Bhikusa Yamasa Kshatriya Vs Sangamner Akola Taluka Bidi Kamgar Union

Court: Bombay High Court

Date of Decision: June 30, 1958

Acts Referred: Minimum Wages Act, 1948 â€" Section 10, 10(2), 20, 26, 26(2)

Citation: (1959) 61 BOMLR 764 : (1959) 2 LLJ 578

Hon'ble Judges: D.V. Vyas, J; D.G. Tambe, J

Bench: Division Bench

Judgement

Vyas, J.
This is an application under Art. 226 of the Constitution of India by the owners of the bidi-manufacturing concerns of Sangamner,

Akola and places within seven miles of their respective municipal limits and it raises certain important questions of law.

2. In the year 1948 the Central Legislature passed an Act No. XI of 1948, called the Minimum Wages Act. Section 3(1) of the Act empowers the

appropriate Government to fix the minimum rates of wages for certain industries which are described as ""scheduled industries."" Section 3, Sub-

section (3), Clause (a), Sub-clause (iv), provides that different minimum rates of wages may be fixed for different localities at the time of fixing or

revising the minimum rates of wages. Section 4 lays down what the minimum rates of wages fixed or revised by the appropriate Government under

S. 3 may consist of. Section 5 Sub-section (1), Clause (a), provides for the appointment of a committee to hold enquiries in the matter of fixing

minimum rates of wages in respect of any scheduled employment. Section 5, Sub-section (2), empowers the appropriate Government to fix the

minimum rates of wages in respect of each scheduled employment, after considering the advice of the committee appointed under Clause (a) of

Sub-sec, (1) of S. 5. Section 6 requires the appropriate Government to appoint advisory committees and sub-committees to inquire into the

conditions prevailing in any scheduled employment and to advise the appropriate Government in the matter of revising the rates of wages in respect

of such employment. Under S. 7 the appropriate Government is empowered to appoint an advisory board for co-ordinating the work of the

advisory committees and sub-committees. Section 8 provides that the Central Government shall appoint a central advisory board for the purpose

of advising the Central Government and State Governments in the matters of fixation and revision of minimum rates of wages and other matters

under the Act and for co-ordinating the work of the advisory boards. Section 10 lays down that before revising any minimum rates of wages fixed

under the Act the appropriate Government shall consult all the advisory committees appointed under S. 6 and the advisory board also. Section 20

empowers the appropriate Government to appoint an authority to hear and decide for any specified area all claims arising out of payment of less

than the minimum rates of wages to employees employed or paid in that area. Sub-section (2) of S. 20 provides that where an employee is paid

less than the minimum rates of wages fixed for his class of work under the Act, the employee himself, or any legal practitioner or any official of a

registered trade union authorized in writing to act on his behalf, or any inspector, or any person acting with the permission of the authority

appointed under Sub-section (1), may apply to such authority for a direction under Sub-section (1), may apply to such authority for a direction

under Sub-section (3) of S. 20. Then there is S. 26, Sub-section (2A) whereof provides :

The appropriate Government may, if it is of opinion that, having regard to the terms and conditions of service applicable to any class of employees

or in a scheduled employment in a local area, it is not necessary to fix minimum wages in respect of such employees of that class as are in receipt

employees of that class as are in receipt of wages exceeding such limit as may be prescribed in this behalf, direct, by notification in the official

gazette and subject to such conditions, if any, as it may think fit to impose, that the provisions of this Act or any of them shall not apply in relation

to such employees.

3. In the year 1952 the State of Bombay issued a notification No. 146/48-XIII under S. 5, Sub-section (2), of the Act (the minimum Wages Act)

fixing the rates of minimum wages with effect from 31 March, 1952, for workers employed in bidi-manufacturing concerns. Under that notification

the districts of Thana, Ahmednagar. East Khandesh, West Khandesh, Nasik, Poona, Satara North, Kolaba and Dangs comprised Zone No. III;

the districts of Banaskantha, Panchmahals, Broach and Surat comprised Zona No. II; and the districts of Dharwar, Bijapur, Belgaum, Kanara,

Ratnagiri, Sholapur, Satara South and Kolhapur comprised Zone No. IV. The notification provided that in the districts comprised in Zone No. III

the minimum rate of wages to be paid to employees working in the bidi-manufacturing concerns in that zone was Rs. 2 for thousand bidis.

4. It may be noted at this stage that the towns of Akola, Sangamner and places situated within seven miles of their respective municipal limits fell

within the district of Ahmednagar. Sinnar is a town situated in the district of East Khandesh and Dhulia is a town situated in the district of West

Khandesh.

5. On 29 August 1953, the State of Bombay issued a notification under S. 26, Sub-section (2), of the Act declaring that the Act shall not apply

during the period from 30 August, 1953 to 31 December, 1953, to any locality in the State of Bombay except certain specified localities and the

localities so excepted included the towns of Sangamner and Akola. By a notification dated 31 December, 1953, the above exemption from the

provisions of the Act was extended from 1 January, 1954 to 31 March, 1954. By a further notification dated 31 March, 1954, once again the said

exemption was extended from 1 April, 1954 to 30 September, 1954. As I have mentioned above, the exemption from the operation of the Act

which was originally declared by the notification dated 29 August, 1953, did not apply to certain areas, including the towns of Sangamner and

Akola. By a further notification dated 17 September, 1954, issued under Sub-section (2) of S. 26, the said exemption was still further extended

from 1 October, 1954 to 31 December, 1954. Again this exemption was extended by a similar notification from 1 January, 1955 to 31 March,

1955. Then again, by a notification dated 31 March, 1955 the State Government still further extended the above exemption from 1 April, 1955 to

30 June, 1955. Thereafter by a notification dated 30 June, 1955 issued under Sub-section (2) of S. 26, the Government of Bombay directed that

for a period of three months with effect from 1 July, 1955 the provisions of the act shall not apply to bidi-makers employed in any tobacco

manufactory in Sangamner and Akola and places within seven miles of their respective municipal limits also. It would thus be clear that till 30 June,

1955 the provisions of the Act applied to the towns of Akola and Sangamner and places within seven miles of their respective municipal limits

although they did not apply to certain areas and that with effect from 1 July, 1955 the Act ceased to apply even to the towns of Akola and

Sangamner and places within seven miles of their municipal limits. This exemption from the application of the Act was extended from time to time

by notifications till 31 December, 1956. However, in the meantime, On 22 August, 1956 the State of Bombay issued a notification No. 2438/48J

cancelling the exemption with effect from 1 September, 1956 so far as Sangamner, Akola and places within seven miles of their municipal limits

were concerned.

6. During the period from 31 March 1952 to 30 June 1955, during which period the Act applied to Sangamner, Akola and places within seven

miles of their municipal limits, the State Government issued a notification on 19 April, 1955, revising the minimum rates of wages. As result of this

notification the minimum rates of wages in Sinnar, Sangamner, Akola and places situated within seven miles of their respective municipal limits were

raised. So far as Sangamner, Akola and places within seven miles of their respective municipal limits were concerned, the rate was raised from Rs.

2 for thousand bidis to Rs. 2-2-0 for thousand bidis. So far as the rate in the town of Sinnar was concerned, it was raised from Rs. 2 for thousand

bidis to Rs. 2-4-0 for thousand bidis. It may be noted that in the case of East Khandesh any West Khandesh the rate of minimum wages was

reduced from Rs. 2 for thousand bidis to Rs. 1-10-0 for thousand bidis. So far as the cities of Poona and Sholapur were concerned, the rate of

minimum wages was kept constant. In Poona it remained at Rs. 2 for thousand bidis and in Sholapur it continued to remain at Rs. 1-14-0 for

thousand bidis.

7. Taking advantage of the above position, the bidi workers at Sangamner and Akola and at various places situated within seven miles of their

respective municipal limits started demanding wages at the revised rates. These workers filed claims under S. 20 of the Act before the authority

under the Act. The owners of the bidi-manufacturing concerns resisted the claims of the employees on various grounds. One of the contentions put

forward by the employers was that complicated questions of law under the Constitution of India were involved in the determination of the claims of

the employees and, therefore, the authority should submit the cases to the High Court for a decision of the points raised under the Constitution. The

authority, however, did not consider it fit to accede to the prayer of the employers and proceeded to hear and decide the claims of the workers.

