

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.3265/2007,

WRIT PETITION NO.4279/2007,

WRIT PETITION NO.1005/2009,

AND

WRIT PETITION NO.5301/2010

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WRIT PETITION NO.3265/2007

- PETITIONERS :-
1. Maharashtra Liquor Bottlers Association, C/o Nagpur Distillers, 2 & 3, Kamptee Road, Nagpur. through Vishal s/o Devilalji Jaiswal, Authorized Signatory, Aged about 36 years, R/o 226, Shri Ganesh Vandan, Shivaji Nagar, Nagpur.
  2. Vandana Distilleries Pvt. Ltd. A company incorporated and registered under Companies Act, 1956, Plot No.7 Teka Naka, Kamptee Road, Nagpur -26, through its Manager Shri Christopher Clifford Dee aged about 48 years, R/o Mankapur, Nagpur.
  3. Ajanta Distilleries Ltd., A company incorporated and registered under the Companies Act, 1956, Plot No.5 and 6, Teka Naka, Kamptee Road, Nagpur 26, through its Manager, Shri Umesh Bhagwandas Agrawal, aged about 46 years, R/o Vishwakarma Nagar, Nagpur.

4. Nagpur Distillers  
A company incorporated and registered under the Companies Act, 1956, P. No.2 & 3, Teka Naka, Kamptee Road Nagpur 26, through its Managing Partner Shri Jasbir Singh Anand aged about 65 years, r/o Shivaji Nagar, Nagpur.
5. Kokan Agro Marine Pvt. Ltd.,  
A company incorporated and registered under the Companies Act, 1956, 117, Wanjra Lahout Kamptee Road, Nagpur 26, through its Factory Manager, Shri Pandurang Narayanrao Shinde, Aged about 46 years, R/o East Wardhaman Nagar, Nagpur 08.
6. Vidarbha Bottlers pvt. Ltd.  
A company incorporated and registered under the Companies Act, 1956, Chinchbhavan, Wardha Road, Kapri, Nagpur 441 108, through its Director Shri Sanjeet Suresh Jaiswal, aged about 38 years, R/o Chinchbhavan Wardha Road, Nagpur.
7. Vidarbha Liquor Corporation,  
A partnership firm incorporated and registered under the Partnership Act, 30/30-A, New Cotton Market, Nagpur through its Partner Shri Ramesh Jeswani aged about 52 years, R/o C/o 30/30-A New Cotton Market, Nagpur.
8. Deejay Distilleries Pvt. Ltd.  
A company incorporated and registered under the Companies Act, 1956, Kolovli Dist. Thane (MS), through its Director Shri Pradeep

D. Kalami Aged about 46 years.

9. Master Blenders Pvt. Ltd.  
A company incorporated and registered under the Companies Act, 1956, Khaonli, Dist. Raigad, Through its Director Shri Kanayalal K. Kalami.
10. M/s. Deccan Bottling and Distilling Industries Pvt. Ltd. Plot No.E-45, M.I.D.C., Chikhalthana, Aurangabad-431210 through its General Manager, Mr. David David s/o Verghese David.

...VERSUS...

RESPONDENTS :- 1. State of Maharashtra, through Secretary, Industry, Energy and Labour Department, Mantralaya, Mumbai 400 032.

2. Advisory Board, Constituted under Section 7 of the Minimum Wages Act, 1948, Through its Secretary, Commerce Center, Tardeo, Mumbai.

INTERVENORS.

3. Vidarbha Breweries Mazdoor Union, Registration No.NGP/2878, Comrade A.K.Gopalan Bhavan, Shaniwari, Subhash Road, Nagpur through its General Secretary Shri Amrut Meshram.
4. Kolhapur Kamgar Union (Lalbwata) Registration No.PN/3375/28/6/2001 Shirol, MIDC Yadavwadi, Vyankatesh Nagar, At & Post Shirol, Tah. Hatklangale, Dist. Kolhapur, through its Secretary Mr. Ilai Jangale.

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[Shri V.R. Thakur, Adv. for petitioners]  
[Smt. B.H. Dangre, Addl. G.P. for respdt. no.1]  
[Shri P.D. Meghe, Adv. for respdt. nos.3 and 4]  
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WRIT PETITION NO.4279/2007

- PETITIONERS :-
1. Printers' Guild,  
Association of Printers,  
through its Secretary  
Mr. Atul Wasantrao Tapas,  
Aged 41 yrs., r/o. 973-G,  
Nandanwan Colony, Nagpur.
  2. M/s. Nag Madranalaya,  
through its Proprietor -  
Mr. Vivek Dhakras,  
Ruikar Road, Mahal,  
Nagpur.
  3. M/s. Chakradhar Printing and  
Binding Works, through its  
Proprietor Mr. Shantaram  
Potdukhe, Saraipeth, Ashok  
Chowk, Nagpur.
  4. M/s. Akshar Mudran,  
through its Partner Mr. Naresh  
Chandak, Regal Talkies  
Compound, Sitabuldi,  
Nagpur.
  5. M/s. Kalidas Creations,  
through its Partner Mr. Kalidas  
Sathawane, Adhyapak  
Bhawan, Opp. S.T. Stand,  
Nagpur.
  6. M/s. Girnar Graphics,  
through its Partner Mr. Praveen  
Behlande, Untkhana Layout,  
Nag Road, Nagpur.

