

## Benode Behari Saha Vs State of West Bengal

**Court:** Calcutta High Court

**Date of Decision:** July 25, 1976

**Acts Referred:** Constitution of India, 1950 " Article 226

Industrial Disputes Act, 1947 " Section 10, 10(5)

Minimum Wages Act, 1948 " Section 12, 13, 13(1), 14, 3

**Citation:** (1978) 1 ILR (Cal) 303

**Hon'ble Judges:** Sabyasachi Mukharji, J

**Bench:** Single Bench

### Judgement

Sabyasachi Mukharji, J.

This is an application under Article 226 of the Constitution by two Petitioners, namely, Benode Behari Sana and

the West Bengal Printers Association Ltd. Both the Petitioners are employers of printing establishments in Calcutta. There are numerous other

employers of the printing establishments in Calcutta and Howrah, who, it is claimed, are equally interested in the reliefs sought for in this petition

under Article 226 of the Constitution, but in as much as their numbers are too large all of them could not be joined as Petitioners. In order to

appreciate the controversy in this case it would be relevant to refer to certain facts. On May 11, 1948, an award was made by the Printing Press

Industry Tribunal. The said award was published in the Calcutta Gazette on March 1, 1951. On June 17, 1962, the Government of West Bengal

appointed a committee consisting of employers and employees to enquire into the conditions of employment in the printing press industries. The

said committee recommended unanimously a consolidated wage inclusive of dearness allowance for different categories of employees. On

September 30, 1965, notification was published by the Government fixing the minimum rates of wages payable to the employees employed in the

printing press industries in West Bengal. The notification, it is claimed on behalf of the Petitioners, created certain confusions as it did not mention

about the normal hours of work for which the minimum rates as per the notification would be payable. On October 19, 1965, there was another

order of the Government of West Bengal fixing for the employees in the printing press, the hours of work, constituting a normal working day

inclusive of the period of interval of rest, the day of rest and overtime rate, in exercise of the powers conferred by Sections 13 and 14 of the

Minimum Wages Act, 1948. The aforesaid order provided, inter alia, that eight working hours should constitute a normal working day provided

that no employee should work for more than five hours unless he had an interval of rest for at least half an hour. The aforesaid notification dated

September 30, 1965, was published in the Calcutta Gazette on October 21, 1965 and the notification or order dated October 19, 1965, was

published in the Calcutta Gazette on November 30, 1965. On December 2, 1965, the Petitioners submitted a representation contending, inter alia,

that different presses observed different normal working hours. Therefore, it was necessary to have different normal working hours in a day of a

month for which the minimum wages would be required to be paid. The Petitioners wanted to know whether the notification dated September 30,

1965, which according to the Petitioners did not specify the normal working hours of work constitution a normal working day, would validate the

announcement of the minimum wages as mentioned therein and if so, from what date the same would be effective. There was another

representation on December 28, 1965, on behalf of the Petitioners whereby it was submitted that the notification prescribing the minimum wages

could not be implemented before December 1, 1965, as the said notification was published in the Calcutta Gazette on November 30, 1965 and

the same could not have retrospective effect. On April 1, 1967, an order of reference was made u/s 10 of the Industrial Dispute Act, 1947 and the

following issue was referred to the First Industrial Tribunal for adjudication:

Whether, the workmen are entitled to get the minimum rates of wages fixed by the Government Notification No. 2465-I dt. the 30th September,

1965, on the basis of the working hours which were in the existence in the printing presses before the 1st of November, 1965. If not, what should

be the minimum rates of wages for their working less than 48 hours per week?

On June 9, 1967, another order was made by the Government of West Bengal Labour Department u/s 10(5) of the Industrial Disputes Act, 1947,

including establishments as mentioned in the said order in the earlier order of reference dated April 1, 1967. Thereafter, adjudication proceedings

were transferred to the file of Seventh Industrial Tribunal on August 14, 1967. After written statements had been filed the Respondent No. 3

namely the workmen engaged in the printing presses represented by their unions submitted a petition for framing the following additional issues:

(1) Whether, the workmen are entitled to get the "cost of living allowance", a constituent of the minimum rates of wages fixed under the

Government Notification dated the 30th of September, 1965, as may rise or fall from time to time, irrespective of their basic wages or total wages

per month.

(2) Whether, the workmen are entitled to minimum rates of wages fixed under the Government Notification dated the 30th September, 1965, with

effect from 1st November, 1965.

2. Thereafter, on August 25, 1971, the Petitioners filed their petition of objection to the framing of the additional issues before the Tribunal. The

Tribunal allowed the prayer of the Respondent for framing additional issues with regard to issue No. 2 referred to hereinbefore. On July 21, 1972,

an award was made and the award made by the tribunal is the subject-matter of challenge in this application under Article 226 of the Constitution.