On 6 November, 1957 the authority gave his decision in one of the miscellaneous applications, namely, Miscellaneous Application No. 65 of

1956, and he held that the bidi workers were not entitled to receive wages at the revised rates for the period 1 September, 1956 to 31 December,

1956. But the authority further declared that with effect from 1 January, 1957 onwards the bidi workers would be entitled to receive wages at the

rates revised under under the notification dated 19 April, 1955. It is from this decision of the authority that both the parties have filed the various

applications. The present application (No. 67 of 1958) is filed by the owners of the bidi-manufacturing concerns of Sangamner, Akola and places

situated within seven miles of their respective municipal limits. As I have mentioned above, both the parties, namely, the owners of the bidi-

manufacturing concerns and the employees working in those concerns have felt dissatisfied with the decision of the authority. The employers

contend that the authority erred in granting a declaration that the bidi workers in Sangamner, Akola and places with seven miles of their respective

municipal limits were entitled to the wages of Rs. 2-2-0 for thousand bidis from 1 January, 1957. The bidi workers, on the other hand, contend

that they should have been granted wages at the rate of Rs. 2-2-0 for thousand bidis for the period from 1 September 1956 to 1 December 1956

also.

8. Now the learned advocate Mr. Kotwal for the petitioners has pressed several contentions before us in this application. His first contention is that

the procedure requisite under the Minimum Wages Act was not followed by the State Government before revising the rates of minimum wages

payable to the bidi workers, that no sufficient thought was given by Government to the diminishing cost of living index number in the localities

concerned and that the revision of the rates of minimum wages arbitrary, capacious and against the rules of natural justice. Mr. Kotwal has made

this contention in this way : He says that when the rates of minimum wages were originally fixed by a notification dated 31 March, 1952, and when

various zones were created for that purpose, Jalgaon and Ahmednagar were placed in the same zone, being Zone No. III. Akola and Sangamner

are towns situated in the district of Ahmednagar. Mr. Kotwal says that the cost of living index number, so far as the town of Jalgaon in the East

Khandesh district was concerned went down substantially in the years 1954 and 1955. The district of East Khandesh and the district of

Ahmednagar were grouped together in the same zone in the year 1952, the basis of the grouping being the similarity of conditions regarding the

cost of living. The district of Nasik was also included in the same zone in the year 1952. As the cost of living index number went down in Jalgaon,

says Mr. Kotwal, it must presumbly have gone in Ahmednagar district as well. As between Jalgaon and Ahmednagar, the former being a much

more industrialzed place, the living must have been more expensive there than in the places in the Ahmednagar district, and yet the revised rates of

minimum wages in Jalgaon were lower than in Sangamner, Akola and places within seven miles of their respective municipal limits. The rate of

minimum wages as originally fixed by the notification, dated 31 March, 1952, for Nasik, Jalgaon, Sinnar, Sangamner, Akola and places within

seven miles of the respective municipal limits of Sangamner and Akola was Rs. 2 for thousand bidis. The revised rate for Nasik was increased to

Rs. 2-4-0 for thousand bidis from Rs. 2 for thousand bidis. The revised rate for Sinnar, Sangamner, Akola and places within seven miles of the

respective municipal limits of Sangamner and Akola was increased from Rs. 2 for thousand bidis to Rs. 2-2-0 for thousand bidis. The revised rate

for Jalgaon, on the other hand, was reduced from Rs. 2 for thousand bidis to Rs. 1-10-0 for thousand bidis. Thus, says Mr. Kotwal, the rate of

minimum wages payable to bidi workers in the localities where the living was cheaper was increased and it was increased and it was reduced in

places where the living was more expensive. Such a result, Mr. Kotwal says, would not have occurred if proper under the Act had been followed

by the State Government at the time of revision of the rates.

9. Mr. Kotwal"s submission rests on the exaggerated importance attached by him to the cost of living index number in the various places. It is a

fallacy to say that if the cost of living index number in one place is higher than that in another, the living is more expensive in the former place than in

the latter. Cost of living indices are family baskets containing varying quantities of variable factors, such as, needs of the people concerned, their

standards of living, the quality of goods available to them for consumption, transport charges, etc. We do not think it could be seriously disputed

that an index number of the cost of living is really the ratio that the current cost of fixed collection of goods and services bears to the cost of the

same collection of goods and services during a based period. One has to keep before him the family basket with contents varying in quantity as

well as in quality. The cost of living index over a period of years is a measure of the variations in the prices of identical family baskets. We cannot

compare the index for two different places, because the contents and size of the baskets in two places may be different, as, for example in Bombay

the basket may contain 28 items of food, whereas in Ahmednagar it may contain only 14 item of food. It would, therefore, not be entirely safe to

rely exclusively upon the test of the cost of living index number while determining the question whether the rates of minimum wages fixed or revised

were arbitrarily or properly fixed or revised.

10. It may be noted at this stage - and this is important - that the Minimum Wages Act does not case a statutory obligation upon the State

Government to fix or revise the rates of minimum wages strictly according to the cost of living index. Therefore, if the cost of living index in a

particular locality is not strictly followed while fixing or revising the rates of minimum wages, there is no breach of a statutory duty committed.

Section 4, Sub-section (1), merely provides that a minimum rate of wages fixed or revised by the appropriate Government under S. 3 may consist

of any one of the three alternative methods. The first and the third methods in which there is a reference to the cost of living index are not

obligatory. The State Government may adopt them or may not. Of course, if the State Government does adopt these methods, the element of the

cost of living index may to a certain extent influence the rate. In the present case, however, there is nothing to show what method was adopted by

the State Government for revising the rates of minimum wages by the notification, dated 19 April, 1955. Indeed, we do not know what particular

method was adopted by the State Government when the rates were originally fixed in 1952. If the method adopted by the State Government was

the one provided by Clause (ii) of Sub-section (1) of S. 4, the cost of living index would not play the part which Mr. Kotwal says it should in the

fixing or revising the rates of minimum wages. I have referred to this aspect of the case in some detail, because Mr. Kotwal has laid an emphasis,

which appears to us to be an exaggerated emphasis, on the cost of living index number in the context of the question of fixing or revising the rates

of minimum wages under the Act.

11. Next Mr. Kotwal says that the revision of the minimum rates of wages was done by the State Government arbitrarily and in a manner against,

the rules of natural justice. We have considered this contention carefully, but have felt ourselves unable to accept it. As I have stated above, S. 5,

Sub-section (1), of the Act provides for the appointment of a committee to hold an enquiry and advise the appropriate Government in the matter of

fixing the minimum rates of wages. Section 6 provides for the appointment of advisory committees and sub-committees to enquire into the

conditions prevailing in any scheduled employment and to advise the appropriate Government in the matter of the revision of the rates of minimum

wages. It is not disputed that in this case an advisory committee was appointed by the State Government under S. 6. The said committee was

consulted by the State Government. It is also not disputed that this committee made requisite enquiry into the conditions prevailing in the bidi-

making industry in the district of Ahmednagar wherein the towns of Akola, Sangamner and the places within seven miles of their respective

municipal limits are situated. This Committee, after due deliberations, made a report to the State Government, i.e., the Government of Bombay.

After the report of the Advisory Committee was received by the Government of Bombay, the Government appointed an Advisory Board under S.