7. M/s. Tapas Graphics,  
through its Prop. Mrs. Shraddha  
Tapas, Narula Building,  
Lokmat Square, Nagpur.
8. M/s. Surya Offset,  
through its Partner Ajay  
Dhakras 28, Farmland,  
Ramdaspath, Nagpur.
9. M/s. Vrushali Offset Works Pvt.  
Ltd. through its Managing  
Director - Mr. Sanjiv Bansod,  
38, New Cotton Market Layout,  
Nagpur 18.
10. M/s. Mahima Offset Printers  
Pvt. Ltd. through its Director  
Mr. Ashok Ghadge  
Great Nag Road,  
Nagpur.
11. M/s. Print Pack,  
through its Partner Devesh  
Kinariwala,  
25, New Cotton Market Layout,  
Nagpur 18.
12. M/s. Sadhana Litho Offset Works  
through its Prop. Manohar  
Sawalkar, Subhash Road, Mahal,  
Nagpur.
13. M/s. Gurukripa Stationers &  
Printers,  
through its Prop. Manohar  
Sakade, 416, Azamshah Layout,  
Nagpur.
14. M/s. Keshava Printing Press,  
through its Prop. Rasikbhai  
Kinariwala, New Shukrawari,  
Nagpur.

15. M/s. Shyam Brothers,  
through its Partner Mr. Nitin  
Tapas, S.T. Stand Road,  
Nagpur.
16. M/s. Shreerang,  
through its Partner Mr. Sandip  
Bhalerao, Bajaj Nagar Chowk,  
Nagpur.
17. M/s. Mudrashilpa Offset  
Printers, through its Partner  
Mr. Kamlesh Moghe, Bajaj Nagar  
Chowk, Nagpur.
18. M/s. S.K. Enterprises,  
through its Proprietor  
Mr. Agrawal, Modi No.2,  
Sitabuldi, Nagpur.
19. M/s. Swastik Printers,  
through its Proprietor  
Mr. Agrawal Modi No.2,  
Sitabuldi, Nagpur.
20. M/s. Murarka Cottage Industries,  
through its Proprietor  
Mr. Ramkisan Murarka,  
Modi No.2, Sitabuildi,  
Nagpur.
21. M/s. Vipul Prints,  
through its Proprietor Mr. Vivek  
Mishra, Mishra Compound, Mohan  
Nagar, Nagpur.
22. M/s. V.V. Offset & Allied Works,  
through its Proprietor Mr. Vipul  
Mishra, Mishra Compound, Mohan  
Nagar, Nagpur.
23. M/s. Shivshakti Press (P) Ltd.  
through its Director  
Mr. P.B. Changle, Baidyanath  
Chowk, Nag Road, Nagpur.

24. M/s. Kadambari Printers,  
through its Partner Smt. Kavita  
Bajaj, Baidyanath Bhavan, Great  
Nag Road, Nagpur.
25. M/s. Creative Images,  
through its Proprietor  
Mr. Prakash Bisne,  
8/1, Indra Sarita Balraj Marg,  
Dhantoli, Nagpur.
26. M/s. Forward Printers &  
Stationers,  
through its Partner  
Mr. Vitthalrao Disawal,  
Central Avenue, Nagpur.
27. M/s. Libra Offset Works,  
through its Proprietor Umesh  
Mandhekar, Mendhekar Bhavan,  
Gandhibag, Nagpur.
28. M/s. Shree Printers,  
through its Prop. Pratap  
Mendhekar, Mendhekar Bhavan,  
Gandhibag, Nagpur.
29. M/s. Shreenath Graphics,  
through its Partner Ashok  
Kothari, Small Factory Area,  
Nagpur.
30. M/s. Gitanjali Offset,  
through its Director Mr. Gokul  
Pande, Ghat Road, Nagpur.
31. M/s. Aadarsha Printing &  
packaging Products,  
through its Partner Jagdish  
Kothari, Sitabuldi, Nagpur.
32. M/s. Excel Printers,  
through its Prop. Jagdish  
Kothari, Sitabuldi, Nagpur.

33. M/s.Crystal Prints,  
through its Prop. Mr. Kuldeep  
Kothari, Sitabuldi, Nagpur.
34. M/s. Ashish Offset,  
through its Partner Mathura  
Panpalia, Near Vijay Talkies,  
Nagpur.
35. M/s.Ameya Printers,  
through its Partner Wasudeo  
Thombre, Old Bagadganj,  
Nagpur.
36. M/s. Ashvini Printers,  
through its Proprietor Shri  
M.A.Thombre, Model Mill Chowk,  
Nagpur.

