if the principle was good and scientific, the inevitable result of its application should be judged from the stand-point of Indian Journalism as a whole and not the burden it casts on a particular establishment. It is clear therefore, that this principle which found favour with the Wage Board was sought to be worked out without taking into consideration the burden which it would impose upon the weaker units of a particular newspaper establishment.

The representatives of the employers objected to the fixation of scales of wages on the plea that fixation of rates of wages did not include the fixation of scales of wages. This contention was negatived by the representatives of the employees as also by the Chairman and the Wage Board by its majority decision accepted the position that it could, while fixing the rates of wages, also fix the scales of wages. The Press Commission itself had merely suggested a basic minimum wage for the consideration of the parties concerned but had suggested that so far as the scales of wages were concerned they were to be settled by collective bargaining or by adjudication. Even though the Wage Board took upon itself the burden of fixing scales of wages as really comprised within the terms of their reference, it was incumbent upon it to consider what the impact of

the scales of wages fixed by it would be on the capacity of the industry to pay. There is nothing on the record to suggest that both as regards the rates of wages and the scales of wages which it determined the Wage Board ever took into account as to what the impact of its decision would be on the capacity of the industry to pay either as a whole or region-wise.

There is, however, a further difficulty in upholding the decision of the Wage Board in this behalf and it is this that even as regards the fixation of the rates of wages of working journalists the Wage Board does not seem to have taken into account the other provisions of the Act which conferred upon the working journalists the benefits of retrenchment compensation, payment of gratuity, hours of work and leave. These provisions were bound to have their impact on the paying capacity of the newspaper establishments and if these had been borne in mind by the Wage Board it is highly likely that the rates of wages including the scales of wages as finally determined might have been on a lesser scale than what one finds in its decision.

This difficulty becomes all the more formidable when one considers that the working journalists only constituted at best one-fifth of the total staff employed in the various establishments. The rest of the 80% comprised persons who may otherwise be described as factory workers who would be able to ameliorate their conditions of service by having resort to the machinery under the Industrial Disputes Act. If the conditions of service of the working journalists were to be improved by the Wage Board the other employees of newspaper establishments were bound to be restive and they would certainly, at the very earliest opportunity raise industrial disputes with a view to the betterment of their conditions of service. Even though the Industrial Courts established under the Industrial Disputes Act, 1947, might not give them relief commensurate with the relief which the Wage Board gave to the working journalists, there was bound to be an improvement in their conditions of service which the Industrial Court would certainly determine having regard to the benefits which the working journalists

1958

*Express News-
papers (Private)
Ltd. & Another*
v.

*The Union of India
& Others*

Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

enjoyed and this would indeed impose an additional financial burden on the newspaper establishments which would substantially affect their capacity to pay. This consideration also was necessarily to be borne in mind by the Wage Board in arriving at its final decision and one does not find anything on the record which shows that it was actually taken into consideration by the Wage Board.

The retrospective operation of the decision of the Wage Board was also calculated to impose a financial burden on the newspaper establishments. Even though this may be a minor consideration as compared with the other considerations above referred to, it was none the less a circumstance which the Wage Board ought to have considered in arriving at its decision in regard to the fixing of rates of wages.

The financial burden which was imposed by the decision of the Wage Board was very vividly depicted in the statements furnished to us on behalf of the petitioners in the course of the hearing before us. These statements showed that the wage bill of these newspaper establishments was going to be considerably increased, that the retrospective operation of the decision was going to knock off a considerable sum from their reserves and that the burden imposed upon the newspaper establishments by the joint impact of the provisions of the Act in regard to retrenchment compensation, payment of gratuity, hours of work and leave as well as the decision of the Wage Board in regard to the fixing of rates of wages and the scales of wages would be such as would cripple the resources of the newspaper establishments, if not necessarily lead to their complete extinction. The statements also showed what extra burden was imposed upon the newspaper establishments, if they wanted to discharge the working journalists from their employ which burden was all the greater, if per chance, the newspaper establishments, even though reluctantly came to a decision that it was worth their while to close down their business rather than continue the same with all these financial burdens imposed upon them.

These figures have been given by us in the earlier

part of our judgment and we need not repeat the same. The conclusion, however, is inescapable that the decision of the Wage Board imposed a very heavy financial burden on the newspaper establishments, which burden was augmented by the classification on the basis of gross-revenue, fixation of scales of wages, provisions as regards the hours of work and leave, grouping of newspapers into chains or multiple units and retrospective operation given to the decision of the Wage Board as therein mentioned.

