

THE MINIMUM WAGES ACT, 1948

(Act 11 of 1948, dt. 15-3-1948)

[As amended vide SO 1573(E), dt. 3-11-2005]

An Act to provide for fixing minimum rates of wages in certain employments.

WHEREAS it is expedient to provide for fixing minimum rates of wages in certain employments;

It is hereby enacted as follows:—

1. Short title and extent

(1) This Act may be called the Minimum Wages Act, 1948.

(2) It extends ¹[to the whole of India]²[xxx]

COMMENTS

A provision for minimum wages of employees, more appropriately and accurately directly comes within the scope of Entry 27 in List III of Sch. VII to the Constitution of India. So that to an extent that provision may shade into the field in Entry 13 of List II so far as it affects the wages of employees of a local authority, but it does not entrench upon that entry and is not a legislation under that entry. In this approach it is apparent that the true nature and character of Act No. 2 of 1948 making provision for minimum wages and for machinery for the payment of the same is to bring that statute strictly and squarely within the ambit and scope of Entry 27 of List III only and merely because in one respect it shades into the field of Entry 13 of List II, it cannot be held to be unconstitutional. It is to a legislation within the scope and ambit of Entry 13 in List II.

The purpose of Minimum Wages Act is to provide that no employer shall pay to workers in certain categories of employment wages at rates less than the minimum wages prescribed by notifications under the Act. The provisions of the Minimum Wages Act are intended to achieve the object of doing social justice to workmen employed in the scheduled employments by prescribing minimum rates of wages for them, and so in construing the said provisions the court should adopt what is sometimes described as beneficial rule of construction.

The object of the Act as stated in the preamble is to provide for fixation of minimum wages in certain employments to prevent exploitation of ignorant or less organised or less privileged members of society by the capitalist class. The Directive Principles of State Policy direct the State Government to endeavour to secure to all workers, agricultural, industrial or otherwise not only bare physical subsistence but a living wage and conditions of work ensuring a decent life and full enjoyment of leisure. The Directive Principles lay down the foundation of appropriate social structure wherein the labour will have a place of dignity legitimately due to it in lieu of its contribution to the progress of the national economic prosperity.

Legislature had undoubtedly intended to apply the Act to industries or localities in which because of reasons, such as unorganised labour or absence of machinery for regulation of wages, the wages paid to them were in the light of the general level of wages and subsistence level inadequate.

¹ Substituted for “all the provinces of India” by the A.O. 1950.

² Words “except the State of Jammu and Kashmir” omitted by Act 51 of 1970, w.e.f. 1-9-1971.

2. Interpretation

In this Act, unless there is anything repugnant in the subject or context, —

- ¹[(a) “adolescent” means a person who has completed his fourteenth year of age but has not completed his eighteenth year;
- (aa) “adult” means a person who has completed his eighteenth year of age;]
- (b) “appropriate Government” means,—
 - (i) in relation to any scheduled employment carried on by or under the authority of the ²[Central Government or a railway administration], or in relation to a mine, oilfield or major port, or any corporation established by ³[a Central Act], the Central Government, and
 - (ii) in relation to any other scheduled employment, the State Government;
- ⁴[(bb) “child” means a person who has not completed his fourteenth year of age;]
- (c) “competent authority” means the authority appointed by the appropriate Government by notification in its Official Gazette to ascertain from time to time the cost of living index number applicable to the employees employed in the scheduled employments specified in such notification;
- (d) “cost of living index number” in relation to employees in any scheduled employment in respect of which minimum rates of wages have been fixed, means the index number ascertained and declared by the competent authority by notification in the Official Gazette to be the cost of living index number applicable to employees in such employment;
- (e) “employer” means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, and includes, except in sub-section (3) of section 26,—
 - (i) in a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person named under ⁵[clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948)], as manager of the factory;
 - (ii) in any scheduled employment under the control of any Government in India in respect of which minimum rates of wages have been fixed under this Act, the person or authority appointed by such Government for the supervision and control of employees or where no person or authority is so appointed, the head of the department;
 - (iii) in any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act, the person appointed by such authority for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority;
 - (iv) in any other case where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under

¹ Substituted by Act 61 of 1986, w.e.f. 23-12-1986.