...VERSUS...

- RESPONDENTS :-
1. State of Maharashtra, through  
Secretary, Industry, Energy and  
Labour Department, Mantralaya,  
Mumbai 400 032.
  2. Advisory Board, Constituted  
under Section 7 of the Minimum  
Wages Act, 1948, Through its  
Secretary, Commerce Center,  
Tardeo, Mumbai.

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[Shri V.R. Thakur, Adv. for petitioners]  
[Smt. B.H. Dangre, Addl. G.P. for respdt. no.1]  
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WRIT PETITION NO.1005/2009

- PETITIONERS:-
1. Central Circuit Cine Association,  
Through Shri Prashant M. Rathi,  
Authorised Representative,  
Walkat Compound, Plot No.5,  
Morshi Road, Amravati 440 601.



2. Cine Exhibitors Association through its President, Shri Dilip Singh Vali Building, Sitabuldi, Nagpur.
3. Cinema Owners and Exhibitors' Association of India, through its Vice President, Shri Nitin Narayan Datar, 42/43, 1st Floor, Vijay Chambers, Tribhuvan Road, Grant Road (E), Mumbai 400 004.

...VERSUS...

- RESPONDENTS :-
1. State of Maharashtra, Through Secretary, Industries, Energy and Labour Department, Mantralaya, Mumbai 400 032
  2. Advisory Board, Constituted under Section 7 of the Minimum Wages Act, 1948, Through its Secretary, Commerce Center, Tardeo, Mumbai 400 034

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[Shri V.R. Thakur, Adv. for petitioners]

[Smt. B.H. Dangre, Addl. G.P. for respdt. nos.1 & 2]  
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WRIT PETITION NO.5301/2010

- PETITIONER :- Birla Cotsyn (India) Ltd., a Public Limited Company, having its registered office at Mumbai and Factory at A-82, MIDC, Khamgaon Tah. Khamgaon Dist. Buldhana through its Factory Manager Shri O.B. Sharma R/o Khamgaon Tah. Khamgaon Dist. Buldhana (Maharashtra).

...VERSUS...

- RESPONDENTS :-
1. State of Maharashtra, through its Secretary, Industries, Energy and Labour Department, Mantralaya, Mumbai 400 032.
  2. Advisory Board, Constituted under Section 7 of the Minimum Wages Act, 1948, Through its Secretary, Commerce Center, Tardeo, Mumbai.

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[Shri V.R. Thakur, Adv. for petitioner]  
[Smt. B.H. Dangre, Addl. G.P. for respdt. nos.1 & 2]  
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**CORAM : B.P. DHARMADHIKARI AND  
A.B. CHAUDHARI, JJ.**

**Date of reserving the judgment : 14.03.2012**  
**Date of pronouncing the judgment : 31.03.2012**

**J U D G M E N T** (PER : A.B. CHAUDHARI, J.)

1. In all these writ petitions there is a challenge to the final notifications of various dates issued by the Government of Maharashtra in the matter of revision of minimum wages under the provisions of the Minimum Wages Act, 1948 (For short, hereinafter referred to as the M.W. Act).

2. (A) In Writ Petition No.3265/2007, Maharashtra Liquor Bottlers Association and others, who are all the distillers have challenged notification dated 9.2.2007 (Annexure P-3) by which

the Government of Maharashtra revised the minimum rates of wages payable to the employees, employed in the scheduled employment, namely Liquor Manufacturing.

(B) In Writ Petition No.4279/2007 the Printers' Guild Association of Printers and 35 others connected with the Printing Industry have put to challenge the notification dated 11.4.2009 (Annexure P-4), issued by the Government of Maharashtra, revising the minimum rates of wages payable to the employees, employed in the scheduled employment, namely Printing by letterpress, lithography, photogravure or other similar work or work incidental to such process or book binding is carried on.

(C) In Writ Petition No.1005/2009 Central Circuit Cine Association and Cine Exhibitors Association have put to challenge notification dated 2.1.2009 (Annexure P-10), issued by the Government of Maharashtra by which minimum rates of wages were revised, payable to the employees, employed in the scheduled employment, namely Cinema Exhibition Industry.

(D) In Writ Petition No.5301/2010 Birla Cotsyn (India) Ltd. Textile Industry has challenged the notification dated 20.7.2010, issued by the Government of Maharashtra (Annexure P 2), revising minimum rates of wages payable to the employees employed in scheduled employment, in factory defined in clause-m of Section 2 or within the meaning of Section 85 of the Factories Act, 1948 (LXIII of 1948) not covered by any of the entries in the schedule and also for declaration that entry no.65 in schedule part I of the M.W.Act introduced by the State of Maharashtra in exercise of powers under Section 27 of the said Act violates Article 14 of the Constitution of India and thus be quashed.