7 of the Act. It appears that the report submitted to the Government by the Advisory Committee was not a unanimous report. The Advisory

Committee consisted of seven members. Three of the members were representatives of the employers, and three others were representatives of

the employees. Sri P. S. Bakhle was the Chairman of the Committee. The Government sent the Committee''s report to the Advisory Board and the

Board, after going carefully into the question of the revision of the rates of minimum wages, made a unanimous report to the Government. It may be

noted at this stage that on 29 June 1954 the Under Secretary to the Government of Bombay, Development Department, wrote a letter, being letter

No. 2438/48-J, to the Chairman of the Advisory Board. Along with this letter the Government forwarded to the Chairman of the Board a copy of

the report of the Advisory Committee. In the course of this letter the Government brought it to the notice of the Chairman that the Bidi

Manufactures and Merchant''s Association of Sholapur had represented to the Government that the rates of wages in the bidi factories in the

neighboring areas of Hyderabad were unduly low and that the rate of minimum wages at Rs. 1-14-0 for thousand bidis, which was prevailing at

Sholapur, would not allow them to compete with the bidi factories in the Hyderabad area. The Chairman of the Advisory Board was requested by

the Government to go into that question and to give to the Government the benefit of the Board''s advice on that point. It may be noted - and this is

important - that along with this letter, dated 29 June, 1954, Government forwarded to the Chairman of the Advisory Board a copy of a letter,

dated 29 September, 1953, which was received from the Chairman, Nasik-Sinnar-Sangamner Bidi Karkhandar Mandal, Sinnar, on the subject of

the revision of minimum rates of wages and the Chairman of the Advisory Board was particularly requested to take into consideration the various

suggestions which were made by the Chairman of abovementioned Bidi Karkhandar Mandal in the matter of revising the minimum rates of wages.

Not only this, but on 30 July 1954 Sri Joshi, the Secretary of the Advisory Board, wrote letters to the employers in the bidi industry. In these

letters the employers in the bidi industry were in terms told that the Government had referred the question of revising the rates of minimum wages,

which were originally fixed in pursuance of the notification dated 27 December, 1951, to the Advisory Board. The employers were requested to

forward their suggestions, if any, to the Advisory Board on or before 9 August, 1954. In particular, the employers in the bidi industry were

requested to forward to the Secretary of the Advisory Board certified accounts for the year 1952-53, Income Tax statements and sales-tax

returns (in support of the case of the employers), details of the price for preparing 1,000 bidis, selling price and wage-rate respectively for each

year since 1948, the strength of the workers employed by them in the factory as well as on ""Khep"", etc., etc. The employers were also requested

to inform the Secretary of the Advisory Board as to what rate of minimum wages was appropriate in their view. It is, therefore, reasonable to

assume that the employers must have made representations to the Advisory Board and must have told the board what they considered was an

appropriate rate of minimum wages payable to the workers in their factories. The Advisory Board must have taken into consideration all the

material supplied to them by the employers and the employees. Thereupon the Board made a unanimous recommendation to the appropriate

Government. The said unanimous recommendation was the basis upon which the notification, dated 19 April, 1955, was issued by the State of

Bombay and it was under that notification that the revision of the rates of minimum wages was ordered in Nasik, Sinnar, Sangamner, Akola and

places situated within seven miles of the respective municipal limits of Sangamner and Akola. Under these circumstances, it is impossible to accept

the contention of Mr. Kotwal that the rates of minimum wages were revised in a manner the was arbitrary and contrary to the rules of natural

justice.

12. The next contention of Mr. Kotwal is that S. 3, Sub-section (3), Clause (a), Sub-clause (iv), of Minimum Wages Act is a discriminatory law,

Mr. Kotwal says that by using the expression ""different localities"" in Sub-clause (iv), the legislature conferred an unfettered power upon

Government to make a discrimination in respect of the various localities, and he contends that this power in a given case may be abused by the

Government. It is contended for the petitioners that the phraseology ""different localities"" is too wide and vague and may even mean a town or street

of a town or even a house in a particular street in a particular town, and a grievance is made that in the body of the Act no guiding principal has

been laid down to throw light as to proper meaning to be assigned to the words ""different localities.

13. We have heard Mr. Kotwal at considerable length upon this point, but we do not see force in this contention. In Bijay Cotton Mills Ltd. Vs.

The State of Ajmer, it was contended that the provisions relating to the fixation of minimum wages were unreasonable and arbitrary and that the

whole question had been left to the unfettered discretion of the Government. A point was also made that the restrictions put by the Act were

unreasonable and even oppressive with regard to a class of employers whose factories might be situated in one locality and who for purely

economic reasons might not be able to pay minimum rates of wages, but who might have had no intention to exploit labour at all. It was argued in

that case that the provisions of the Act in such an event would have no reasonable relation to the object which the Act had in view. It was held by

their lordships that the restrictions imposed upon the freedom of contract by the fixation of minimum rates of wages, through they interfered to

some extent with the freedom of trade or business guaranteed under Art. 19. Clause (1). Sub-clause (g), of the Constitution, were not

unreasonable and they were being imposed in the interest of the general public and with a view to carry out one of the directive principles of the

State policy as embodied in Art. 43 of the Constitution and were protected by the terms of Clause (6) of Art. 19.

14. If S. 3, Sub-section (3), Clause (a), Sub-clause (iv), were the only provision of the law on the subject of fixing or revising the minimum rates of

wages, it might have been a different matter. But upon examining the the scheme of the entire Act it is clear that adequate safeguards against

discrimination are provided in the Act itself. Under S. 5, Sub-section (1), it is obligatory upon the appropriate Government to have recourse to one

of the two procedures before fixing the minimum rates of wages and each of these procedures is an adequate safeguard against discrimination.

Clause (a) of Sub-section (1) of S. 5 provides :

In fixing minimum rates of wages in respect of any scheduled employment for the first time under this Act, the appropriate Government shall -

(a) appoint a committee to hold enquiries and advise it in this behalf with such it sub-committees for different localities as it may deem expedient to

appoint to assist such committee .....

It is clear, therefore, that the committee, which is required to be appointed under Clause (a), is charged with the duty of advising the State

Government in the matter of of fixing minimum rates of wages in different localities. Under Clause (b) of Sub-section (1) of S. 5 Government is

required to publish its proposals for the information of persons likely to be affected thereby and two months'' time has to be given to enable the

persons likely to be affected to make representations against the proposals if they wish to make any. Sub-section (2) of S. 5 requires the

Government to consider the advice that may be tendered to it by committee appointed under Clause (a) of Sub section (1). It also requires the

Government to take into consideration representations as might have been received by it from the persons affected by its proposals. Section 7

requires the appropriate Government to appoint an advisory board for the purpose of co-ordinating the work of the committees, sub-committees,

advisory committees and advisory sub-committees, appointed under Ss. 5 and 6. Section 10 requires that before revising the rates of minimum

wages, the Government shall consult all the advisory committees appointed under S. 6 and also the advisory board. Section 28 provides that the

Central Government may give directions to a State Government as to the carrying into execution of the Act. All these provisions of the Act are to

be considered together. Therefore, upon a proper examination of the scheme of the Act, it is clear that under the Act no scope is left for the State

Government to make arbitrary discrimination between different localities.

15. The next point pressed by Mr. Kotwal is that the notification, dated 19 April 1955, was itself discriminatory and, therefore, it infringed the

provisions of Art. 14 of the Constitution. Mr. Kotwal says that while revising the rates of minimum wages by this notification, the rates were

increased in some places, reduced in other localities and kept constant in some areas. In Nasik the rate was increased from Rs. 2 to Rs. 2-4-0 for

thousand bidis : in Sangamner, Akola and places within seven miles of the respective municipal limits of Sangamner and Akola the rate was

increased from Rs. 2 to Rs. 2-2-0 for thousand bidis; in Poona and Sholapur the rate was kept constant at Rs. 2 and Rs. 1-14-0 for thousand

bidis respectively; and in East Khandesh and West Khandesh the rate was reduced from Rs. 2 to Rs. 1-10-0 for thousand bidis. The petitioners

say that this discrimination, which flowed from the notification dated 19 April, 1955, was purposeful and intentional. It would be convenient in this

context to set out some of the consents of Para. 11 of the petition wherein the petitioners contend :

The words "different localities" are so elastic as to be capable of being applied even to different parts of the same village or to different parts of

the same lane in the same village. The provisions of S. 3, Sub-section (3)(iv), give the executive ample and unlimited scope for discriminating

between industries in one area from those in another merely on the ostensible ground that they are situate in different localities. It leaves the door

wide open to a purposeful and intentional discrimination on the part of the executive on political and other important grounds.

