IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT

MR. JUSTICE IFTIKHAR MUHAMMAD CHAUDHRY, CJ
MR. JUSTICE TARIQ PARVEZ
MR. JUSTICE GHULAM RABBANI

Civil Petitions No. 987 to 989 of 2011

(On appeal from the judgment of High Court of Sindh at Karachi dated 31.5.2011 passed in Const. P.Nos.D-1391/2004, D-1151/2007 and D-494/ 2008)

All Pakistan Newspapers Society and others (in CPs.987, 989/11)
M/s Pakistan Heralds Publications and others (in CP 988/11)
... PETITIONERS

VERSUS

Federation of Pakistan and others (in CPs.987, 989/11)
Chairman Implementation Tribunal etc. (in CP. 988/11)
... RESPONDENTS

For the petitioners/ Employers:	Mr. Abdul Hafeez Pirzada, Sr. ASC Mr. Afzal Siddiqui, ASC, Mr. Mehmood A. Sheikh, AOR Assisted by: M/s Hameed Ahmad, Mustafa Aftab Sherpao and Bilal Akbar Tarar, Advocates
On Court Notice:	Maulvi Anwar-ul-Haq, Attorney General for Pakistan Assisted by M/s Salman Faisal, Syed Ali Mustafa Gillani and Mrs. Shafaq Mohsin, Advocates
For PFUJ (Dastoor Group):	Mr. Muhammad Akram Sheikh, Sr. ASC
For respondent No. 2C(i) (ii)(iii)& (v) [CP 987/2011] & for respondent No. 4 [CP 989/2011]	Mr. Mehr Khan Malik, AOR
For respondent No. 3 [CP 987/2011] & For respondent No. 4 [CP 988/2011] & For respondent No. 6 [CP 989/2011]	Mr. Salman Akram Raja, ASC Mr. Mehr Khan Malik, AOR assisted by M/s Umar Akram Chaudhry, Smeer Khosa, Malik Ghulam Sabir, Yasir Latif Hamdani, Faiz Ghanghro, Ms. Aneesa Agha & Ms. Sahr Bandial, Advocates
For respondent No.3 [CP 988/2011]	Mr. Shaukat Aziz Siddiqui, ASC Raja Abdul Ghafoor, AOR
For respondent no. 1: [CP 987/2011]	*Nemo* [despite service of notice]

For respondent no. 1-3: *Nemo* [despite service of notice]
[CP 988/2011]
For respondent no. 1-2: *Nemo* [despite service of notice]
[CP 989/2011]

Dates of hearing : 20, 21, 28 & 29th September, 2011

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J U D G M E N T

IFTIKHAR MUHAMMAD CHAUDHRY, CJ. — The petitioners seek leave against two separate judgments of even date, (31st May, 2011) passed by a learned Division Bench of the High Court of Sindh at Karachi whereby Constitution Petitions No. D-1391/2004, D-1151/2007 and D-494/ 2008 filed by them challenging the constitutionality of the Newspaper Employees (Conditions of Service) Act, 1973 [Act No. LVIII of 1973], hereinafter referred to as the "NECOSA", or in the alternative, the constitutionality of the Seventh Wage Award dated 25th October, 2001, and the powers of the Implementation Tribunal for Newspaper Employees, hereinafter referred to as the "ITNE" were dismissed with costs throughout.

2. Brief facts giving rise to the instant petitions are that on 8th July, 2000, the Government of Pakistan constituted the Seventh Wage Board under the NECOSA for the purpose of fixing the rates of wages of the newspaper employees. The Wage Board (hereinafter referred to as 'the Board'), headed by Hon'ble Mr. Justice Raja Afrasiab Khan, a former Judge of the Supreme Court of Pakistan as Chairman along with 10 members, five each nominated by the employers and the employees pronounced its Award, published by the Government of Pakistan *vide* S.R.O. No.744(I)/2001, dated 25th October, 2001. The petitioners, All Pakistan Newspapers Society (APNS) and others, felt aggrieved by the Award and made a representation to the Government of Pakistan through Secretary, Information and Media Development