² Substituted for “Central Government, by a railway administration” by Act 30 of 1957, w.e.f. 17-9-1957.

³ Substituted for “an Act of the Central Legislature” by the A.O. 1950.

⁴ Inserted by Act 61 of 1986, w.e.f. 23-12-1986.

⁵ Substituted for “clause (e) of sub-s. (1) of s. 9 of Factories Act, 1934 (25 of 1934)” by Act 26 of 1954, w.e.f. 20-5-1954.

this Act, any person responsible to the owner for the supervision and control of the employees or for the payment of wages;

- (f) "prescribed" means prescribed by rules made under this Act;
- (g) "scheduled employment" means an employment specified in the Schedule, or any process or branch of work forming part of such employment;
- (h) "wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment ¹[and includes house rent allowance], but does not include—
 - (i) the value of—
 - (a) any house, accommodation, supply of light, water, medical attendance, or
 - (b) any other amenity or any service excluded by general or special order of the appropriate Government;
 - (ii) any contribution paid by the employer to any pension fund or provident fund or under any scheme of social insurance;
 - (iii) any travelling allowance or the value of any travelling concession;
 - (iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or
 - (v) any gratuity payable on discharge;
- (i) "employee" means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out-worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of the Armed Forces of the ²[Union].

STATE AMENDMENTS

Madhya Pradesh

(1) In section 2 of clause (e), for the words, brackets and figures "and includes, except in sub-section (3) of section 26", substitute the words, brackets and figures "and includes a person deemed to be employer under section 22CC and further includes, except in sub-section (3) of section 26".—[*Vide Madhya Pradesh Act 11 of 1959, w.e.f. 1-6-1959 and Madhya Pradesh Act 23 of 1961, w.e.f. 23-6-1961*]

(2) In section 2, in clause (i) shall be re-numbered as clause (ee) and to that clause following Explanation shall be added:—

"Explanation: An employee who has been dismissed, discharged or retrenched from employment or whose employment has been otherwise terminated shall, in respect of all claims arising out of payment of less than the minimum rates of wages or in respect of the payment of remuneration for days of rest or for work done on such

¹ Inserted by Act 30 of 1957, w.e.f. 17-9-1957.

² Substituted for "Crown" by the A.O. 1950.

days under clauses (b), (c) of sub-section (1) of section 13 or wages at the overtime rate under section 14 during the period of his employment, be deemed to be an employee for the purpose of this Act".—[*Vide Madhya Pradesh Act 23 of 1961, w.e.f. 23-6-1961*]

Maharashtra

In section 2, in clause (i) for the words "and management of that other person", substitute the words "and management of that other person; and includes for the purposes of sections 20, 21, 22A, 22B, 22C and 22D any person who has been an employee and who has ceased to be so by reason of superannuation, retirement, dismissal, removal, discharge, termination of his service, or otherwise howsoever."—[*Vide Maharashtra Act 3 of 1963, w.e.f. 14-1-1963*].

COMMENTS

Sec. 2(b) : The place where the employment is carried on and for whose benefit the employment is carried on and under whose control the work connected with the employment is carried out are the deciding factors in finding out whether the appropriate Government is the Central or the State Government. The legislative policy aims at a statutory fixation of minimum wages for the work carried on by a private contractor for the Central Government or the Railways or the State Government. Where the work was being carried out by or under the authority of the Railways and the fact that the contractor had employed the workmen was not a deciding factor because actually the work was carried by or under the authority of Railways only.