3. All the above writ petitions were heard together since the question that arose for consideration and argued by the learned Counsel for the rival parties relates to the revision of minimum wages by virtue of the enabling provisions of Section 5 of the M.W. Act.

4. In support of the writ petitions, learned Counsel for the petitioners made the following submissions.

(i) Textile Industry in the country in general and in the State of Maharashtra in particular has been major industry and therefore, the classification of such major industry made by the respondents in the form of residuary entry in exercise of powers under Section 27 of the M.W. Act vide entry no.65 in the schedule under the head of factories, is wholly arbitrary, irrational and bereft of any plausible reason or logic attracting the vice of arbitrariness, envisaged by Article 14 of the Constitution of India. This entry was made in the year 1986 and in the absence of any justification to make such impermissible classification of textile industry the same is liable to be struck down by this Court.

(ii) As per the constitution Bench decision in the case of *M/s Bhikusa Yamasa Kshatriya and another...Versus...Sangamner Akola Taluka Bidi Kamgar Union and others*, reported in *AIR 1963 Supreme Court 806* and others the pronouncement of law by the Apex Court is consistent; in that, while fixing the minimum wages, the State is required to take into consideration large number of factors, various data, economic climate of the region or locality, needs of

the people concerned and then balancing the same and the changed economic and competitive scenario in the industrial development in the area and the industry in particular, for considering revision of minimum wages.

(iii) There can be no dispute about the fact that exploitation of labourers or unorganized sector or workmen must be scuttled. But then the overall industrial atmosphere, economic condition of type of industry concerned, the market, the inflation, living conditions are required to be balanced in order to come to a reasonable conclusion in the matter of revision of minimum wages.

(iv) Procedure under Section 5 of the M.W. Act is required to be followed with utmost sincerity and not in a casual manner. In the instant case, the procedure has not been followed seriously or sincerely and has been followed in breach of the said provisions of Section 5 of the M.W. Act. Not only that there is unreasonable and uncalled for gap between the draft notification and the final notification, which also supports the submission about non-following the procedure as required by law.

(v) There is a total non-application of mind to the principles set out by the Hon'ble Apex Court in its various pronouncements for finding out the correct revision of rates of minimum wages for the workers and that vitiates the final notification.

(vi) There was an order made by the Bombay High Court in **Writ Petition No.1098/2004** in the case of **Cinematograph Exhibitors Association of India and another...Versus...The State of Maharashtra, decided on 19.10.2004**, under which the respondent/State was permitted to issue fresh notification, according to law, within a period of four months from the date of the said order. Though four months expired somewhere in the month of March, 2005, nothing was done by respondent no.1 and there is no explanation whatsoever for such a long delay in issuing final notification.

(vii) Before issuing final notification, the Government is required to take note of the existing industrial economic atmosphere, competition due to globalization and the fact that the products manufactured by the foreign companies and countries have entered the Indian market almost full-fledged,

posing a threat to the survival of the domestic industries.

(viii) As a matter of fact majority of the Cinema theatres in the State were required to be closed down due to advancement of film technology and the major change of the nature of cinema theatre industry. There are many such factors, which were required to be taken into consideration.

5. Perusal of draft notification and comparison of the same with the final notification in all these cases will clearly show that there is a notable departure. Then there is a long gap between the draft and final notification between them and total mismatch which has clearly frustrated the very object of issuance of draft notification, namely inviting objections and consideration thereof by the appropriate authority.

6. Advocate Shri Thakur took us through the draft and final notification in all these writ petitions and also demonstrated total changes occurring in these two notifications. There is no need for us to specify them here.



7. Advocate Shri Thakur then argued citing certain decisions, which we have gone through and considered that in the above fact situation, the Courts were compelled to strike down such notifications, which do not adhere to the pronouncements, made by the Hon'ble Apex Court from time to time.

8. Neutralization considering the lowest paid employee permissible is below 100% or with a benchmark of 100% and at any rate, the neutralization in any event cannot exceed 100%.

9. In all these cases, with the help of the charts produced by the respondents and by him, Advocate Shri Thakur, contended that the neutralization goes beyond 100% and even to the extent of 150%. It is not necessary for us to set out the details thereof hereunder since we have carefully considered the same. Advocate Shri Thakur explained the method of calculation for neutralization based on the decision in the case of Hindustan Lever Mazdoor Sabha...Versus...Hindustan Lever Ltd. and another, reported in 1990 LIC 950, affirmed by the Hon'ble Supreme Court. Learned Counsel for the petitioners

also cited the following decisions.

(a) AIR 1963 Supreme Court 806 (M/s Bhikusa Yamasa Kshatriya and another...Versus...Sangamner Akola Taluka Bidi Kamgar Union and others).