and Secretary Labour Manpower and Overseas Pakistanis, but no relief having been provided to them, they filed Constitution Petition No. 35 of 2002 before this Court under Article 184(3) of the Constitution challenging, *inter alia*, the constitutionality of the NECOSA on the ground of being violative of their Fundamental Rights and *ultra vires* the Constitution, as also the Award being *void ab initio* and of no legal effect and consequence. This Court, *vide* judgment dated 8th April, 2004 reported as *All Pakistan Newspapers Society v. Federation of Pakistan* (PLD 2004 SC 600), dismissed the petition as not maintainable and the petitioners were asked to avail remedy before the proper forum, if they so desired.

3. Three sets of the newspaper establishments, namely, APNS & 14 others (petitioners in CP 987/2011); Pakistan Heralds Publications & 7 others (petitioners in CP 988/2011); and APNS & 4 others (petitioners in CP 989/2011) then filed Constitution Petitions No. D-1391/2004, D-1151/2007 and D-834/ 2004 under Article 199 of the Constitution before the High Court of Sindh. A learned Division Bench of High Court of Sindh, *vide* two separate judgments of even date, i.e., 31st May, 2011 dismissed the said petitions. Aggrieved by the aforesaid judgments of the High Court of Sindh, the petitioners have filed the instant petitions for leave to appeal under Article 185(3) of the Constitution before this Court. As caveat was filed by the contesting respondents, therefore, notices were issued to the learned Attorney General for Pakistan and official respondents so as to finally dispose of the petitions as the matter was lingering on for the last about ten years.

4. Mr. Abdul Hafeez Pirzada, Sr. ASC for the petitioners has argued that the NECOSA is *ultra vires* the Constitution and liable to be

struck down as a void law, *inter alia*, on the grounds that it has not provided even a single right of appeal from any adjudicatory or directory orders or actions, interim or final made or issued under it; although the decision of the Board is deemed an Award of the Full Bench of the National Industrial Relations Commission (NIRC), which can be questioned in appeal/review/revision before a larger bench of the NIRC, yet no appeal is provided against it; Chairman of the Board is empowered to hand down edicts and Bills of Attainder, which violates not only Article 19 of the Constitution, but also the fundamental principles of trichotomy of power, access to justice and the independence of the judiciary; the Legislature has completely abdicated its powers as it is excessive delegation of powers to the Wage Board, without any guidelines, in terms of the judgments of this Court. There are various laws already existing on the subject, incorporated in the Act of 1973 itself, namely, (i) The Payment of Wages Act, 1936 [Section 2(h)]; (ii) The Provident Fund Act, 1928 [Section 5(v)]; (iv) The Factories Act, 1934 [Section 6]; (v) The Industrial & Commercial Standing Orders Ordinance, 1968 [Section 17]; (vi) The Industrial Relations Ordinance, 1965 [Section 18]; (vii) The Social Security Ordinance, 1965 [Section 19]; (viii) The Cost of Living Act, 1973; (ix) The Employees Old Age Benefit Act, 1974; (x) The Workers' Participation & Profit Act; and (xi) the Minimum Wages Ordinance, 1969; the Wage Board and the Tribunal, constituted under the Act of 1973 are not judicial or *quasi*-judicial forums/bodies who are exercising purely executive and administrative functions in a discretionary manner. On merits of the Award, the learned counsel has made the following submissions: -

(1) The newspaper owners are ready to implement the Wage Board Award and what they had done, it was conditional implementation and they are making payments in terms of the 6th Award conditional upon the outcome of the pending proceedings in the courts of law including the intra-court appeals before a Division Bench of the Lahore High Court;

(2) The 6th Award, which came in 1995, had inbuilt provisions and a machinery in annual increment of not less than 10% per annum and promotion to higher grades. These increments have been regularly given and promotions have not been withheld, so the workers are presently getting more than 300% of their emoluments;