The definition of "appropriate Government" in the Industrial Disputes Act is not in *pari materia* with the definition thereof given in the Minimum Wages Act as the definition in the Industrial Disputes Act is in relation to industry carried out by or under the authority of the Central Government or by a Railway company, whereas the definition in the Minimum Wages Act is in relation to scheduled employments carried on by or under the Central Government or Railways etc., is the Central Government and in relation to any other scheduled employment the State Government. In the first case the deciding factor as to whether an industry is carried on by or under the authority of Central Government or State Government or any Railway company, etc., whereas in the second one it is in relation to scheduled employment carried on by or under the authority of the Central Government or Railways, etc. If it does not fall under cl. (1) of s. 2(b) of the Act, the State Government is the appropriate authority. Decision rendered under the Industrial Disputes Act cannot be held to cover the issue involved in the case on hand as to appropriate Government under the Minimum Wages Act. The Court held that the Central Government is the appropriate Government and the minimum wages notification issued by it is applicable to wages payable to workmen engaged in building operations for constructing staff quarters for the Railways.—*Regional Labour Commissioner, Bangalore v. T.K. Varkey and Co. 1992 (1) LLJ 547*

Sec. 2(e) : Clause (e) of section 2 of the Minimum Wages Act defines an employer to mean any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act. As per the definition it also includes among other cases, a person appointed by a local authority for the supervision and control of employees in the case of any scheduled employment under such local authority. A person employing persons in any scheduled employment is not an employer within the meaning of the Act unless in respect of that employment, minimum wages have been fixed under the Act.

In a case the work-charged tube-well operators of a State Govt. were transferred to local bodies, i.e., panchayat administration, discussing the applicability of the Payment of Wages Act to the case, the Supreme Court held that tube-well operators were employed in a scheduled appointment under local authority and Sch. Part 1, and therefore, item 6 of the Minimum Wages Act was applicable. The panchayats were the employers within the purview of s. 2(e) of the Minimum Wages Act as well as s.

10(2) of the Gujarat Panchayat Act. The employees were held entitled to all benefits envisaged in the Minimum Wages Act.—*Patel Ishwarbhai Prahladbhai v. Taluka Development Officer (1983) 1 SCC 403*

Sec. 2(g) : According to cl. (g) of s. 2, a scheduled employment means an employment specified in the schedule or any process or branch of work forming part of such employment.

Vanaspati ghee and ghee obtained from animal fat is oil. Various processes such as neutralization, bleaching, deodorisation, hardening and hydrogenation to which oil is subjected to for conversion into vanaspati do not change its basic characteristic and the furnished product remains a cooking medium vegetable fat as the main ingredient, the employment in a vanaspati manufacturing concern is being covered by item 5 and therefore a scheduled employment within the purview of section 2(g).—*Champak Lal H. Thakkar v. State of Gujarat (1980) 4 SCC 329*

In case The Ahmedabad Panjrapole Sanstha was engaged in taking care of lame and sick cattle, raising cattle, improving the breed, running a dairy farm, supplying milk and ghee to the public and having land in different villages from which they earned rental and other revenue by sale of agricultural produce, wood, wool and manure, the point to be determined was if the Sanstha was a commercial establishment to which the Minimum Wages Act applied. It was held that having regard to the activities of Sanstha it is a commercial establishment attracting the Minimum Wages Act. The Vastrapur branch of the Sanstha is not a separate establishment and the fact that the other branches have not demanded minimum wages does not effect the right of the workmen.

Sec. 2(i) : Unless there is a relationship of master and servant between two persons and a contract of employment between them one cannot be said to be an employee of the other. The determination whether a person is a servant or an agent on the one hand or an independent contractor on the other depends on whether or not the employer not only determines what has to be done but retains control of the actual performance, in which case the person is a servant or agent.

The word "employee" in section 2(i) does not include an ex-employee. An ex-employee is not competent to file a claim application and only an employee in actual employment can do so.—*Mahiya v. State of Haryana 1982 (1) SLR 26*

3. Fixing of minimum rates of wages

¹[(1) The appropriate Government shall, in the manner hereinafter provided,—

²[(a) fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either Part by notification under section 27:

PROVIDED that the appropriate Government may, in respect of employees employed in an employment specified in Part II of the Schedule, instead of fixing minimum rates of wages under this clause for the whole State, fix such rates for a part of the State or for any specified class or classes of such employment in the whole State or part thereof;]

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

³[PROVIDED that where for any reason the appropriate Government has not reviewed the minimum rates of wages fixed by it in respect of any scheduled employment within any interval of five years, nothing contained in this clause shall be

¹ Substituted by Act 26 of 1954, w.e.f. 20-5-1954.