If these proposals had been circulated, before being finalized, by the Wage Board to the various newspaper establishments so that these newspaper establishments could, if they so desired, submit their opinions thereupon and their representations, if any, in regard to the same to the Wage Board for its consideration and if the Wage Board had after receiving such opinions and representations from the newspaper establishments concerned finalised its decision, this attack on the ground of the Wage Board not having taken into consideration the capacity of the industry to pay as a whole or region-wise would have lost much of its force. The Wage Board, however, did nothing of the type. Proposals were exchanged between the representatives of the employers and the representatives of the employees. The discussion that the chairman had with each set of representatives did not bear any fruit and the chairman himself by way of mediation, as it were, submitted to them his own proposals presumably having regard to the different points of view which had been expressed by both these parties. The decision in regard to the scales of wages, was, as we have seen before, a majority decision which was not endorsed by the representatives of the employers. The proposals of the chairman also were not acceptable to the representatives of the employers but the representatives of the employees accepted them and they thus became the majority decision of the Wage Board. The ultimate decision of the chairman on those points does not appear to have been the result of any consideration of the capacity of the industry to pay as a whole or region-wise but reflects a compromise

1958

Express Newspapers (Private) Ltd., & Another
v.

The Union of India & Others

Bhagwati J.

1958

*Express News-
papers (Private)
Ltd. & Another
v.*

*The Union of India
& Others*

Bhagwati J.

which he brought about between the diverse views but which also was generally accepted only by the representatives of the employees and not the representatives of the employers. Nowhere can we find in the instant case any genuine consideration of the capacity of the industry to pay either as a whole or region-wise. We are supported in this conclusion by the observations of the chairman himself in the note which he made simultaneously with the publication of the decision on April 30, 1957, that it was difficult for the Wage Board at that stage to work out with any degree of precision, the economic and other effects of the decision on the newspaper industry as a whole.

An attempt was made on behalf of the respondents in the course of the hearing before us to shew that by the conversion of the currency into naye pyse and the newspapers charging to the public higher price by reason of such conversion, the income of several newspapers had appreciably increased. These figures were, however, controverted on behalf of the petitioners and it was pointed out that whatever increase in the revenue was brought about by reason of this conversion of price into naye pyse was more than offset by the fall in circulation, ever rising price of newsprint and the higher commission, etc., which was payable by the newspaper establishments to their commission agents. The figures as worked out need not be described here in detail; but we are satisfied that the conversion of the price into naye pyse had certainly not the effect which was urged and did not add to the paying capacity of the newspaper establishments.

The very fact that the Wage Board thought it necessary to express a pious hope that if there is a good paper and it deserves to exist, the Government and the public will help it to continue, and also desired the interests which it felt had been hit hard by its decision not to pass judgment in haste, but to watch the effects of its decision in actual working with patience for a period of 3 to 5 years, shows that the Wage Board was not sure of its own ground and was publishing its decision merely by way of an experiment. The chairman urged upon the Government of India

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others**Bhagwati J.*

the desirability of creating immediately a standing administrative machinery which could also combine in itself the functions of implementing and administering its decision and that of preparing the ground for the review and revision envisaged after 3 to 5 years. This was again a pious hope indulged in by the Wage Board. It was not incumbent on the Government to fulfil that expectation and there was no knowing whether the Government would ever review or revise the decision of the Wage Board at the expiration of such period.

We have carefully examined all the proceedings of the Wage Board and the different tables and statements prepared by them. Neither in the proceedings nor in any of the tables do we see satisfactory evidence to show that the capacity of the industry to pay was examined by the Board in fixing the wage structure. As we have already observed, it was no doubt open to the Board not to attach undue importance to the statements of profit and loss accounts submitted by various newspaper establishments, but, since these statements prima facie show that the trade was not making profit it was all the more necessary for the Board to satisfy itself that the different classes of the newspaper establishments would be able to bear the burden imposed by the wage structure which the Board had decided to fix. Industrial adjudication is familiar with the method which is usually adopted to determine the capacity of the employer to pay the burden sought to be imposed on him. If the industry is divided into different classes it may not be necessary to consider the capacity of each individual unit to pay but it would certainly be necessary to consider the capacity of the respective classes to bear the burden imposed on them. A cross-section of these respective classes may have to be taken for careful examination and all relevant factors may have to be borne in mind in deciding what burden the class considered as a whole can bear. If possible, an attempt can also be made, and is often made, to project the burden of the wage structure into two or three succeeding years and determine how it affects the financial position of the employer. The whole of the