16. To say that the notification dated 19 April 1955 was discriminatory and that the discrimination was purposeful and intentional is to say that the

notification was issued with an ""evil eye."" Now it is necessary to remember that after the Advisory Committee was appointed by the State

Government under S. 6 of the Act and after that Committee made its report, the State Government appointed an Advisory Board. Not only did

the State Government forward the report of the Advisory Committee to the Advisory Board, but it also addressed letters to the employers in the

bidi industry asking them to forward to the Advisory Board certified copies of their accounts for the year 1952-53, Income Tax statements and

sales-tax returns in support of their contentions, details of the price for preparing 1,000 bidis, selling price and wage-rate respectively for each year

since 1948, etc., etc. The State Government also forwarded to the Advisory Board a letter received by it from the Chairman of the Nasik-Sinnar-

Sangamner Bidi Karkhandar Mandal on the subject of the revision of the rates of minimum wages. After a consideration of all the material which

was placed before the Advisory Board by the employers and employees, the Board, consisting, besides the Chairman, of 20 members who were

drawn equally from the employers and employees, made a unanimous recommendation to the State Government. The Government accepted the

said recommendation and made it the basis of the notification, dated 19 April, 1955. In other words, the notification issued by the State

Government on 19 April, 1955, was in terms of the recommendation made unanimously by the Advisory Board consisting of 10 representatives of

the employers, 10 representatives of the employees and the Chairman. In these circumstances, the allegation of the petitioners that the notification

made purposeful and intentional discrimination appears to be fantastic.

17. Mr. Kotwal says that the appointment of the Advisory Board in this case was a farce. As I have said, the Advisory Board was constituted of

21 persons, one of whom, Sri Bakhle, was the Chairman. Ten persons represented the employers and ten others represented the employees. Mr.

Kotwal contends that only one out of the ten representatives of the employers was contacted with the tobacco industry and only one person out of

the employees'' representatives had also some connexion with the bidi-making industry. Nine out of 10 representatives of the employers and 9 out

of 10 representatives of the employees were not connected with the bidi-making industry. They were concerned with different industries, such as

oil industry, road construction, building operations, stone-breaking, stone-crushing, motor transport, tannery, leather manufacturing, salt-pan

industry, agriculture, etc. They resided in various areas or localities remote from the district of Ahmednagar. In short, Mr. Kotwal says that a larger

majority of the representatives of the employers and the employees were not connected with the bidi industry and they did not even belong to any

place situated near the district of Ahmednagar. Therefore, says Mr. Kotwal, the appointment of the Advisory Board was merely ""an eyewash.

18. Now, in this connexion it is to be borne in mind that S. 7 of the Act does not require that the State Advisory Board should be constituted of

the employers and employees belonging to a particular industry. The Central Advisory Board is required to be constitution in such a manner that

there has got to be a representative upon it of the employers and employees in the scheduled employment. But that is not the case with the

constitution of the State Advisory Board. In our view, the Advisory Board appointed by the State Government was a good board. It consisted of

independent men belonging to different industries and different places and with minds free from predilections and prejudices. To the board of such

independent character requisite material was supplied by the employers in the bidi industry in response to the letter, dated 30 July, 1954, written

by the Board''s Secretary. This independent body of the representatives of the employers and the employees applied their minds to the said

material, considered it carefully and then arrived at certain unanimous conclusions upon which the notification, dated 19 April, 1955, was based. In

these circumstances, we find ourselves unable to accept Mr. Kotwal''s contention that the notification proceeded upon a purposeful and intentional

discrimination.

19. Mr. Kotwal has referred us to the case of Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, . In this case the Governor-

General of India, finding that on account of mismanagement and neglect, a situation had arisen in the affairs of the Sholapur Spinning and Weaving

Company, Ltd., which had prejudicially affected the production of an essential commodity and had caused serious unemployment amongst a

certain section of the community and that an emergency had thereby arisen which rendered it necessary to make special provision for the proper

management and administrative of the said company, promulgated an Ordinance, which was subsequently reenacted in the form of a legislation

called the Sholapur and Weaving Company (Emergency Provisions) Act, 1950. The result of the promulgation of the Ordinance was the managing

agents of the said company were dismissed, the directors holding office vacated their office automatically, the Government was authorized to

appoint new directors, the rights of the shareholders of the company were curtailed in the matter of voting, appointment of directors, passing of

resolutions and applying for winding up, and power was also given to the Government to modify the Indian Companies Act in its application to the

company. In accordance with the provisions of the Ordinance new directors were appointed by Government. A shareholder made an application

under Art. 32 of the Constitution for a declaration that the Act was void and for enforcement of his fundamental rights by a writ of mandamus

against the Central Government, the Government of Bombay and the directors restraining them from exercising any powers under the Act and from

interfering with the management of the company on the ground that the Act was not within the legislative competence of the Parliament and

infringed his fundamental rights guaranteed by Arts. 19(1)(f), 31 and 14 of the Constitution and was consequently void under Art. 13. It was held

by their lordships of the Supreme Court that the presumption was always in favor of the constitution of an enactment, since it must be assumed that

the legislature understood and correctly appreciated the needs of its own people, that its laws were directed to problems made manifest by

experience and that its discriminations were based upon adequate grounds. It was also held that the above presumption regarding constitutionality

of an enactment might be rebutted in certain cases by showing that on the face of the face of the statute there was no classification at all or none on

the basis of any apparent difference specially peculiar to any particular individual or class and not applicable to any other person or class of

persons. Now, in the present case, on the face of the notification there is a classification. It is ex facie clear that the Government of Bombay had

appointed an Advisory Committee for the purpose of enquiring into the conditions of employment in the bidi-making industry, that the said

Committee had made its report as to those conditions, that the Government had also consulted the Advisory Board and that it was after

considering the advice of the Committee and the Board that the rates of minimum wages were revised. It is, therefore, clear on the face of the

notification that the conditions of employment in the bidi-making industry must have been found different in the different areas. As I have mentioned

in the earlier part of this judgment, the Advisory Board had called upon the employers to submit certain details, such as the accounts, the Income

Tax statements, the sales-tax returns in respect of the industry, the selling price and the wage-rate since 1948, the strength of employees in the

industry etc. The advice tendered by the Board to the Government must have been in the light of the above material. It is but reasonable to assume

that the examination of the above material must have revealed that the employers in the various areas mentioned in the notification had varying

capacity to pay wages to their employees, that their profits from the industry were unequal, that the industrial competition which they had to

encounter from the industry in the neighboring areas was not uniform, that the quantum of production, conditions of labour and transport facilities in

different places were different, etc., etc. It is, therefore, apparent that the notification proceeded upon a classification that was based upon

differences, peculiar to the particular employers and employees. These differences or distinction were real and substantial and they had a

reasonable relation to the object which the legislature sought to attain by enacting the Act.

20. The learned advocate Mr. Kotwal for the petitioners-employers contends that it is for the State of Bombay to show that the notification, dated

19 April, 1955, was not discriminatory. The learned Advocate-General, on the other hand, says that the onus to show that the notification is

discriminatory is upon the petitioners. In Chiranjitlal Chowdhuri v. Union of India 1950 S.C. 869 : 53 Bom. L.R.499 it was held that the burden

was upon him who attacked the constitutionality of an enactment to show that there had been a clear transgression of constitutional principles.

Their lordships held in that case that the petitioner had not been able to rebut the presumption which was in favor of constitutionality of the

enactment which was challenged. In Ram Krishna Dalmia v. Tendolkar, J. (1958) 61 Bom. L.R. 192 , also, where a certain notification issued by

the Government was challenged, it was observed by their lordships of the Supreme Court that it was to be expected - and, until the contrary was

proved, it was to be presumed - that the Government, which was responsible to the Parliament, would act honestly, properly and in conformity

with the policy and principle laid down by the Parliament. The learned Advocate-General is therefore right in the submission made by him that the

presumption is in favour of the constitutionality of the notification issued by the State Government under S. 10, Sub-section (2). It is true that in the

The State of Rajasthan Vs. Rao Manohar Singhji, where the jagirdars of only a particular area of Rajasthan were subjected to a disability in that

the revenue which till then was collected by them was required thenceforward to be collected by and paid to Government, to was held by the

Supreme Court that the classification might have been justified if the State had shown that it was based upon a substantial distinction, namely, that

the jagirdars of the area subjected to the disability were in some way different to those of the other areas of Rajasthan who were not similarly

situated. It is to be seen however that in that case S. 8A of the Act which was introduced by Ordinance X of 1949 was ex facie discriminatory.