² Substituted by Act 31 of 1961, w.e.f. 28-8-1961.

³ Inserted by Act 30 of 1957, w.e.f. 17-9-1951.

deemed to prevent it from reviewing the minimum rates after the expiry of the said period of five years and revising them, if necessary, and until they are so revised the minimum rates in force immediately before the expiry of the said period of five years shall continue in force.]

(1A) Notwithstanding anything contained in sub-section (1), the appropriate Government may refrain from fixing minimum rates of wages in respect of any scheduled employment in which there are in the whole State less than one thousand employees engaged in such employment, but if at any time, ¹[x x x] the appropriate Government comes to a finding after such inquiry as it may make or cause to be made in this behalf that the number of employees in any scheduled employment in respect of which it has refrained from fixing minimum rates of wages has risen to one thousand or more, it shall fix minimum rates of wages payable to employees in such employment ²[as soon as may be after such finding].]

(2) The appropriate Government may fix,—

- (a) a minimum rate of wages for time work (hereinafter referred to as “a minimum time rate”);
- (b) a minimum rate of wages for piece work (hereinafter referred to as “a minimum piece rate”);
- (c) a minimum rate of remuneration to apply in the case of employees employed on piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis (hereinafter referred to as “a guaranteed time rate”);
- (d) a minimum rate (whether a time rate or a piece rate) to apply in substitution for the minimum rate which would otherwise be applicable, in respect of overtime work done by employees (hereinafter referred to as “overtime rate”).

³[(2A) Where in respect of an industrial dispute relating to the rates of wages payable to any of the employees employed in a scheduled employment, any proceeding is pending before a Tribunal or National Tribunal under the Industrial Disputes Act, 1947 (14 of 1947) or before any like authority under any other law for the time being in force, or an award made by any Tribunal, National Tribunal or such authority is in operation, and a notification fixing or revising the minimum rates of wages in respect of the scheduled employment is issued during the pendency of such proceeding or the operation of the award, then, notwithstanding anything contained in this Act, the minimum rates of wages so fixed or so revised shall not apply to those employees during the period in which the proceeding is pending and the award made therein is in operation or, as the case may be, where the notification is issued during the period of operation of an award, during that period; and where such proceeding or award relates to the rates of wages payable to all the employees in the scheduled employment, no minimum rates of wages shall be fixed or revised in respect of that employment during the said period.]

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

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

¹ Words “whether before or after the expiry of any time specified in sub-section (1)” omitted by Act 31 of 1961, w.e.f. 28-8-1961.

² Substituted for “within one year from the date on which it comes to such findings”, *ibid.*

³ Inserted, *ibid.*

- (i) different scheduled employments;
- (ii) different classes of work in the same scheduled employment;
- (iii) adults, adolescents, children and apprentices;
- (iv) different localities;

¹[(b) minimum rates of wages may be fixed by any one or more of the following wage periods, namely:—

- (i) by the hour,
- (ii) by the day,
- (iii) by the month, or
- (iv) by such other larger wage-period as may be prescribed;

and where such rates are fixed by the day or by the month, the manner of calculating wages for a month or for a day, as the case may be, may be indicated:]

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

STATE AMENDMENTS

Bihar

In section 3, omit sub-section (2A).—[*Vide Bihar Act 5 of 1983, w.e.f. 30-1-1983*]

Gujarat

In section 3, in sub-section (1A), add the following proviso namely:—

"PROVIDED that, where the State Government had for any reason not fixed the minimum rates of wages in respect of any scheduled employment within one year from the date on which it came to a finding as aforesaid in respect of such employment, nothing contained in this sub-section shall, after the commencement of the Minimum Wages (Gujarat Amendment) Act, 1961, prevent the State Government from fixing the minimum rates of wages in respect of such employment even after the expiry of the said period of one year."—[*Vide Gujarat Act 22 of 1961, w.e.f. 18-5-1961*]

Kerala

In its application to the fixation of minimum rates of wages in respect of employments specified in Part I and Part II of the Schedule to the Act in relation to which the appropriate Government is the State Government, shall have effect in the State of Kerala 'subject to the amendments specified below. In section 3, in sub-section (1), in the opening words, for the words "The appropriate Government", substitute the words "The State Government".—[*Vide Kerala Act 18 of 1960, w.e.f. 2-9-1960*]