(b) AIR 1970 Supreme Court 2042 (Chandra Bhawan Boarding and Lodging, Bangalore...Versus...State of Mysore and another).

(c) 1992 (1) Supreme Court Cases 290 (Workmen Represented by Secretary...Versus...Reptakos Brett. & Co. Ltd. and another).

(d) AIR 1961 Supreme Court 895 (The Standard Vacuum Refining Co. of India...Versus...Its Workmen and another).

(e) AIR 1980 Supreme Court 31 (The Management of Shri Chalthan Vibhag Khand Udyog Sahakari Mandli Ltd....Versus...G.S. Barot and another).

(f) 1997 (1) L.L.J. 124 (Arimala Clinic...Versus...State of Kerala).

(g) 2005 (4) Mh.L.J. 1111 (Vibha Synthetics Pvt. Ltd. and others...Versus...State of Maharashtra and others).

(h) 1986 (II) CLR 443 (The N.M. Wadia Charitable Hospitals & Ors....Versus...State of Maharashtra and Ors.).

(i) 1987 (2) CLR 351 (The N.M. Wadia Charitable Hospital and Ors....Versus...State of Maharashtra and Ors.).

(j) 1995 (2) L.L.J. 779 (Sangli District Powerloom Owners' Association Ltd. & Ors....Versus...The State of Maharashtra & Ors.).

(k) 1998 (1) L.L.J. 1054 (M.P. Lime Manufacturing Asso....Versus...State of M.P.).

(l) 1992 (II) C.L.R. 447 (Achuthan...Versus...State of Kerala).

(m) 1990 Lab. I.C. 950 (Hindustan Lever Mazdoor Sabha...Versus...Hindustan Lever Ltd. and another).

(n) AIR 1995 Supreme Court 817 (Hindustan Lever Limited...Versus...B.N. Dongre and others).

(o) AIR 1955 Supreme Court 25 (Edward Mills Co. Ltd., Beawar and others...Versus...State of Ajmer and another).

(p) AIR 1978 Supreme Court 1113 (Shivraj Five Arts Litho Works and others....Versus...The State Industrial Court, Nagpur and others).

(q) AIR 1986 Supreme Court 125 (The Workmen employed by M/s. Indian Oxygen Ltd....Versus...M/s. Indian Oxygen Ltd.).

10. Per contra, Smt. Dangre, learned Additional Government Pleader for the State and Shri Meghe, learned Counsel for the workmen vehemently opposed these writ petitions, refuting all the contentions, advanced before us by the learned Counsel for the petitioners. They referred to Articles 38 and 43 of

the Constitution of India and the provisions of the M.W. Act and argued that the statement of objects and reasons pertaining to the Minimum Wages Act clearly show the genuine effort of the State Government to give the benefit of the constitutional scheme by implementing the Minimum Wages Act in its letter and spirit. They argued that the function of the State Government is legislative in nature when action to fix or revise the minimum wages is undertaken by it and therefore, the Courts should be loath in interfering with the same. Learned Counsel further relied upon the limited scope of judicial review and argued that the enquiry in the present proceedings cannot go beyond the tenets of law and therefore, examination of the details of modalities as argued by the learned Counsel for the petitioners would be beyond the scope of the permissible judicial review. The learned Counsel also relied on certain decisions.

11. Smt. Dangre, the learned Additional Government Pleader then argued that doctrine of neutralization has application in respect of special allowances or dearness allowances and has nothing to do with the revision of minimum wages. The submission

that there was a big gap between the draft notification and the final notification or that there was no proper procedure seriously followed by the Government is wholly misconceived. According to learned Additional Government pleader, the procedure required by Section 5 of the M.W. Act was scrupulously followed and objections were invited, which were considered by the appropriate authority and thereafter the notification was issued. Perusal of the hike in the wages also shows that the same was not at all exorbitant as tried to be shown by the learned Counsel for the petitioners, looking to the inflation and the rates of wages in respect of industries in particular concerned in these petitions and all other factors required to be taken into consideration in respect of which the submissions have already been made. Power to revise under Section 5 of the M.W. Act is vested in the State Government. Even if there was some delay in issuing the final notification after the issuance of draft notification that by itself would not vitiate the action and at any rate, the changes between the draft notification and the final notification sought to be shown as drastic are not so, for example; in the

case of Cinema Industry, the Cinema Industry does include multiplex theatres, touring talkies and so on and so forth. To say that there is a change in the final notification by change in the placement etc. of multiplex or touring talkies would hardly make any difference.

12. Advocate Shri Meghe submitted that notification of July 2003 was not even objected by the concerned petitioners and therefore, it is not correct to say there was no application of mind by the Government.

13. Smt. Dangre, the learned Additional Government Pleader then argued that residuary entry 65 is perfectly valid and cannot be struck down and at any rate, challenge to the same now at such a late stage when the entry was inserted in 1986 is stale and cannot be entertained. Learned Counsel for the respondents, thus, prayed for dismissal of writ petitions with costs.