(3) As far as the Seventh Award is concerned, it is to be noted that it is not as if they are totally oblivious because both owners and working journalists cannot exist without each other. This recognition is always there. *Ex-gratia* payments, i.e. payments without commitment, are being made, especially under the Seventh Award. However, one commitment was made that if and when the Seventh Award would be implemented, these payments, which they are receiving, would be set-off;

(4) Under the Seventh Award, the newspapers exist in categories A and B, i.e., the metropolitan newspapers fall in Category A while the regional papers fall in Category B. In the first category, there are only three metropolitan cities, namely, Karachi, Lahore and Rawalpindi-Islamabad, the publication whereof is listed as Grade A. The basic pay of an Editor Grade employee of a metropolitan newspaper was proposed at Rs.9,400/- with a maximum of Rs.13,900/- and now the said employee with perks and privileges is getting in *lacs*;

(5) Nobody has been denied annual increments and now some of them are getting more than twice or thrice;

(6) There are about 40,000 declarations of the newspapers at the moment floating around Pakistan with an initial list of 260 who are the members and the membership has gone up to 2300 in Pakistan – this process of increment is

automatic and it is calculated over a period of 16 years since 1995 and even if it were to be taken at the rate of 10% with compound increase over and over, it will not be less than 300% to 400% of what they were getting in 1994, which would be less than 250% of what the Seventh Award has given them;

(7) The metropolitan newspapers cannot be judged according to the standard of the Jang, the Recorder or the Dawn or the *Nawa-e-Waqt* who are giants in their own rights, having their own TV channels;

(8) Many of the journalists have now opted out of being newspapers journalists to the electronic media where they are getting approximately 2 to 3 times salaries. Voluntarily they are coming and entering into agreements. It is a universal phenomenon all over the world – people always have ingenious minds to find ways how to circumvent the things. Access has been evaded, companies have been found in camel islands. Now here it is happening including in the State organizations is that many of these services, which are to be performed by the employees, are being so stout. Many of newspapers have handed over entire security to many security companies, which PIA and other organizations has done in various fields, such as catering, etc.. As such, when a big chunk of employees are no longer employees of an organization, their responsibilities no longer rest upon the organization. They are no longer entitled to the benefits of the Wage Board Award. Employer's contract is with an independent body to provide those services instead of getting such services directly from the employees. Many companies hire the security agencies, which have contract with many companies and the employees are of security agencies and they are not employees of the companies so this is happening all over Pakistan. The learned counsel has proposed to his clients that they accept in spirit the Seventh Wage Board Award vis-à-vis the working journalists. His advice has been well received at this moment because it is a body, which has to

take a decision. And to this extent he is hopeful that they will come back with a positive response. According to him, millions are not being made anywhere except some newspapers, i.e. Jang, Dawn, etc., but for the newspapers having three members staff sitting in Mastung, this is arbitrary. Today, the editor of Kohistan is sitting with aside. Daily news papers; Nasim Hijazi's newspaper; and this gentleman along with another outstanding newspaper "Sun" were the first victims of the Wage Board Awards and it closed down. The newspaper Muslim of Agha Murtaza Poya's had to shut down; Taamir was shut down after the 4th Wage Board Award; The Morning News from Karachi, with Khawaja Khairuddin as the Editor was shut down following the 5th Wage Board Award. There is a statement that 190 newspapers have been shut down - what would be about their workers/hawkers? The Government is the biggest advertiser in the country. Since 2001 when this Award came, the Government has not increased the rates of advertisement even by 1%.

5. Mr. Muhammad Akram Sheikh, learned Sr. ASC stated that he is representing Dastoor Group of the PFUJ whereas Ms. Asma Jehangir would be representing the Working Group, the other component of the PFUJ. He submitted that the decision of the Wage Board is akin to arbitration proceedings, which is suggestive of a greater cordiality amongst the employers and the employees.