3. On behalf of the workmen two main contentions were urged before the tribunal, namely, that the Government Notification dated September 30,

1965, which is Ex. "A" and which was issued in exercise of the powers conferred by Clause (a) of Sub-section (1) of Section 3 read with Sub-

section (2) of Section 5 of the Minimum Wages Act, 1948, was an independent Notification and must be implemented, as such. The Notification

dated October 19, 1965, issued under Sections 13 and 14 of the Minimum Wages Act, 1948, did not fix, according to the workmen, the minimum

hours of work to be worked in the said presses. It was, secondly, contended that the two different components, namely, the basic wage and the

dearness allowance, were separately mentioned in the Government Notification being Ex. A and they had to be given effect to separately. It was

contended on behalf of the employers that there was no provision of the Minimum Wages Act, 1948, to treat the cost of living allowance as a

separate entity distinct from the basic wage. It was submitted that the statute provided for fixation of minimum rates of wages which consisted of

basic wages and cost of living allowance but there was no provision of law for fixation of minimum wages for each component. It was submitted

that the employers were liable to pay the total minimum wages as fixed under the said Notification dated September 30, 1965, on the basis of the

working hours under the Notification dated October 19, 1965, prospectively, i.e. December 1, 1965 and thereafter. It was urged on behalf of the

employers that the minimum wages were liable to be reduced proportionately on the basis of lesser number of working hours for those employees

who worked for lesser hours than 8 hours a day or 48 hours a week. The employers submitted that so far as the Omnibus Printing Press Award

was concerned only a few printing press establishments in Calcutta and Howrah were parties to the said award. The Notification fixing the hours of

work under the Minimum Wages Act, 1948, was, however, applicable to all printing press establishments in West Bengal. The employers

submitted that the employers were within their rights to claim 8 hours a day or 48 hours per week from the workmen employed in the

establishments on payment of total minimum wages as prescribed by the Notification and to pay proportionately less to the workmen who did not

work for full working hours. On behalf of the workers it was submitted that because of the serious strain involved in the printing presses and

hazardous risk involved in printing work the printing industry had accepted by and large 42 hours or less in a week as the period of working hours.

Besides the presses mentioned in the order of reference it was urged that there were many printing presses where the existing working hours were

less than 40 hours a week. The Award of the Printing Press Industry Tribunal in West Bengal published in the Calcutta Gazette on May 11, 1948,

also provided for 42 hours' work a week taking everything into consideration and the awarded wages were paid accordingly. After that Award

there was another reference in 1951 for, inter alia, revision of scales of pay on the basis of the said 42 hours of work in a week and the award of

the said Tribunal was published in the Calcutta Gazette on March 1, 1961. Since then, it was alleged, that by long lapse of time as well as by

expressed terms and by implication of the conduct of the parties the said 1951 Award stood terminated. Fresh efforts were made for fixation of

the Minimum Wages Act, 1948 and otherwise through negotiations, conciliation or adjudication. According to the workmen who are the

Respondents here the West Bengal Government made the said Notification and the substance the same was intended to mean that the basic wage

introduced was for the existing working hours for 42 hours a week or in other words on the existing working hours in different presses. Secondly,

the cost of living allowance as before was a distinct and separate entity. Thirdly, the flat cost of living allowance for all categories irrespective of

pay and categories for Calcutta and Howrah was same and would vary in consideration of the rise in price index number. So far as the Ex. A-1,

subsequent notification is concerned, it was urged on behalf of the workers that eight hours inclusive of half an hour recess were intended to cover

those presses where no working hours had been fixed or where the working hours fixed in a day were more than that. It was, further, submitted

that where the working hours were less, that should be the working hours for the establishments where the minimum wage was fixed. The said

working hour in a day was not relevant for earning of the day's minimum wages but for checking exploitation of human labour and that was the

uppermost ceiling fixed so that overtime wages at overtime rate would become due for the work beyond the said period. To hold that the minimum

basis wage was for 8 hours or 7½ hours" work in a day, would mean reduction in the existing wages in many cases instead of serving the

purpose and would thus lead to absurdity, according to workmen. It was, further, urged that the Minimum Wages Act, 1948, did not contemplate

or empower the committee to fix any working hours far less to charge the same to the prejudice of the workmen. The object and purpose of the

Minimum Wages Act, 1948, was to ensure the minimum wages for a worker's family for its bare subsistence and to give proportionate wage for

less working hours would be self-defeating and would cause failure of objective. Therefore, the workmen submitted, that the Tribunal should

answer the issue in favour of the workmen holding that the Government notification on minimum wages dated September 30, 1965, was on the

basis of working hours which were in existence in the printing presses before November 1, 1965 and grant them the said wages retrospectively

with effect from November 1, 1965, with a direction that the basic wages and cost of living allowance were two separate entities and the cost of

living allowance should be available to all the workmen irrespective of the basic wages or total wages one might earn.