Advocate Shri Meghe cited the following decisions.

(1) AIR 1969 Supreme Court 182 (M/s. Hydro (Engineers) Pvt. Ltd....Versus...The Workmen).

(2) 1975 (I) LLJ 211 (Tourist Hotel, Hyderabad...Versus...State of Andhra Pradesh and another).

(3) 1997 (I) LLJ 434 (Secunderabad Club...Versus...State of Andhra Pradesh).

14. We have heard Advocate Shri Thakur for the petitioners, learned Additional Government Pleader for the State and Advocate Shri Meghe for the workmen at length. We have gone through the entire record and proceedings of these writ petitions so also the judgments cited by the learned Counsel for the rival parties.

15. As to the concept of fixation of minimum wages or revision thereof and the modalities to be adopted so also the principles laid down by the Hon'ble Apex Court, we do not want to repeat the same in this judgment since we have sufficiently understood all those principles. In other words, we are fully aware of the principles laid down by the Hon'ble Apex Court from time to time in such matters and keeping in mind all those principles, we proceed to determine the issues involved in the present petitions.

16. At the outset, we would like to keep in mind the limitations on the scope of power of judicial review in the matters like revision/fixation of minimum wages. The constitution Bench in the case of ***U. Unichoyi and others...Versus...State of Kerala,*** reported in ***AIR 1962 Supreme Court 12*** had observed thus:

...When a Committee consisting of the representatives of the industry and the employees considers the problem and makes its recommendations and when the said recommendations are accepted by the Government, it would ordinarily not be possible for us to examine the merits of the recommendations as well as the merits of the wage structure finally notified by the Government.

In any event these are considerations which ordinarily cannot be entertained by us because obviously we are not sitting in appeal over the recommendations of the Committee or the notification following upon them.



17. Similarly, the Hon'ble Apex Court in the case of Ministry of Labour and Rehabilitation and another...Versus...Tiffin's Barytes Asbestos and Paints Ltd. and another, reported in AIR 1985 Supreme Court 1391 has had to say thus :

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

From the above, it is clear that the Courts do not possess expertise in such matters and it would be impermissible to go in the calculations and the figures etc.. To sum up, the limited scope of enquiry would be as to whether the decision of the State Government before issuing final notification was taken on the basis of considerations, which are relevant or as to whether the decision is vitiated by irrelevant considerations.

18. Similarly, in the case of *Tourist Hotel, Hyderabad...Versus...State of Andhra Pradesh and another*, reported in *1975 I L.L.J. 211*, the Division Bench of the Andhara Pradesh High Court in reference to the nature of Section 5 in paragraph nos.34 and 35 held thus:

34. Looking to S.5 in the background of the scheme of the Act, we are, however, of the view that the exercise of power under S. 5 by the Government is neither administrative act nor is it a quasi-judicial act. It is a legislative function delegated to the Government by the Parliament under S. 5 of the Act. It is every common nowadays for statutes to

empower Government to determine minimum rates of wages by a subordinate legislation.

35. We do not think that anything worthwhile turns upon the question whether the exercise of the power under S. 5 is administrative or legislative in character. There is only a hazy borderline between legislation and administration, and the assumption that they are two fundamentally different forms of power is misleading. There are of course some obvious general differences between the two. The distinction between legislative and administrative acts is usually expressed as being a distinction between the general and the particular. It is easy to see that legislative power is the power to lay down the law for the people in general whereas administrative power is the power to lay down the law for them individually, or in some particular case. The idea, however, that a clear division can be made is a legacy from an older era of political theory.

In the light of this decision, it appears that the action of the State Government under Section 5 of the M.W. Act would neither be

administrative nor quasi judicial but would take the shape of legislative action.

19. Apropos first submission made by Advocate Shri Thakur about the validity of entry 65 or putting of textile industry under the head of factories, we do not find that the said entry would be rendered ultra vires to Article 14 of the Constitution of India. The wisdom of the legislature as to why textile industry was classified under the head of factories cannot be gone into. Merely because textile industry has been very old industry besides being one of the major industries in the State of Maharashtra and was not given its due importance for the purposes of putting the said textile industry with independent entry, the classification, thus, made would become arbitrary or violative of Article 14 of the Constitution of India, does not appeal to us. Textile industry is also a factory and there is no material on record placed in the petitions as to why such classification of textile industry under the head 'factories' can be said to be impermissible. We, therefore, do not think that entry 65 is ultra vires as contended before us.