Madhya Pradesh

(1) In section 3, in sub-section (1), insert the following proviso, namely:—

"PROVIDED that where for any reason the State Government has not fixed the minimum rates of wages in respect of any scheduled employment within the period specified in this sub-section, the State Government may, by notification, extend from time to time, the said period by a further period not exceeding one year in the aggregate:

PROVIDED FURTHER that the State Government may, instead of fixing minimum rates of wages under this sub-section for the whole State, fix such rates for a part of the State or for any specified class or classes 'of such employment or category or categories of employees in such employment in the whole State or part thereof."

¹ Substituted by Act 30 of 1957, w.e.f. 17-9-1957.

(2) After sub-section (1A), add the following sub-section, namely:—

"(1B) Notwithstanding anything contained in sub-section (1), the State Government may, at the time of review under clause (b) of that sub-section—

- (a) split up the class or classes of such employment or category or categories of employees in such employment or amalgamate the class or classes of such employment or category or categories of employees in such employment and revise the minimum rates of wages fixed in respect thereof under sub-section (1);
- (b) fix the minimum rates of wages for the class or classes of such employment or category or categories of employees in such employment as were not in existence at the time of fixing the minimum rates under sub-section (1) or were in existence but were not covered by such fixation;
- (c) fix the minimum rates of wages, mentioned under clause (a) or clause (b) for the whole State or for any such part thereof for which they were not fixed under sub-section (1) or extend the minimum rates fixed under sub-section (1) for any part of the State, to the whole State or any other part of the State, to the whole State or any other part thereof."

(3) In section 3, in sub-section (3), in clause (a), in sub-clause (iii), after the word "adults" insert the words and brackets "(males and females)"—[*Vide Madhya Pradesh Act 23 of 1961, w.e.f. 23-6-1961*]

Maharashtra

(1) In section 3, in sub-section (1 A), add the following proviso, namely:—

"PROVIDED that, where the State Government has not for any reason fixed the minimum rates of wages in respect of any scheduled employment within one year from the date on which it came to a finding as aforesaid in respect of such employment, nothing contained in this sub-section shall, after the commencement of the Minimum Wages (Maharashtra Amendment) Act, 1960, prevent the State Government from fixing the minimum rates of wages in respect of such employment even after the expiry of the said period of one year."—[*Vide Maharashtra Act 10 of 1961, w.e.f. 15-2-1961*]

(2) In section 3, in sub-section (1) in clause (a), for the proviso, substitute the following proviso, namely:—

"PROVIDED that the State Government may, instead of fixing the minimum rates of wages under this clause for the whole State, fix such rates for a part of the State or for any specified class or classes of such employment in the whole of the State or any part thereof and in the case of an employment under any local authority, or class of local authorities."—[*Vide Maharashtra Act 3 of 1963, w.e.f. 14-1-1963*]

COMMENTS

The committee appointed by Government has merely set out different claims made by various unions and representatives of the employers. Why it has preferred one set of view or the other has not been explained. In fact the very concept of minimum wage has been misunderstood by the committee. The minimum requirement of food, clothing, medicine and housing of a press worker has not been taken into consideration by the committee. In the absence of such consideration of requirements which go into the making of the minimum wage, it cannot be said that the committee has formulated what can be understood as "minimum wage as contemplated by the Act". The fact that the worker's representatives have been remiss in the discharge of their duties cannot be a reason for sustaining the report on the assumption that they must have been on guard to protect the interest of the workers. The unanimity in the view of the members is again no reason for sustaining what is an *ipse dixit*, and a report which proceeds on that basic error vis-a-vis the concept of minimum wages cannot be sustained.—*Mumbai Kamgar Sabha v. State of Maharashtra 1992 (1) LLJ 169*