4. The Tribunal after discussing the relevant contentions came to the conclusion on evidence on record that weekly working hours mentioned in the

order of reference were less than 48 hours prior to November 1, 1965. The tribunal was of the opinion that the question for consideration was

whether the workmen would be entitled to get the minimum rates of wages fixed under the Government notification dated September 30, 1965, on

the basis of the working hours which were in existence in the printing presses before November 1, 1965. If the answer to this question was in the

affirmative, then the second part of the issue No. 1 did not arise for decision according to the Tribunal. If, however, the answer to the question was

in the negative, the Tribunal was to consider what should be the minimum rates of wages for their working less than 48 hours in a week. The

Tribunal was of the opinion that the special order u/s 13(1) of the Minimum Wages Act, 1948, would govern the conditions of service in the

schedule of employment. In the instant case according to the tribunal the said special order is the notification which is Ex. A-1. Section 12 made it

obligatory for the employer to pay wages at the rate not less than the minimum rate of wages fixed by the notification, Ex. A, without any reduction

except as might be authorised within such time and subject to such conditions as might be prescribed. It was for the Government, according to the

Tribunal, to make appropriate rules by virtue of the provisions of Section 30(2)(h) of the Minimum Wages Act, 1948, providing for the cases and

circumstances where an employee employed for a period less than the requisite hours of work constituting a normal working day, would not be

entitled to receive wages for a full normal working day. Until and unless the appropriate Government made rules under the provisions of Section

30(2)(h), of the Act it was not open, according to the Tribunal, for the employer in the instant case to make proportionate reduction of the

minimum rates of wages fixed by the notification, Ex. A, on the ground that the workmen were working less than the hours fixed by the notification

which is Ex. A-1. Similarly, according to the Tribunal, the Tribunal was not competent to make any reduction in the minimum rates of wages fixed

by the notification, Ex. A, on the ground that the workmen were working less than 48 hours a week. Therefore, the tribunal was of the opinion that

unless the rules were framed by the Government in accordance with the provisions of Section 30(2)(h) of the Minimum Wages Act, 1948, the

employers and the Tribunal could not make any reduction of the minimum rates of wages. In view of the provisions of the Minimum Wages Act,

1948 and in the absence of the relevant rules u/s 30(2)(h) of the Act, it must be held according to the Tribunal, that the workmen would be entitled

to get the minimum rates of wages fixed under the notification No. 2456-1 dated September 30, 1965, on the basis of the working hours which

were in existence in the printing presses before November 1, 1965. Accordingly, the Tribunal held that the second part of the issue No. 1 did not

arise for decision. So far as the additional issue was concerned, it was contended by the Unions that in view of the provisions of the Government

Notification dated September 30, 1965, Ex. A, the workmen would be entitled not only to the minimum basic wages, but also to the cost of living

allowance as mentioned in the said Notification. The Tribunal for the reasons mentioned in the Award upheld this contention and was of the opinion

from the evidence on record that dearness allowance had been treated separately by the employers and employees. In view of the provisions of

the Notification, Ex. A, cost of living allowance should be adjusted as mentioned therein.

5. So far as the issue No. 2 being an additional issue as hereinbefore mentioned was concerned, the Tribunal was of the opinion that there was no

question of giving any retrospective operation to the Notification. It was clearly mentioned in the notification that minimum rates of wages would

come into effect from November 1, 1965. The Tribunal accordingly held that the workmen would be entitled to minimum rates of wages fixed by

the Government Notification dated September 30, 1965, from November 1, 1965.

6. In support of this application on behalf of the Petitioners it was contended, firstly, that the Tribunal exceeded its jurisdiction in deciding a

question not included in the issue mentioned in the order of reference, namely, minimum rates of wages fixed under the Government Notification

had two components, i.e. a basic minimum wage and basic minimum cost of living allowance which was variable one and thereby, holding that the

workmen were entitled to get components separately as per Notification. It was urged that this finding of the Tribunal was perverse in view of the