The section read :

Without prejudice to the generality of the foregoing provisions, it is hereby enacted that the revenue which was heretofore collected by jagirdars

shall henceforward be collected by and paid to the Government; the Government will, after deducting the collection and other expenses, pay it to

the jagirdars concerned.

21. The discrimination between the jagirdars of one area of Rajasthan and those of the other areas was apparent on the face of the enactment

itself. In the case of the present notification whose constitutionality is challenged, namely, the notification, dated 19 April 1955, issued under S. 10,

Sub-section (2), by the State of Bombay, it is clear that on the face of it there was classification which, as I have started in this judgment, was

based upon distinctions which were real and substantial and which bore a reasonable relation to the object which was sought to be attained by

enacting the Minimum Wages Act. That being so, the decision in the State of Rajasthan v. Rao Manohar Singhji would not assist the petitioners. In

Ram Prasad Narayan Sahi v. State of Bihar 1953 S.C.R. 112 their lordships stated that where on the face of a statute there was no classification

at all and where no attempt had been made to select an individual or a group with reference to any differentiating attribute peculiar to that individual

or group and not possessed by others, the presumption in favor of the constitutionality of the enactment was of little or no assistance to the State.

This case also would not help the petitioners, since the notification in the present case proceeded upon a classification. Therefore, so far as the

question of onus of proof is concerned, we must accept the contention pressed before us by the learned Advocate-General that it is for the

petitioners to show that the notification dated 19 April, 1955 was discriminatory and therefore offended against the provisions of Art. 14 of the

Constitution. This the petitioners have failed to show. Beyond merely alleging that there was no ""plausible and reasonable"" basis for laying down

different rates for the different localities and that there was no plausible or reasonable basis for laying down higher rates for places where the cost

of living was lower and lower rates at places where the cost of living was higher and that there was no justification for Government to make a

distinction against Sinnar, Sangamner, Akola and places situated within seven miles of Akola and Sangamner, they have said noting. It is clear upon

a proper construction of the notification that this is a case where persons differently circumstances were differently treated. The essence of a

discriminatory notification would lie in differently treating persons who were similarly circumstanced. That is not case with the notification, dated 19

April 1955.

22. It is settled on authority that when a legislative enactment is challenged as being discriminatory, the challenger must prove that the enactment is

not based on any classification at all or that it is based on a classification which is not founded upon any intelligible differential having a rational

relation to the object sought to be attained by the enactment. Ram Prasad Narayan Sahi v. State of Bihar and Budhan Choudhry and Others Vs.

The State of Bihar, are authorities on this point. In the present case, I have already shown that the classification is apparent on the face of the

notification and further that the classification was founded on a reasonable differentia distinguishing the cases of employers and employees in Nasik,

Sinnar, Sangamner, Akola and places within seven miles of Sangamner and Akola from those in other areas. There was clearly a nexus between

the said differentia and the object of the Act, viz., the revision of the rates of minimum wages. When a notification issued by Government in

pursuance of the power conferred upon it by the statute is challenged under Art. 14 as being discriminatory, the challenger must prove not only that

the notification is not based on any classification or that it is based on classification which is not founded upon intelligible differentia having rational

relation to the object which the legislature has sought to attain by enacting the statute, but further that the discrimination is intentional and

purposeful.

23. In Snowden v. Hughes (1944) 88 Law. Ed. 497 the provisions of the Fourteenth Amendment which are analogous to the provisions of Art. 14

of the Constitution of India came up for consideration before the Supreme Court of the United States. The learned Judges of the Supreme Court

said that it was not every denial of a right conferred by the State law that involved a denial of the equal protection of the law, even though the

denial of the right to one person might operate to confer it on another. It was also pointed out that where the executive action purported to be in

conformity to the statutory classification, an erroneous or mistaken performance of the statutory duty, although a violation of the statute, was not,

without more, a denial of the equal protection of the laws. Their lordships said that an unlawful administration by the State officers of a State statute

fair on its face, resulting in its unequal application to those who were entitled to be treated alike, was not a denial of equal protection, unless there

was shown to be present in it an element of intentional or purposeful discrimination. Their lordihips further observed that the Constitution did not

assure uniformity of decisions or immunity from merely erroneous action whether by the Courts or the executive agencies of a State, and then they

pointed out that :

the talk in some of the cases about systematic discrimination is only a way of indicating that in order to give rise to a constitutional grievance a

departure from a norm must be rooted in design and not derived merely from error or fallible judgment.

Upon the application of the principle laid down in Snowden case it is clear that although the Advisory Board might have committed an error in

making the recommendation which it did make to the State of Bombay and although the State might likewise have committed an error in accepting

the unanimous recommendation of the Advisory Board the notification could not, merely on that ground, be held to be in violation of the provisions

of Art. 14 of the Constitution. In order to come to the conclusion that the notification offended against the provisions of Art. 14 of the Constitution,

the Court must hold that the discrimination was purposeful and intentional discrimination.

24. The above principle of Snowden case was approved by the Supreme Court of India in Budhan Choudhry case, where their lordships dealt

with a contention that discrimination might be brought about either by the legislature or the executive or even the judiciary and that the inhibition of

Art. 14 extended to all actions of the State denying equal protection of the laws, whether it was the action of any one of the three limbs of the

State. Dealing with this contention, their lordships said :

... it has, however, to be remembered that, in the language of Frank-furter, J., in Snowden v. Hughes, "the Constitution does not assure uniformity

of decisions or immunity from merely erroneous action, whether by the Courts or the executive agencies of a State." The judicial decision must of

necessity depend on the facts and circumstances of each particular case and what may superficially appear to be an unequal application of the law

may not necessarily amount to a denial of equal protection of law unless there is shown to be present in it an element of intentional and purposeful

discrimination.

It is clear, therefore, that although ostensibly it might appear that the employers in the tobacco industry in the different localities referred to in the

notification were unequally treated, that by itself would not amount to a denial of equal protection of the laws unless it was further shown that in the

notification there was an element of purposeful and intentional discrimination. The point which I wish to emphasize is that the principle of Snowden

case that the gist of infringement of the Fourteenth Amendment which is analogous to Art. 14 of the Constitution, lay in purposeful and intentional

discrimination, was approved by the Supreme Court of India in Budhan Choudhry case.

25. This principle would by implication appear to have been reiterated by the Supreme Court in Ram Krishna Dalmia case wherein their lordships,

while dealing with a notification of the Government of India regarding the Commission of Inquiry, observed :

... We feel sure, however, that if this law (meaning thereby the notification issued by the Government regarding the Commission of Inquiry) is

administered by the Government "with an evil eye and an unequal hand" or for an oblique or unworthy purpose, the arms of this Court will belong

enough to reach it and to strike down such abuse with a heavy hand.

It is implicit in these observations that their lordships took the view that in order to hold that the notification issued by the Government about the

Commission of Inquiry was in violation of Art. 14 of the Constitution, it would be necessary to hold that there was purposeful and intentional

discrimination made by the said notification.