Minimum Wages Act, 1948, aims to prevent exploitation of labour and authorizes the appropriate Government to fix minimum wages for employment covered by the Schedule. In an under-developed country having a problem of under-employment on a large scale, it is not unlikely that labour may offer to work even on starvation wages. The capacity of the employer need not be considered in prescribing minimum wage rate which a welfare State assumes every employer must pay before he employs labour. The court observed that the advice of the committee is to be taken into consideration before fixing minimum rate of wages if such a committee is appointed or the representations on its proposals made by the persons who are likely to be affected thereby. Advisory Board has been made obligatory which have an equal number of representatives besides some independent members who are to take a fair and impartial view of the matter and this provision constitutes an adequate safeguard against any hasty and capricious decision by the appropriate Government. It would be unjust to interfere with the notification fixing minimum wages as the wages fixed *per se* appears to be fair. The interference on grounds which are not substantial would be repugnant to the entire object or purpose of the Act and opposed to the well settled principle of exercising extra-ordinary jurisdiction under art. 226 of the Constitution.—*Manmohan Singh v. State of Punjab 1993 (2) LLJ 155*

It is not for the Labour Court or Tribunal to fix the minimum rate of wages and while fixing the fair rate of wages, the courts or Tribunals take into consideration the minimum rate of wages fixed by Government and where the Government has not fixed the minimum rate of wages then the courts or Tribunals ascertain for themselves that would be the minimum rate of wages where the minimum rates of wages are fixed by the appropriate Government under the provisions of the Minimum Wages Act then the Labour Courts or Tribunals are not to fix minimum rate of wages. If accurate expression is used, then it may be said that the fixation of the minimum rate of wages is done only by the Government. Labour Courts and Tribunals do not fix minimum wages for the purpose of deciding fair wages.—*Transport Corporation of India v. State of Maharashtra 1993 (2) LLJ 365*

Even if the number of employees in an industry in the whole State is less than 1000, section 3(1A) does not prevent the State Government from fixing rates of minimum wages for any scheduled employment. The power being discretionary the State Government can fix the minimum wages in respect of such employment.—*Ram Kumar Misra v. State of Bihar 1984 (2) SCC 451*

The Act is aimed at preventing exploitation of workers through the medium of fixation of minimum wages which the employer must pay. Section 3(1A) which is in two parts starts with the *non obstante* clause and the first part thereof permits the appropriate Government to refrain from fixing the minimum wages as required in section 3(1) if the strength of employment is less than one thousand. The second part of the sub-section requires fixation of minimum wages of the strength if any scheduled employment is over one thousand and if this is not done the employees in a scheduled employment have a right to get the minimum rates of wages fixed and this right can be enforced. Section 3(1A) does not prevent the appropriate Government from fixing the minimum rates of wages even if the number of employees is less than one thousand. The appropriate Government has the jurisdiction to withdraw the minimum wages earlier fixed and this power to rescind the wages once fixed without any express provisions in that regard in section 3(1A) of the Act can be inferred with reference to section 21 of the General Clauses Act.

4. Minimum rate of wages

(1) Any minimum rate of wages fixed or revised by the appropriate Government in respect of scheduled employments under section 3 may consist of—

- (i) a basic rate of wages and a special allowance at a rate to be adjusted, at such intervals and in such manner as the appropriate Government may direct, to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers (hereinafter referred to as the “cost of living allowance”); or

- (ii) a basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concessional rates, where so authorised; or
- (iii) an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

(2) The cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concessional rates shall be computed by the competent authority at such intervals and in accordance with such directions as may be specified or given by the appropriate Government.

STATE AMENDMENT

Madhya Pradesh

Section 11 renumbered as section 4A.—[*Vide Madhya Pradesh Act 23 of 1961, w.e.f. 23-6-1961*]

COMMENTS

Sec 4(1) postulates that the minimum wage fixed or revised under section 3 may consist of a basic rate of wages and a special allowance at a rate to be adjusted at such interval and in such manner as the appropriate Government may direct. To accord as nearly as practicable with the variation in the cost of living index number applicable to such workers or a basic rate of wages with or without the cost of living allowance and the cash value of the concessions where so authorised or all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any. For neutralising the cost of living by dearness allowance it has to be kept in view if there has been an increase or decrease in the basic wage over a given period of time for determining if the neutralising factor adopted by the State Government exceeds 100% or 200% or 300% in a given situation. On the plain terms of section 4(1) of the Act, the payment of D.A. would arise only if the basic wage fixed for a particular category of workmen fell short of the minimum wage which the State Government has to fix taking into account the needs of the worker's family consisting of three consumption units.—*Karnataka Film Chamber of Commerce v. State of Karnataka 1987 (1) LLJ 182*

¹[5. Procedure for fixing and revising minimum wages

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

- (a) appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision, as the case may be, or
- (b) by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected thereby and specify a date, not less than two months from the date of the notification, on which the proposals will be taken into consideration.