Tribunal's order dated September 23, 1971, whereby the Tribunal had disallowed the raising of the first issue suggested on behalf of the

workmen. It was, secondly, contended that having regard to the fact that dispute had arisen with regard to the working hours for the purpose of

implementation of the minimum wages and having regard to the fact that there were different working hours before the Notification, the Tribunal

had jurisdiction to correlate the minimum wages fixed by the government on the basis of standard normal working hours, i.e. 48 hours a week or 8

hours a day and to hold that the employees were not to get the minimum wages when they did not work according to the said normal working

hours fixed under the minimum wages notification. It was contended that having regard to the nature or the extent of the issue particularly the first

part referred to for adjudication and having regard to the finding that operation of the Awards of 1948 to 1951 were over, the existence of such

awards would not be a bar to re-fixation, the Tribunal committed an error of law apparent on the face of the record in not giving effect to the

notification. Before me a large number of decisions were cited. I need not refer to all of them. But reference must be made to the decision in the

case of Bengal Motion Pictures Employees Union v. Kohinoor Pictures Pvt. Ltd. 1965 (II) L.L.J. 387 (405). There the question about correlation

between minimum wages and the hours of work was discussed. One of the points raised as will appear from the observations of the judgment was

that in the Notification which was under challenge in that case the hours of work and the hours of rest had not been prescribed by the Government

and the rates of wages had no correlation to the workload or the hours of work and as such the notification was bad. It was urged that Section 13

of the Minimum Wages Act, 1948, contemplated that in fixing the rates of minimum wages, hours of work and hours of rest had to be specified

and rates of wages should be fixed in relation thereto. The Division Bench of this Court noted that the actual hours of work and actual hours of rest

in respect of an employee in cinema industry had not been specifically provided by the Notification fixing the rates of minimum wages and the

number of hours of work which would constitute normal working day as contemplated by Section 13 of the Minimum Wages Act. The question

which arose was whether in the absence of any exercise of special power u/s 13(1) after fixing of minimum rates of wages under Sections 3 and 5

of the Act, the Notification fixing minimum wages could be regarded as invalid. The Court was of the opinion that the answer must be in the

negative. What was contemplated by Section 13 was that it was open to the appropriate Government to fix and provide for special number of

hours of work which would constitute normal working day a day of rest in a period of seven, payment of remuneration for such days of rest and

payment for work on a day of rest at a rate not less than the overtime and if such an order was made by the appropriate Government u/s 13(1) the

special order would govern the condition of service in the scheduled employment; but if after the fixation of minimum rates of wages no such order

was issued at all u/s 13(1) the notification fixing minimum wages might be open to challenge on the ground that there had been no proper fixation of

minimum wages. In the facts and circumstances of the case, the notification u/s 13(1) had not been issued in that case. But the decision, in my

opinion, clearly establishes the proposition that there was correlation between minimum rates of wages and the hours of work of an employee and

if by notification u/s 13(1) normal hours of work has been fixed then, in my opinion, the said Notification would form part of the conditions of

service of the employees and therefore, the minimum rates of wages should be subject to that condition. In such a case where notification has been

issued, in my opinion, there is no scope for framing fresh rules u/s 30(2)(h) of the Minimum Wages Act, 1948. In my opinion, therefore, the

Tribunal was in error in not considering this aspect of the matter and in not fixing the minimum wage fixed by the government on the basis of

standard normal working hours, namely, 48 hours a week. As a matter of fact, that was part of the issue which was referred to the Tribunal. In my

opinion, therefore, the Tribunal failed to exercise the jurisdiction properly and thereby committed an error of law.

7. The second question is whether basic wages and cost of living should be treated as different components. In this connection, counsel for the

Petitioner contended that if specific issues were referred in the Notification, the Tribunal should confine it self to those issues and the Tribunal had

no jurisdiction to travel beyond those. In support of this proposition reliance was placed on the observations in the case of Calcutta Electric Supply

Corporation Ltd. v. Calcutta Electric Supply Workers Union and Anr. AIR 1959 S.C. 1191, in the case of Delhi Cloth and General Mills Co.

Ltd. Vs. The Workmen and Others, . But in view of the definition of Section 4 of the Minimum Wages Act, 1948, I am of the opinion, that the

question of the component parts of minimum wages was an incidental issue referred to and as such the Tribunal was competent in deciding this



issue. When the Tribunal went into this question, in my opinion, the Tribunal did not travel beyond the issues referred. In the aforesaid view of the

matter on this aspect I am unable to accept the contention urged on behalf of the Petitioners. As I mentioned before, a large number of decisions

were cited before me but I need not refer to them in detail.

8. In the aforesaid view of the matter, as the Tribunal has failed to exercise the jurisdiction properly, as mentioned hereinbefore, I set aside the

award made by the Tribunal and remand the case back to the Tribunal for determination of the question referred to it in accordance with law.

9. The Award is, therefore, set aside. The matter is remanded back to the Tribunal for determination in accordance with law and in accordance

with the observations made in this judgment. The Rule is made absolute to the extent indicated above. There will be no order as to cost.