6. Mr. Salman Akram Raja, ASC, who also argued on behalf of Ms. Asma Jehangir, learned counsel for the Working Group of PFUJ submitted that the Wage Board Award has wrongly been characterized as a judicial verdict rendered by a non-judicial forum. Even, it is not akin to arbitration; rather it is in the nature of price fixation of different commodities. The former essentially decides an existing dispute between two parties whereas no dispute was presented before

the Board. In the latter case, whenever rates are fixed, it is in the nature of rule making, which is always done for the future. Right of appeal would come in where any individual right is determined one way or the other. Even the function performed by the ITNE is not adjudication or determination of the rights and obligations, but it simply implements the decision of the Board, not to make any further determination. The Tribunal is like the Collector of Customs because he simply applies the law. No trial is pending before the Tribunal, nor any punishment has ever been awarded by it. There is no cause of action and the courts do not entertain challenges where there is no cause of action or where there is no live issue. The impugned powers of the Tribunal have never been invoked or exercised, therefore, there is no occasion to challenge the same. The question is purely academic in nature. As to the discrimination argument, it is established law that there can be a class. The newspaper industry is clearly distinguishable from other industries, e.g. cement, textile, etc. So, in order to regulate one, all do not have to be regulated. The Constitution leaves that area open to the legislature. This is the only sector referred to as the fourth pillar of the State. As to the bias, the Chairman is not a judge, his function is essentially information gathering and then laying down the rates of wages. Nothing has been brought on the record to show that the finding of the Board is perverse except taking advantage of their own boycotts. As to the excessive delegation, guidelines are there in the statute and it is a ground used most sparingly to strike down a legislation. It is not shown with any specific instances from the Award that the Chairman has acted in excess of the authority vested in him. The ground of occupied field is not available. This happens all the time. General civil law is in place, but special laws, such as banking,

cooperative societies etc., creating special procedures for the determination of certain rights are enacted. On the role of the Chairman and Members of the Board, the High Court of Sindh in its judgments has given finding. The language of the law is clear that the divergent parties are represented in equal number and it is the Chairman who decides by putting the casting vote.

7. Mr. Shaukat Aziz Siddiqui, learned ASC supported the arguments advanced by Mr. Salman Akram Raja and added that the representatives of the newspaper establishments, after joining in the consultative process before the pronouncement of the Award, cannot insist upon providing a right of appeal to them.

8. The learned Attorney General for Pakistan supported the constitutionality of the NECOSA and the Wage Award.

9. Keeping in view of the importance of the constitutional issues raised in these petitions, challenging the *vires* of NECOSA, it is considered appropriate to look into the history of the laws on the subject for the purpose of better understanding of such issues. Initially, the Working Journalists (Conditions of Service) Ordinance, 1960 (hereinafter referred to as "the Ordinance, 1960") was promulgated to regulate certain conditions of service of working journalists and other persons and to provide for constitution of a Wage Board. Section 8 of the Ordinance, 1960 provided that it was within the jurisdiction of the Provincial Government to constitute a Wage Board. The scope of the Wage Board was confined to the fixation of wages of working journalists as defined under section 2(f) of the Ordinance. On 30th May, 1960, the First Wage Board was constituted headed by late Mr. Justice Sajjad Ahmad Jan, the then Judge of the High Court, as the Chairman of the Board. The Wage Board gave its

decision on 31st December, 1960. The decision of the Wage Board was subject to review and revision after five years from the date of its enforcement by an authority that might be set up by the Federal Government. However, instead of five years, the Second Wage Board was constituted on 25th April, 1969. The Board announced its decision on 8th June, 1974, fixing new pay scales of the newspaper employees while maintaining the categorization of the newspapers, periodicals and the news agencies as was already done in the First Wage Board Award.