20. Next, the submission that Section 5 of the M.W. Act and the procedure incorporated therein has not been followed or the same was casually dealt with by the Government does not impress us. There is no dispute that the draft notification was issued by the Government inviting objections and there are proceedings on record, which show that the advisory committee had discussed the issues raised before it and then made recommendations to the Government. Section 5 requires the said major procedure to be followed since the Government has been given a choice to adopt the modality under sub clause (a) of Sub Section 1 of Section 5 or sub clause (b) of Sub Section 1 of Section 5 of the M.W. Act. In the instant case, the Government followed the procedure contemplated by sub clause (b) of Sub Section 1 of Section 5 and then also followed the mandate of proviso to Sub Section 2 of the M.W. Act. We, therefore, find that the procedure under Section 5 of the M.W. Act was duly followed. As to the delay in issuance of draft notification and final notification, we do not think so, nor any prejudice has at all been shown by the petitioners for the delay. On the

contrary, as a matter of fact because of the stay granted by this Court in all these writ petitions, the real prejudice has been caused to the workmen, who were to be the beneficiaries. Apart from that mere delay in issuance of final notification would not vitiate the final notification. Even the Government has followed the procedure and complied with the statutory requirements before issuing the final notification. In fact, the delay on the part of the Government in issuing final notification can be said to have benefited the petitioners. The Government having considered the recommendations of the advisory committee and then issued the final notification would be enough compliance of the statutory requirements. As to the order of the Bombay High Court dated 19.10.2004 in Writ Petition No.1098/2004, we find that though it is true that the Government did not proceed to issue final notification within four months from the date of order that by itself would not affect the validity of the notification issued later in point of time. At the most, it could be said there was breach of the said order of the High Court.

21. The submission made by Advocate Shri Thakur about non-consideration of the competition or the closure of the cinema theatres or slack industrial growth or the less growth rate etc. or the fact that the products manufactured by the foreign companies have entered into Indian market, does not appeal to us. It is not possible for us to appreciate that the State Government was not alive to above considerations or factors vehemently put forth by Advocate Shri Thakur. It is the function of the executive to take into consideration day-to-day, month-to-month and year-to-year industrial activities, competition and the inflation and the benefit of presumption in favour of the Government will have to be given to it in the absence of any specific material brought to our notice by the petitioners. It cannot be said that the Government has not been alive to the aforesaid factors before issuing final notification. We also do not believe that the Government was not aware about the closure of large number of cinema theatres in the State because of the advancement in film technology and so on and so forth. On the contrary, the fact that the Government inserted entry of multiplex cinema in

the final notification shows that the Government has been fully aware about the problems faced by the owners of theatres and the workers in the State of Maharashtra.

22. Advocate Shri Thakur has also challenged the impugned notification on the ground that if wages are fixed as per the said notification, it would be amounting to 100% neutralization, which is contrary to the principles of wage fixation, laid down by the Hon ble Supreme Court. In the case of Central Circuit Cine Association i.e. Writ Petition No.1005/2009, it is the contention of the petitioner that the comparison of minimum wages prescribed in the first notification fixing minimum wages dated 5.3.1983, draft notification 28.1.2005 and final notification dated 2.1.2009 the increase is in manifold and exorbitantly high and by providing cost of living allowance linked to consumer price index, the total wage package in the base year against the further increase in cost of living adds to high costs. It is also argued that by the revision in question, the State has provided for 100% nay more than 100% neutralization. Advocate Shri Thakur has also argued



that the calculation of 100% neutralization factor of the State Government is erroneous. To demonstrate, he has produced before us a statement, showing the working of neutralization of wages in writ petition No.5301/2010 i.e. in case of Birla Cotsyn (India) Limited, which pertains to textile industry. The said industry falls within the residuary entry 65 of the Schedule to the Minimum Wages Act. To demonstrate the learned Counsel for petitioner contends that in this particular industry the date of first notification when the minimum wages was fixed was 6.12.1996 and therefore base year is 1996. He further contends that the base index No. in December, 1996 is fixed at 343 by taking average consumer price Index number in respect of 10 centres in State of Maharashtra for working class (new series 1982-100) he has calculated the wage applicable to unskilled worker in Zone III. He calculated in the following manner.

(a) In zone III	For unskilled worker
Minimum Basic wages per month in base year 1996	Rs. 920=00

Special Allowance as  
Declared by Government  
& payable per month in  
December, 1996

Rs. 247=00

-----  
Total Rs. 1167=00

Thus, the total pay packet as on 6.12.1996  
Rs. 1167=00 per month for unskilled employee in  
Zone III.

(b) Total pay packet Rs. 1167=00

C.P.I. Rs. 3.40

Therefore for 100% neutralization multiplier  
is Rs. 3.40 per point rise over C.P.I. 343.

(c) As on 20.7.2010, the date of impugned  
notification, the Average index for 10 centers in  
Maharashtra was 734. The C.P.I. increase by 391 points  
(734-343=391)

Increase in C.P.I. X Multiplier for 100%  
neutralization

391 x Rs 3.40 = Rs 1329.40

Total per month pay packet as on 6.12.1996

Rs. 1167=00

Special allowance for increase of 391 points of C.P.I. by applying Multiplier of Rs 3.40(100%neutralization) Rs.1329=00

Total Rs.2496=00

(d) As per impugned notification as on 20.7.2010 basic Wages for unskilled Employee for Zone III.