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

¹ Substituted by Act 30 of 1957, w.e.f. 17-9-1957.

PROVIDED that where the appropriate Government proposes to revise the minimum rates of wages by the mode specified in clause (b) of sub-section (1), the appropriate Government shall consult the Advisory Board also.]

STATE AMENDMENTS

Assam

In section 5, in sub-section (1), in clause (a) add at the end the following proviso, after adding a colon after the word "be" and deleting the comma and the word "or" namely:—

"PROVIDED the committees and sub-committees as so appointed may advise the appropriate Government in respect of fixation of wages on interim measure after holding such preliminary enquiries as the necessary committee or the sub-committee, as the case may be, considers in this behalf and the appropriate Government after considering such advice may fix the wages pending the fixation of the minimum rate of wages as required under sub-section (2), or."—[*Vide Assam Act 19 of 1964, w.e.f. 11-8-1964*]

Madhya Pradesh

The M.P. Minimum Wages Fixation Act, 1962 (16 of 1962) is an Act to fix the minimum wages in certain scheduled employments and to provide for certain other matters connected therewith. Section 3 of this Act says that notwithstanding anything contained in section 5 of the principal Act of 1948 as applicable to State of Madhya Pradesh or any other provision contained therein in that behalf or any judgment, decree or order of any Court to the contrary, the State can fix minimum rates of wages in respect of employment in items 2, 3, 5, 6, 7, 8 and 11 of Part I as well as in respect of employments in Part II of the Schedule. Rates fixed in respect of the said employments shall be enforceable with effect from 1st January, 1959.

Section 4 of that Madhya Pradesh Act (16 of 1962) states that the States shall also have Power to revise the rate fixed, from time to time.

COMMENTS

A customer going to a tea shop will not be refused service on the ground that the premises are not meant for serving tea to the customers. It is a different matter that the size of the establishment, i.e., premises is so small that major portion of the customers of the shop are those who are served tea through tea boys at the place of their choice rather than the premises where the tea shops are located. The non-inclusion of representatives of the tea shop owners in the committee for fixing minimum wages could not mean that there was no proper exercise of power under section 5(1)(a) of the Act. A representative of the employers was taken and too fine a distinction cannot be made in such matters when the final notification recites that all representations had been taken into consideration, it will have to be accepted that such consideration had taken place and the recital represents what really transpired what should not be lost sight of is the fact that the economic capacity of a trade or industry is of no consequence when the question is of fixing minimum wages. In the matter of fixation of minimum wages, it is well settled that the economic capacity of the trade or industry is irrelevant for what alone is germane is the wages required by the employees to survive.—*Arbuda Bhuvan Tea Shop v. State of Maharashtra 1992 (1) LLJ 807*

Where the Advisory Board hastened to approve the proposed notification without discussing the objections of the petitioners and consideration of the relevant circumstances, the action of the Advisory Board is arbitrary. High Court observed that it is not for the court to see if the revision in minimum wages is fair and reasonable. The Act envisages fixing of different rates of wages for different localities. The fact that in an adjoining the minimum wages area far less than what is fixed in the impugned notification does not mean that art. 14 or 19 of the Constitution is violated.—*H.B. Verma v. Union of India 1993 (1) LLJ 39*

The advice of a committee or Advisory Board is not binding upon Government either in fixing or revising the minimum wages. The advice is, however, expected, particularly in the present democratic setup to be taken seriously into consideration.—*State of Andhra Pradesh v. Narayana Velure Beedi Manufacturing Factory (1973) 4 SCC 178*