10. It seems that despite pronouncement of two Wage Boards Awards, it failed to achieve the object as no effective/independent forum was provided for the redressal of the grievances of non-journalist newspaper employees, as a result whereof the newspaper employees had been observing strikes, etc. Thus, after the integration of the Provinces of West Pakistan and East Pakistan, the Provinces were authorized to constitute Wage Boards for fixing wages of the newspaper working in the respective Provinces. All the Provinces agreed on the constitution of one Wage Board. The journalists started demanding that the constitution of the Wage Board should be brought under the control of the Federal Government (reference may be made to the Parliamentary Debates). As such, under the circumstances, keeping in view the difficulties highlighted hereinbefore as well as to avoid uncertainty and to provide smooth and peaceful atmosphere, the NECOSA was enacted on 11th August, 1973. The difference in both the enactments is apparent from their titles. Former i.e. the Ordinance was only to regulate the service conditions of working journalists, whereas, the NECOSA was meant for the working journalists as well as other persons employed in the newspaper establishments. It would not

be out of context to mention here that the latter enactment, in fact, was in continuation of the Ordinance, 1960 as the former was repealed by it with certain amendments, re-enacting sections 2(c), (d) and (e) and section 9, 10, 11, 12, 12A, 13 and 13A.

11. The Third Wage Board, constituted on 24th January, 1979, headed by Mr. Justice (R) Mohammad Munir Faruquee as its Chairman, initially provided interim relief on 5th August, 1979 and then announced final decision on 25th May, 1980, following the existing scheme of categorization of establishments and the gradation of the employees. The Fourth Wage Board, constituted on 4th October 1984 under the chairmanship of Mr. Justice Mian Fazle Mahmood, Judge of the Lahore High Court, initially provided interim relief on 10th January, 1985 and then announced the final decision on 28th September, 1985, following the existing scheme of categorization of establishments and the gradation of the employees. The Fifth Wage Board constituted on 20th July, 1989 under the chairmanship of Mr. Justice Agha Ali Haider, Judge of the High Court of Sindh gave its decision on 18th December, 1990. The Sixth Wage Board, headed by Mr. Justice Zia Mahmood Mirza, a former Judge of the Supreme Court of Pakistan was constituted on 23rd October, 1994, granted interim relief on 1st December, 1994 and thereafter announced the final decision on 13th March, 1996.

12. It is informed that the Sixth Wage Board was challenged before the Lahore High Court by filing Writ Petition No. 8926 of 1996, which was dismissed vide judgment dated 12th September, 1997 reported in *Pakistan Herald Publications (Private) Ltd. v. Federation of Pakistan* (1998 CLC 65). Against the said judgment, ICA No. 859 of 1997 was instituted in the Lahore High Court, which remained pending

from 1997 until 16th June, 2010 when it was consigned to record, in terms of the order of the said date, with the observation that "we, therefore, consign this appeal to record. If and when the appellants make arrangements for appropriate representation before this court, they may make any application for re-fixation/revival of this case." Mr. Afzal Siddiqui, learned ASC stated that so far no application has been filed for re-fixation or the revival of the ICA. It would also not be out of context to note that in absence of stay order, reportedly the Sixth Wage Board Award has been implemented.

13. One of the questions agitated by Mr. Abdul Hafeez Pirzada, Sr. ASC is in respect of violation of Article 25 of the Constitution *qua* classification between the working journalists and non-working journalists given in section 2(d) of the NECOSA. According to him, the definition of newspaper employees is unjustified and unreasonable as two distinct classes of persons, i.e., working and non-working journalists have been combined through it, which does not stand the test of reasonable classification, thus, the NECOSA has been rendered as a bad law and unconstitutional and the same is liable to be struck down on this ground. In this context his arguments are twofold:-

(i) There is no reasonable classification under section 2(e) of the NECOSA between working and non-working journalists.

(ii) Except newspaper establishments no other industry has been subjected to any special law for fixing wages of the employees working therein and newspaper industry has been picked up with an object not recognized under the law.

14. Mr. Salman Akram Raja, learned ASC submitted that the Ordinance of 1960 was promulgated wherein in terms of section 8(1), the Wage Board was empowered to fix rates of wages of the working

journalists only, therefore, on promulgation of the NECOSA the Board was empowered to fix wages of the newspaper employees, which includes a whole-time journalist and a whole-time non-journalist to ensure smooth working of the newspaper industry.