26. Mr. Kotwal says that the principle of Snowden case would not be attracted by the facts of this case, since the question of discrimination which

arose in Snowden case was in respect of an executive act of the Government, whereas in the present case the question of discrimination has arisen

in respect of a notification which, Mr. Kotwal says, amounts to a piece of subordinate legislation. Now, in our view, Mr. Kotwal is not right when

he contends that the notification dated 19 April, 1955, which was issued by Government under S. 10(2) of the Act, is a piece of legislation. In

Edward Mills Company, Ltd. v. State of Ajmer 1954 II L.L.J. 680 their lordships of the Supreme Court were dealing with a notification issued

under S. 27 of this very Act and they said that they did not think that in enacting S. 27 the legislature had in any way stripped itself of its essential

power to legislate or had assigned to the administrative authority anything but an accessory or subordinate power which was deemed necessary to

carry out the purpose and the policy of the Act. Now, there is no doubt that the purpose and the policy of the Minimum Wages Act is to provide

four fixing minimum rates of wages to certain employees. The impugned notification in this case, namely, the notification dated 19 April, 1955, was

in our view nothing more than an executive active taken by the State to carry out the policy and the purpose of the Act. We do not think that when

the legislature enacted Sub-section (2) of S. 10 of the Act it had any intention to strip itself in any way of its power of legislation under the Act. It

had no intention, in our view, to assign to the appropriate Government anything more than a mere accessory power of taking an executive action of

issuing notifications which were necessary to carry out the policy of the Act. Then again, in State of Bombay Vs. Narothamdas Jethabai and

Another, the validity of S. 4 of the Bombay City Court Act was challenged and it was held that all that was left to the discretion of the Provincial

Government under the section was the determination of the conditions under which the Court should be invested with the enhanced jurisdiction. It

was held that S. 4 did not involve any delegation of legislative powers, but was only an instance of conditional legislation and was not ultra vices or

invalid on this ground. In the present case also all that was left to the discretion of the Provincial Government under Sub-section (2) of S. 10 of the

Act was to determine whether an administrative action in the form of issuing a notification should be taken by the State Government for the

purpose of giving effect to the object of the Act, namely, for the purpose of revising the rates of minimum wages. The power conferred upon the

Government under Sub-section (2) of S. 10 did not involve any delegation of legislative powers. Mr. Kotwal contends that the notification should

be looked upon as an instance of a conditional legislation. We are unable to accept this contention. Sub-section (2) of S. 10 itself, and not the

notification, would amount to conditional legislation. In our view, the notification issued by Government under S. 10(2) is not a piece of legislation

of any kind, neither delegated legislation nor subordinate legislation nor conditional legislation.

27. Mr. Kotwal has next referred us to Art. 13 of the Constitution and has contended that under Clause (3) of Art. 13, the notification dated 19

April, 1955, issued by Government under S. 10(2), would be law and that, therefore, the question arising out of this notification is one of

discrimination made by law and not one of discrimination made by an official or executive act of Government. Therefore, says Mr. Kotwal, the

principle of Snowden case would not apply to the facts of the present case, since in Snowden case the question was one of discrimination made

not by law but by an executive act of the State. We are unable to see much force in this contention. Article 13, Clause (3), provides :

''law'' includes any Ordinance, order, by law, rule, regulation, notification, custom or usage having in the territory of India the force of law.

28. It is to be noted that Art. 13, Clause (3), does not confer upon the order, rule, regulation, notification, etc., the character identical with the

character of the Act of the legislature. All that it says is that the order, notification, etc., shall have the same force, and shall be treated on the same

footing, as the Act of the legislature. It is significant to note that the Parliament did not use the words ""law means and includes."" It is implicit in the

word ""includes"" that but for the inclusion the thing included would not have fallen in the same category under which it is included. It is clear that an

order made by Government, as, for example, the notification dated 19 April, 1955, is an executive act of the Government. It is not the act of the

legislature done in consequence of its legislative competence. Section 10, Sub-section (2), is a piece of conditional legislation. By enacting that

section, the legislature itself provided that upon the condition of a certain satisfaction being reached by Government, the Government may make a

certain order. The order which the Government may make under that section is not a piece of legislation of any kind, since no legislative

competence is conferred upon Government under the section. It is not even a conditional legislation. As I have said, the conditional legislation is

contained in the section itself [S. 10, Sub-section (2)]. The order or notification issued by the Government under that section is an executive act of

the Government done in pursuance of the power conferred upon it by the conditional legislation enacted by the legislature, and all that would follow

from Art. 13, Clause (3), is that the said order would have the same force as if it were the law of the land. While dealing with the question of

discrimination introduced by an executive act of an authority, it is not invariably possible to rule out a probability that an element of intention or

purpose might have entered into entered into the discrimination. Such a probability must in variably stand ruled out in the case of an act of the

legislature. This essential difference between the two kinds of acts - the executive act of the Government, albeit done in pursuance of power given

given to it by a piece of conditional legislation, and the legislative act of the legislature itself - must be borne in mind when the act is challenged on

the ground of discrimination; or else the constitutional guarantee would be rendered illusory. If an administrative act of an executive Government is

to enjoy the same immunity as the act of the legislature, in that the question of the intention or purpose in respect of it cannot be gone into as it

cannot be in the case of an act of the legislature, the constitutional guarantee of equal protection against executive orders which would have the

force of law under Art. 13, Clause (3), would be reduced to a rope of sands. Therefore, before the petitioners can successfully challenge the

notification of Government dated 19 April, 1955, they must establish that there was an intention or purpose on the part of Government to make a

discrimination. In this connexion, the petitioners have alleged in Para. 14 of the petition :

This action (meaning thereby the issue of a notification) of the Government was mala fide and dishonest. It was prompted by political

considerations for the purpose of bettering the chances of the Congress party and for wakening their opponents.

29. That allegation raises a disputed question of fact and it cannot be decided without recording evidence. It is well settled that a recourse to Art.

226 is not a remedy for deciding much disputed questions of fact. A suit is a remedy and the petitioners have not chosen to adopt that remedy. The

result, therefore, is that the petitioners have failed to establish that the discrimination introduced by the notification dated 19 April, 1955 was

intentional and purposeful and accordingly their challenge to the constitutionality of the notification must fail.

30. Mr. Kotwal has next attacked the constitutionality of the notification dated 19 April 1955, upon another ground, namely, the ground that within

the same industry - the bidi-making industry - one class of employees was treated differently from the other classes of employees. He has invited

our attention to the notification issued by the Government of Bombay under Clause (a) of Sub-section (1) of S. 3 of the Act, creating various zones

and laying down the rates of minimum wages in those zones. If we turn to this notification, it would appear that it refers to several categories of

employees in the bidi-making industry, namely, bidi-makers, wrappers, taraiwallas, bhattiwallas, tobacco mixers, distributors of leaves, etc.

Different rates of wages were provided for in the case of these different categories of employees. If we turn to the notification dated 19 April,

1955, it would appear that the revision of rates which was ordered by it was in respect of bidi-makers only, i.e., in respect of only one category of

employees out of the several categories referred to in the earlier notification. Mr. Kotwal says that what was done by the issue of the notification

dated 19 April, 1955 was that in the same industry, the Government of Bombay treated one class of employees - the bidi-makers - differently

from the other classes of employees in the same industry. Upon this ground Mr. Kotwal says that the notification was ex facie discriminatory and

that, therefore, it was not necessary for the petitioners to lead any proof about it. Now, it is to be noted that such an attack upon the

constitutionality of the notification dated 19 April, 1955 was not made by the petitioners in the petition. The notification was challenged as

discriminatory on only two grounds by the petitioners and those grounds are found in Para. 12 of the petition. It would be convenient to set out the

contents of Para. 12 at this stage. Paragraph 12 of the petition says :

That the petitioners maintain that in issuing the notification dated 19 April 1955 the State Government had exercised its power under S. 3(3)(iv) in

a manner which was capricious and arbitrary. There was no plausible and reasonable basis for laying down different rates fixed for the different

localities referred to in the same notification ... If the rate fixed for these district places which were commercially much more important and had a

much larger population than the small towns of Sangamner and Akola, were fixed at Rs. 1-10-0, Rs. 1-14-0, and Rs. 2, there was no plausible or

reasonable basis for fixing the rate for Sangamner and Akola ar Rs. 2-2-0.