Rs. 3900=00 per month  
 Rs. 2496=40 : 3900=00 : 100  
 Rs. 3900 x 100  
 ----- = 156.22 =156% neutralization  
 Rs. 2496.40

Thus, according to Advocate Shri Thakur it amounts 156% neutralization, which is not permissible.

As against this, Smt. Dangre, the Additional Government Pleader has produced a chart before us to demonstrate that the neutralization factor in no case is 100%. In the said chart for the residuary entry in respect of textile industry the percentage of neutralization by the Government notification is arrived at 98.87%. Smt. Dangre, the Additional Government Pleader has calculated the said neutralization factor by demonstrating that the lowest

paid unskilled workers minimum basic wages as per the impugned notification dated 20.7.2011 is fixed at Rs.3900/- per month. The basic index at which the minimum wages are fixed (in 1982- 100 series) is 732. She argued that for arriving neutralization factor the lowest workers minimum wages are divided by basic index and percentage arrived at 5.31 and if the multiplication factor of 5.31 was taken, it would give only 100% neutralization. However, in the impugned notification the actual factor taken for neutralization is 5.25 and this gives rise to neutralization of 98.87% which does exceed 100%. According to Smt. Dangre, the learned Additional Government Pleader the difference in the calculation made by Advocate Shri Thakur is due to the difference in the C.P.I. index right from the first notification of 1996. According to her the base index number in 1996 was 343 whereas in the impugned notification the average index as 734 and therefore, Advocate Shri Thakur has calculated the C.P.I. increase by 391 points to 1996 to 2010. The calculation is totally erroneous since Advocate Shri Thakur has not taken into consideration the revision of wages done in

between this period i.e. 30.6.2004 when the basic wage was fixed at 2600 + Dearness allowance of Rs.549/- and the wages were fixed at Rs.3149.40. According to Smt. Dangre, the Additional Government Pleader since the minimum wages are to be fixed for a future period, there is no need to take into consideration the C.P.I. number in the base and for calculating 100% neutralization factor this wage fixed by the present notification divided by basic index reached at that point when these minimum wages are fixed are to be considered to arrive at neutralization factor. According to her even if these are verified, it can be demonstrated that it does not exceed 100%. The relevant extract of the chart produced by Smt. Dangre, the learned Additional Government Pleader in respect of the textile industry for which Advocate Shri Thakur had given the calculations is cited below :

Name of Scheduled employment	Lowest paid unskilled workers minimum basic wages	Basic index at which minimum wages are fixed (1982-100)	Neutralization (100%) (Lowest workers minimum wages) basic index	Actual factor taken for neutralization in the notification	% of neutralization as per Govt. notification

Residency Factory notificat -ion dt. 20.7.2010	Rs.3900 p.m.	734	3900=5.31	5.25	$\frac{5.25 \times 100}{5.31} =$ 98.87%
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We have carefully considered the above submissions on the aspect of neutralization advanced by both sides. The submission made by Advocate Shri Thakur and the calculations made by him with reference to the only first revision rather than the revision made in the year 2004 does not appeal to us. In our opinion, it will be futile to refer to the first revision of the year 1996 when the very purpose of neutralization is to deface the effect of inflation. It would be appropriate to refer to the last revision and in the instant cases, namely of the 2004 to find out the correct neutralization to avoid the effect on the workmen in respect of inflation. Thus, we hold that the revision of 2004 was relevant for finding out the correct neutralization rather than referring to the one of the year 1996, namely the first revision. Keeping in mind the aforesaid aspect, we uphold the submission made by Smt. Dangre, the Additional Government Pleader that neutralization is

well below 100% as shown by her in the chart produced before us.

23. Though Advocate Shri Thakur has cited various judgments before us on the questions argued before us, we think it not necessary to refer to the same since in fact we have followed the principles laid down in those judgments before deciding the present matters.

24. In the result, we do not find any merit in these writ petitions. Hence, we make the following order.

O R D E R

Writ Petition Nos.3265/2007, 4279/2007, 1005/2009 and 5301/2010 are dismissed. No order as to costs.

**JUDGE**

**JUDGE**

At this stage, Advocate Shri Thakur appearing for the petitioners seeks continuation of interim orders already operating for a period of eight weeks.

Advocate Shri Meghe and Additional Government Pleader Smt. Dangre appearing on behalf of respective respondents are strongly opposing the request.

However, in the interest of justice, the interim order already operating is continued for a period of eight weeks from today. The same shall cease to operate automatically on expiry of the said period.

**JUDGE**

**JUDGE**

SSW