15. Learned counsel in the same breath has made a statement that the owners of the newspapers (petitioners) are likely to accept in spirit the Seventh Wage Award vis-à-vis the working journalists. It may be noted that somehow identical statement was also made by him while appearing in the case of *All Pakistan Newspapers Society* (PLD 2004 SC 600). When we drew his attention towards the said statement, he did not deny the same, but stated that it was a conditional statement and to elaborate his plea in respect of the same stand, he had gone to the extent of stating that advice so given by him would be considered in a meeting by the newspaper establishments. The representative of the respondents vehemently opposed the statement and stated that the Court may decide the case on merits instead of leaving it to the newspaper establishments. However, from his above stance, *prima facie*, it is established that the petitioners are ready to accept the Seventh Wage Award as far as the working journalists as defined in section 2(d)(i) *ibid*. Be that as it may, to deal with this argument, we have to refresh our memory with the background/history/circumstances, which persuaded the legislature to make amendments in the Ordinance of 1960 and without any fear of contradiction that all the Awards given by the Wage Board for both the categories of newspaper employees, i.e., working journalists and non-working journalists in terms of section 2(d) of the NECOSA have been implemented. Learned counsel without supporting his arguments on the basis of material stated that some of the allied services, e.g.,

printing and publication, security services, catering, etc., have been outsourced, therefore, the persons engaged in those areas could not be treated as the employees of newspaper establishments. As such, the definition of newspaper employee based on irrational classification being violative of Article 25 of the Constitution is not acceptable. There is no cavil with the proposition that all citizens are equal before the law and are entitled to equal protection of law. But, we fail to understand as to how this point is available to the newspaper establishments because they have to plead discrimination under Article 25 of the Constitution if for the sake of argument, they have not been treated equally under the definition of newspaper employees given in section 2(d) of the NECOSA. Apparently, under this provision of the law, categories of working journalists and non-working journalists have been created for argument's sake, newspaper employees could plead discrimination or irrational classification against themselves. However, the petitioners/newspaper establishments legitimately can agitate against the rate of wages fixed by the Wage Board for both the categories of the newspaper employees.

16. In the case of *Pakistan Herald Publications* (*supra*) on behalf of a group of owners of newspapers, contention was raised that though there may be some justification for treating the working journalists as a separate class and fix their wages considering the nature of their duties, but there was no occasion for giving similar treatment to other employees of the newspaper establishments who are non-working journalists. This contention on their behalf was repelled as under: -

> "38. I am unable to agree with the learned counsel. The Act on.-the face of it provides for fixation of wages of all newspaper employees, both journalist and non-journalists.

The law was framed to ensure payment of wages and salaries of the persons engaged in the newspaper industry as a whole in recognition of the position that dissemination of news is vital to public interest. It was, therefore, necessary to ensure that all those persons who are engaged in bringing out newspapers should be free from shackle of economic misery and the resultant sense of despondency. The nature of duties being performed by the journalists may be unique and of more importance but it is equally clear that without the participation of other non-journalists employees it is not possible to bring out a newspaper. The legislature, being alive to this position, has chosen to frame the law for the newspaper industry as a whole which by itself is a separate class. This classification cannot be said to be arbitrary or irrational and the question of violation of Article 25 of the Constitution which does not prohibit reasonable classification, does not arise. It may be noticed that the earlier law namely the Working Journalists (Conditions of Service) Ordinance, 1960 provides for fixation of wages of the working journalists only which was found to be unsatisfactory. The Newspapers Employees (Conditions of Service) Act, 1973 which repealed the aforesaid Ordinance, therefore, provides for fixation of wages of both whole time journalists and whole time non-journalists and defined in sub-clause (i) and sub-clause (ii) of clau3e (8) of section 2 of the Newspaper Employees (Conditions of Service) Act, 1973.

39. There is also merit in the contention of Mr. Minto that the grant of better conditions of service only to the journalists as compared to other persons engaged in bringing out of the newspapers tended to create friction among the two sets of employees and was not congenial to the better relations inter se. It may also be mentioned here that relevant law in India namely The Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 was originally applicable only to

> working journalists but by subsequent amendment, provision has been made for fixing wages of the non journalists also. In Independent Newspapers Corporation (Pvt.) Ltd. v. Chairman Fourth Wage Board and Implementation Tribunal for Newspaper Employees, Government of Pakistan, Islamabad (1993 SCMR 1533), it was observed that the purpose of Newspaper Employees (Conditions of Service) Act, 1973 is the betterment of financial condition of persons employed in the newspaper establishments and it should receive beneficial construction."