31. Thus, the notification was challenged as being discriminatory upon only two grounds in the petition, namely, that different rates were laid down

for different localities and that higher rates were provided for smaller places where the living was cheaper and lower rates were provided for bigger

places where the living was more expensive. There was no allegation made in the petition that the notification was discriminatory, because within

the same industry, namely, the bidi-making industry, the notification purported to treat one class of employees, namely, the bidi-makers, differently

from the other classes of employees, namely, wrappers, taraiwallas, bhattiwallas and others. If such an allegation had been made by the petitioners

in the petition, the State would have had an opportunity of meeting it. For instance, in that cases, the State might have been in a position to show

that in respect of the other categories of employees also in the bidi-making industry notifications were issued corresponding to the notification

issued in this case on 19 April, 1955. We must not be taken to suggest that other notifications similar to the notification dated 19 April, 1955 were

in fact issued by the State of Bombay, revising the rates of minimum wages payable to the other categories of employees in the bidi-making

industry. What we wish to say is that if such a contention had been taken by the petitioners, the State of Bombay would have had an opportunity of

meeting it. Such an opportunity to the State of Bombay has been denied by reason of the absence of such an allegation in the petition itself and we

do not think that we can permit Mr. Kotwal to raise this allegation for the first time in an application under Art. 226. Not only such a contention

was not taken by the petitioners in the petition itself, but no reference whatsoever was made to it during the course of the initial exhaustive address

of the learned advocate Mr. Kotwal. It was after the learned Advocate-General had made a reply to all the contention which were advanced by

Mr. Kotwal that Mr. Kotwal for the first time in reply to the learned Advocate-General''s address attacked the notification as being discriminatory

upon the ground that it introduced discrimination in respect of only one class of employees in the bidi-making industry in Akola, Sangamner and

places within seven miles of their respective municipal jurisdictions. We could not permit Mr. Kotwal to raise such a contention at such an

extremely late stage.

32. Lastly, Mr. Kotwal has contended that by virtue of the various notifications issued by the State of Bombay under Sub-section (2) of S. 26 of

the Act between 29 August, 1953 and 30 June, 1955, it was provided that the provisions of the Act shall not apply to places situated within seven

miles of the municipal limits of Akola and Sangamner. So, says Mr. Kotwal, upon the date upon which the impugned notification was issued,

namely, on 19 April, 1955, the Act was not applicable to the places situated within seven miles of Akola and Sangamner and therefore, the

Government of the State of Bombay had no power to issue the notification, so far as the employees working in the bidi-making industry in places

situated within seven miles of Akola and Sangamner were concerned. Then Mr. Kotwal says that by the notifications dated 30 June, 1955 and 28

June, 1956, issued by the State under Sub-section (2) of S. 26 it was provided that the Act shall not apply to sangamner and Akola as well and it

was further provided that the duration of the non-application of the Act to these would be up to 31 December, 1956. The result of the notification

dated 30 June, 1955 and 28 June, 1956, was that the Act had become inapplicable to Sangamner, Akola and places within seven miles of

Sangamner and Akola up to 31 December, 1956. In the meantime, on 22 August, 1956, by a notification issued by the State of Bombay, the

exemption which was granted to Sangamner and Akola from the operation of the Act up to 31 December, 1956 was with-drawn with effect from

1 September, 1956. In the light of these facts Mr. Kotwal contends firstly that the Act must be deemed to have been repealed, so far as

Sangamner, Akola and places within seven miles thereof were concerned, by reason of the notifications dated 30 June, 1955 and 28 June, 1956.

Secondly, Mr. Kotwal says that by reason of the notification dated 22 August, 1956, the above repeal itself was repealed. Mr. Kotwal says that

the repeal of the repeal would not result in the revival of the Act and he says that even if we hold that by reason of the repeal the Act was revived,

even so the revival of the Act would not result in the revival of notification dated 19 April, 1955. Mr. Kotwal contends that in any view of the

matter, even if we were to hold that the Act itself was revived by the repeal of the repeal, it was obligatory upon the Government to make a fresh

inquiry and issue a fresh notification under S. 10(2) consequent upon the result of that inquiry. It is clear from what has been stated above that the

whole of Mr. Kotwal''s contention in this context proceeds upon the assumption made by him that the Act was repealed, so far as Sangamner,

Akola and places within seven miles thereof were concerned, by virtue of the notifications issued by the State on 30 June, 1955 and 28 June,

1956. If this contention fails, then the whole argument of Mr. Kotwal on this point fails. Now, in this connexion it is to be noted in the first place

that none of the notifications issued between 29 August, 1953 and 30 June, 1955, and neither of the notifications dated 30 June, 1955 and 28

June, 1956, stated in terms that the Act was repealed by these notifications. To take one notification by way of an instance (all notifications were

similarly worded), namely, the notification dated 29 August 1953, it stated :

In exercise of the powers conferred by sub-section (2) of S. 26 of the Minimum Wages Act, 1948 (XI of 1948), the Government of Bombay is

pleased to direct that for the period from the 30 August, 1953 to 31 December, 1953 (both days inclusive) the provisions of the said Act shall not

apply to bidi-makers employed in any tobacco (including bidi-making) manufactory in any locality in this State except the following localities, etc.,

etc.

33. It is clear, therefore, that what the Government did when it issued the various notifications was that it simply granted exemption to certain areas

from the operation of the Act. The learned Advocate-General contends and in our view rightly - that the granting of an exemption from the

operation of the Act is not, and cannot be, equivalent to a repeal of the Act. Granting of an exemption only meant that for certain reasons

Government considered it fit to suspend the operation of the Act in respect of certain areas for a certain time. It may be noted that the exemption

which was granted initially to the places situated within seven miles of Sangamner and Akola from the operation of the Act was extended from time

to time by various notifications. It could not be contended that the repeal was being extended from time to time. In our view, the very fact that the

exemption from the operation of the Act was being extended to certain localities from time to time would show that the Act had not ceased to

exist, but for certain reasons the Government had thought it appropriate to suspend its operation in certain areas. If we turn to S. 21 of the General

Clauses Act, it says :

Where, by any Central Act or regulation, a power to issue notifications, orders, rules, or bylaws is conferred, then that power includes a power,

exercisable in the like manner and subject to the like sanction and conditions if any, to add to, amend, vary or rescind any notifications, orders,

rules or bylaws so issued.

34. Under S. 26(2) of the Minimum Wages Act, power is given to the State Government to issue a notification. Under S. 21 of the General

Clauses Act a statutory power is given to the State, in pursuance whereof the State may decide to issue a notification, an order or a rule saying that

certain provisions of the Act or all the provisions of the Act shall not apply to certain industries situated within certain areas for a certain time. It

was in pursuance of the statuary power that the Government in the first instance issued a notification saying that the Act shall not apply to certain

areas, then extended the said exemption from time to time and ultimately rescinded or withdrew the exemption. From this it could not be

contended that the Act had ceased to exist at any time or that it had been abrogated or repealed. On the contrary, the facts of this case would

show that the existence of the Act was postulated. As the Act was never repealed and as it continued to exist all the while, the Government had

power to issue the notification on 19 April, 1955, and as soon as the exemption granted by the notifications dated 30 June, 1955 and 28 June,

1956 was withdrawn, the said notification could validly apply to the various localities referred to therein.

35. Mr. Kotwal has invited our attention to S. 6 of the General Clauses Act and contended that unless the repeal explicitly said so, it shall not

revive anything which was not in force at the time at which the repeal took effect. It is scarcely necessary for us to deal with this contention of Mr.

Kotwal, since we find ourselves wholly unable to agree with his argument that the granting of exemption amounted to a repeal of the Act from time

to time. Lastly, Mr. Kotwal referred us to the latter part of S. 24 of the General Clauses Act, which says :

When any Central Act or Regulation, which, by a notification under S. 5 or 5A of the Scheduled Districts Act, 1874, or any like law, has been

extended to any local area, has, by a subsequent notification, been withdrawn from and re-extended to such area or any part thereof, the

provisions of such Act or Regulation shall be deemed to have been repealed and reenacted in such area or part within the meaning of this section.

This is not a case where a Central Act has been extended to any area by a notification issued under S. 5 or 5A of the Scheduled Districts Act,

1874, or any law like the law contained in the Scheduled Districts Act, 1874. That being so, a reference to S. 24 of the General Clauses Act is

futile in this case and it cannot assist Mr. Kotwal''s clients.