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

record before the Board including the chairman's note gives no indication at all that an attempt was made by the Board to consider the capacity of the industry to pay in this manner. Indeed, the proceedings show that the demands made by the representatives of the employees and the concessions made by the employers' representatives were taken as rival contentions and the Chairman did his best to arrive at his final decision on the usual basis of give and take. In adopting this course, all the members of the Board seem to have lost sight of the fact that the essential pre-requisite of deciding the wage structure was to consider the capacity of the industry to pay and this, in our opinion, introduces a fatal infirmity in the decision of the Board. If we had been satisfied that the Board had considered this aspect of the matter, we would naturally have been reluctant to accept any challenge to the validity of the decision on the ground that the capacity to pay had not been properly considered. After all, in cases of this kind where special Boards are set up to frame wage structures, this Court would normally refuse to constitute itself into a court of appeal on questions of fact; but, in the present case, an essential condition for the fixation of wage structure has been completely ignored and so there is no escape from the conclusion that the Board has contravened the mandatory requirement of s. 9 and in consequence its decision is ultra vires the Act itself.

Re. 9.

This ground, viz., that the Board had no authority to render a decision which was retrospective in operation in also untenable. The Wage Board certainly had the jurisdiction and authority to pronounce a decision which could be retrospective in effect from the date of its appointment and there was no legal flaw in the Wage Board prescribing that its decision should be retrospective in operation in the manner indicated by it. The retrospectivity may have its repercussions on the capacity of the industry to pay and we need not say anything more in regard to the same. We have already dealt with it above.

Re. 10.

Ground No. 10 talks of the authority of the Wage Board to fix scales of pay for a period of 3 years, subject to review by the Government by appointing another Wage Board at the end of that period. We are not concerned with such fixation of the period for the simple reason that the Board has not in terms done so. The only authority which it had was to fix the rates of wages and submit its decision in respect thereof to the Government. Any pious hope expressed that the decision should be subject to review or revision by the Government by appointment of another Wage Board after the lapse of 3 or 5 years was not a part of its decision and we need not pause to consider the effect of such fixation of the period, if any, because it has in fact not been done.

Re. 11.

The last ground talks of the Wage Board being handicapped for want of Cost of Living Index. This ground also cannot avail the petitioners for the simple reason that the decision of the Wage Board itself referred in Clause 24 thereof to the all India cost of living index number published by the Labour Bureau of the Government of India O Base 1944: 100 and fixed the dearness allowance in relation to the same. These statistics were available to the Wage Board and it cannot be said that the Wage Board was in any manner whatever handicapped in that respect.

On a consideration of all the grounds of attack thus levelled against the validity and the binding nature of the decision of the Wage Board, we have, therefore, come to the conclusion that the said decision cannot be sustained and must be set aside.

The petitions will, therefore, be allowed and the petitioners will be entitled to an order declaring that s. 5(1)(a)(iii) of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955, is *ultra vires* the Constitution of India and that the decision of the Wage Board dated April 30, 1957, is illegal and void.

As regards the costs, in view of the fact that the

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

1958

*Express News-
papers (Private)
Ltd., & Another*

v.

*The Union of India
& Others*

Bhagwati J.

petitioners have failed in most of their contentions in regard to the constitutionality of the Act, the fairest order would be that each party should bear and pay its own costs of these petitions.

Civil Appeals Nos. 699-703 of 1957.

These Civil Appeals are directed against the decision of the Wage Board and seek to set aside the same as destroying the very existence of the newspaper establishments concerned and infringing their fundamental rights. Special leave under Art. 136 of the Constitution was granted by this Court in respect of each of them, subject to the question of maintainability of the appeals being open to be urged.

These appeals are also covered by the judgment just delivered by us in Petition No. 91 of 1957 & Ors., and the appellants would be entitled to a declaration in each one of them that the decision of the Wage Board is *ultra vires* the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955, and therefore void and inoperative.

In view of the conclusion thus reached, we feel it unnecessary to consider whether the appeals would be maintainable under Art. 136 of the Constitution. The appellants having substantially succeeded in their respective petitions under Art. 32 of the Constitution, the question has now become purely academic and we need not spend any time over the same.

The result therefore is that there will be no orders save that all the parties thereto shall bear and pay their own costs thereof.

Petitions allowed.

Appeals disposed of accordingly.