At this juncture, it is to be observed that as far as the working journalists or non-working journalists are concerned, they have no reservations against each other although according to the Wage Board Award, the wages of both types of newspaper employees are not at par as is evident from the contents of the Award. The argument so raised by the learned counsel has not impressed us, as it has already been observed hereinabove that the grievance of the petitioners at the best could be that the wages of the newspaper employees of both categories i.e., working journalists and non-working journalists, fixed by the Board are irrational.

17. There has been a protracted litigation in the instant case. Earlier, a petition under Article 184(3) of the Constitution was filed before this Court, which was decided in the case of *All Pakistan Newspapers Society* (*supra*). Then petitions under Article 199 were filed before the High Court of Sindh, which remained pending for a considerable period of time, and prior to instant legal proceedings, the question being raised, has been decided by the Lahore High Court in 1998 in *Herald Publications' case*. But despite it, no material has been brought on record to substantiate the plea of discrimination to the

petitioners by defining “newspaper employees” under section 2(d) of NECOSA has caused to them and how wages fixed by the Board were irrational. Article 25 of the Constitution confers a right upon the citizens that they should be treated equally and whosoever challenges any provision of the law, it becomes his responsibility to prove the same and in absence thereof it is held that section 2(d) of the NECOSA is not violative of Article 25 of the Constitution.

18. Mr. Salman Akram Raja, while laying down foundation of his case, has drawn our attention towards the case of *All Pakistan Newspapers Society v. Federation of Pakistan* (PLD 2004 SC 600) and submitted that the NECOSA is a beneficial legislation, which is aimed at the betterment of the newspaper employees, therefore, it should receive beneficial construction. It is well-settled that there is a presumption in favour of the constitutionality of legislative enactments, the Courts must lean in favour of upholding the constitutionality of a legislation and that the law should be saved rather than destroying it. Reference in this behalf may be made to the cases of *Abdul Aziz v. Province of West Pakistan* (PLD 1958 SC 499), *Province of East Pakistan v. Siraj-ul-Haq Patwari* (PLD 1966 SC 854), *Inam-ur-Rehman v. Federation of Pakistan* (1992 SCMR 563), *Sabir Shah v. Shad Muhammad Khan* (PLD 1995 SC 66), *Multiline Associates v. Ardeshir Cowasjee* (PLD 1995 SC 423), *Elahi Cotton Mills Ltd. v. Federation of Pakistan* (PLD 1997 SC 582) *Tariq Nawaz v. Government of Pakistan* (2000 SCMR 1956), *Asif Islam v. Muhammad Asif* (PLD 2001 SC 499) and *Federation of Pakistan v. Muhammad Sadiq* (PLD 2007 SC 133). He further contended that as far as the Parliament is concerned, it is competent to legislate a law making rational classification amongst different persons similarly placed in view of the

judgments pronounced by this Court from time to time, including the case of *I.A. Sharwani v. Government of Pakistan* (1992 SCMR 1041) wherein the principles governing reasonable classification were highlighted. In *I.A. Sharwani's case* (*supra*), this Court had highlighted that reasonable classification should be based on–

(a) intelligible differentia, which distinguishes persons or things that each group together from those who have been left out.

(b) That differentia must have nexus to the appeal cited achieve by such classification.