36. In the result, we have come to the conclusion that the petitioners have failed to show that the requisite procedure under the Minimum Wages

Act was not followed by the State of Bombay before revising the rates of minimum wages by issuing the notification dated 19 April, 1955, that S.

3(3)(a)(iv) of the Act is discriminatory and violates the provisions of Art. 14 of the Constitution, that the notification dated 19 April, 1955 itself is

discriminatory, and that by reason of the exemption granted to the various localities from the operation of the Act from time to time the Act itself

was repealed from time to time. All these contentions of the petitioners having failed, the application is rejected.

37. On the question of costs, it may be noted that the learned Advocate-General is appearing in this application for the Union of India, the State of

Bombay and the authority appointed under the Minimum Wages Act, 1948. Now, so far as his representation of the Union of India is concerned,

he would not be entitled to any costs. Order XXVIIA, rule 3, of the Code of Civil Procedure, provides :

Where under rule 2 Government is added as a defendant in a suit, the Attorney-General, the Advocate-General, or the Government shall not be

entitled to or liable for costs in the Court which ordered the addition unless the Court having regard to all the circumstances of the case for any

special reason otherwise orders.

38. In this application the Act that was challenged was the Central Act and, therefore, the ""Government"" referred to in rule 3 would be the Union

of India in this case. It is, therefore, clear that so far as the representation of the Union of India is concerned, the Advocate-General will not be

entitled to any costs. But he represents the State of Bombay also, In Dialdas Parmanand Vs. P.S. Talwalkar and Others, and Parashram

Damodhar Vaidya Vs. The State of Bombay and Another, the costs awarded to each party were Rs. 1,000. Having regard to the considerable

effort put in by the learned Advocate-General in this case which involved substantial questions of unusual complexity, we direct that the petitioners

shall pay the costs to the tune of Rs. 1,000, so far as the costs of the Advocate-General representing the State of Bombay are concerned. So far

as the learned advocates appearing for respondents 2A and 2B are concerned, they will get their usual costs. The petitioners will bear their own

costs.

38. In Civil Application No. 155 of 1958, stay is dissolved. No order as to costs.

We cannot part with the case without saying that the case was argued by the learned Advocate-General and the learned advocate Mr. Kotwal

with great ability and thoroughness and the Court appreciates the valuable help rendered by them in deciding the case.

No order as to costs of opponent 1.

Tambe, J.

39. I entirely agree with the findings given by my learned brother at p. 51 of his judgment. I also agree that the petition should be dismissed.

I however find it difficult to accept the argument of the learned Advocate-General that in order to establish infringement of Art. 14 of the

Constitution it would, as a general rule, be necessary to establish that the alleged discrimination had been intentional and purposeful. May be that in

certain cases, e.g., where it is challenged that the discrimination has resulted on account of a decision of a Court or on account of action in a

particular cases taken by an officer of the executive, it may be necessary for the petitioner to establish that the decision of the Court or the action

taken by the officer in dealing with a particular case was intentional or purposeful. Now, discrimination may arise not only on account of an

erroneous decision for act of a Court or executive agency, but may also arise on account of a law enacted by the legislature. If for establishing the

infringement of Art. 14 of the Constitution it is necessary as a general rule to prove that discrimination has been intentional or purposeful, then to

discharge that burden in the case of challenge to a law it would well nigh be impossible and would, in my view, reduce the constitutional guarantee

under Art. 14 to a ""rope of sand."" Reliance is placed on the following observations made in Snowden v. Hughes (1944) 88 Law Ed. 497 :-

The constitution does not assure uniformity of decisions or immunity from merely erroneous action, whether by the Courts or the executive

agencies of a States McGovern v. New York 229 U.S. 363: 57 L.Ed. 1228 : 33 S.Ct. 876 : 46 L.R.A. 391. However, in forbidding a State to

"deny to any person within its jurisdiction the equal protection the equal protection of the laws," the Fourteenth Amendment does not permit a

State to deny the equal protection of its laws because such denial is not wholesale. The talk in some of the cases about systematic discrimination is

only a way of indicating that in order to give rise to a constitutional grievance a departure from a norm must be rooted in design and not derive

merely from error or fallible judgment.

In my view, these observations do not take the case and further and are no authority for the proposition contended for. The decision in Snowden

case was referred to in the case of Budhan Choudhry and Others Vs. The State of Bihar, and at p. 1045 it is observed :

... It has, however, to be remembered that, in the language of Frankfurter, J., in Snowden v. Hughes, "the Constitution does not assure uniformity

of decisions or immunity from merely erroneous action, whether by the Courts or the executive agencies of a state." The judicial decision must of

necessity depend on the facts and circumstances of each particular case and what may superficially appear to be an unequal application of the law

may not necessarily amount to a denial of equal protection of law unless there is shown to be present in it an element of intentional and purposeful

discrimination.

But those observation have to be read in the context of the facts of that the case. They were made in answer of the argument advanced that the

discrimination might arise on account of erroneous decision of a criminal Court. These observations also, therefore, in my opinion, are of no

support to the contention raised. The principles deducible from the previous decisions given by their lordships of the Supreme Court relating to Art.

14 the Constitution were summarized by their lordships in Ram Krishna Dalmia v. Tendolkar, J. (1958) 61 Bom. L.R. 192 S.C. and in the

summary it has not been stated by their lordships that, as a general rule, it is necessary for a petitioner to establish that the discrimination has been

intentional or purposeful. Reliance, however, was placed on the following observations of their lordships by the Advocate-General in support of his

contention :-

... As this Court has said in Matajog Dobey Vs. H.C. Bhari, "a discretionary power is not necessarily a discriminatory power and that abuse of

power is not to be easily assumed where the discretion is vested in the Government and not in a minor official." We feel sure, however, that if this

law is administered by the Government "with an evil eye and an unequal hand" or for an oblique or unworthy purpose, the arms of this Court will

be long enough to reach it and to strike down such abuse with a heavy hand.

These observations also are of no avail to respondents 3 and 4 and do not support their contention that as a general rule it has to be shown that

discrimination was intentional or purposeful.

40. Coming next to the question as to whether the notification of 19 April 1955 is purely an executive act or is law within the meaning of Art. 13(3)

(a) of the Constitution, with respect to the learned Advocate-General, in my opinion, it is law within the meaning of Art. 13(3)(a) of the

Constitution. Section 10 of the Minimum Wages Act authorizes the State Government to issue a notification revising minimum wages after following

certain procedure. That procedure has been followed by the State Government before issuing this notification. It is issued by the State Government

in exercise of its powers conferred on it by the said S. 10. It owes its legal efficacy to that section and action can be taken against the employers

for its infringement under S. 20 of the Minimum Wages Act. It has, therefore, the force of law within the meaning the meaning of Art. 13(3)(a) of

the Constitution. It was, therefore, not necessary for the petitioners to establish that the alleged discrimination on account of the notification was

intentional or purposeful. It is sufficient for them to show that as a result of this notification discrimination in fact resulted. In my opinion, however,

the petitioners have not been able to discharge this burden. I agree with my learned brother that the notification ex facie is not discriminatory. The

burden was, therefore, on the petitioners to establish that the discrimination has resulted on account of the notification. The main ground on which it

was claimed that the discrimination has resulted is that in bigger places, viz., Jalgaon, Dhulia, Dharwar, Hubli and Poona, some of which were

formerly grouped with Akola and Sangamner, the rates have been reduced while in places which are smaller, viz., Akola and Sangamner and

places within seven miles round about, the rates have been increased. In my opinion, the smallness or bigness of the places cannot be the sole

criterion in determining the minimum wages of workers in a particular industry. Various other factors will also have to be taken into consideration in

determining the minimum wages. In the instant case, the wages have been revised by the State Government after consulting the Advisory

Committee and following its unanimous advice. The petitioners were afforded an opportunity to place their case before the Advisory Committee. It

is, therefore, not possible to assume that the State Government had revised the minimum wages arbitrarily without taking into consideration various

relevant factors. In these circumstances, in my judgment, the petitioners have not been able to establish that they had been discriminated against.

The petition therefore fails and should be dismissed with costs.