19. Although we have held hereinabove that the plea of unjustified or unreasonable classification in terms of Article 25 of the Constitution of creating two categories of employees, working journalists and non-working journalists would only be available to the newspaper employees who have been placed in one compartment, although the nature of their job, for the sake of argument, is different from each other, i.e., a whole time journalist: an editor, a leader writer, news editor, feature writer, reporter, correspondent, copy tester, cartoonist, news photographer, calligraphist, writer, news editor, feature writer, reporter correspondent, copy tester, cartoonist news photographer, calligraphist and proof reader, and a whole time non-journalist: manager, clerk, stenotypist, printing engineer, linotype, operator, composer, type-seller, photo studio attendant, printing worker, accountant and office peon, who are performing distinct and different functions. However, without prejudice to the discussion made hereinabove, looking from this angle as well and presuming that the petitioners have grievance that a reasonable classification has not been made amongst the working journalists and non-working journalists. We have to apply the test noted hereinabove

from the case of *I.A. Sharwani* (*supra*) on the definition of the newspaper employees. In this context, it may be noted with reference to the object and text as a whole of the NECOSA is to be made to ascertain that it is not a journalist or any other individual alone who can successfully provide support to the newspaper industry for printing and publication of the newspapers containing public news or comments, etc. Argument of Mr. Shaukat Aziz Siddiqui, learned counsel for the respondents at this stage seems to be very relevant as according to him without causing prejudice to the case of any of the categories of the newspaper employees, whenever a news is generated or broken, it would be of no use without the help of the supporting staff who fall within the category of a whole time non-journalist specified in section 2(d)(ii) of the NECOSA to publish and print it because the object and purpose is to print, publish and circulate the newspapers, therefore, there is a nexus in the performance of the duties by the different categories of both types of persons with cooperation and collaboration with each others. Thus, on the basis of intelligible *differentia* the categories of the newspapers employees are different and distinct from other persons who are engaged in some other industries, but their object and purpose is not common as is shown that object and purpose of both the categories is common and to achieve the same there was a necessity of classification.

20. Thus, such classification calls for equal protection of law to the working journalists and non-working journalists because they are equally placed, as such deserves to be treated alike both in privileges and liabilities. As far as promulgation of the NECOSA is concerned, it is the domain and prerogative of the legislature, which has wisdom to

promulgate a law to achieve a particular object and purpose presumably promulgating such laws legally, validly and constitutionally on the basis of its competence. In the instant case, the competence of the legislature has not been questioned except, *inter alia* putting forward the arguments noted hereinabove.

21. Learned counsel also contended that the employees of the electronic media, i.e., radio and television are not covered by the NECOSA, therefore, applying phenomena of pick and choose, prejudice has been caused to the petitioners. Suffice to observe that in view of the above discussion, the newspaper industry is distinct and different from all other industries referred to hereinabove by the learned counsel and at the same time for such reason alone the NECOSA cannot be declared *ultra vires* the Constitution.

22. It may be noted that as far as Article 19 of the Constitution is concerned, it deals with freedom of speech, etc. Thus, argument raised by the learned counsel that by phenomena of pick and choose, discrimination has been caused to the petitioners has no substance.

23. Mr. Abdul Hafeez Prizada, Sr. ASC, learned counsel for the petitioners vehemently contended that the provisions of the NECOSA are violative of the Fundamental Rights enshrined in Articles, 4, 10A, 18, 19, 24 and 25 as well as Article 2-A of the Constitution, therefore, the same deserve to be declared as void. The learned counsel vehemently contended that it is, in particular, violative of the due process of law clause as recently introduced into the Constitution by means of Article 10A inserted by the 18th Amendment as in section 9 of the NECOSA, no right of appeal was provided against the Wage Award. In support of his argument, he relied upon the judgment in the case of *In re: Islamization of Laws* (PLD 1986 FSC 29) wherein on the

recommendations of the Federal Shariat Court, right of appeal was ordered to be provided to the convicts of the Field Court Martial. He also submitted that it is violative of the judicial system as it negates the rights of access to justice in terms of *Sharaf Faridi Case* (PLD 1994 SC 105).

24. On the other hand, Mr. Muhammad Akram Sheikh, learned counsel for the respondents contended that the Legislature, keeping in view the history of the service conditions of the working journalists and newspaper employees, validly promulgated the NECOSA in accordance with the constitutional provisions, which, in no way, violated the Fundamental Rights of the petitioners. According to him, the NECOSA has survived since 1973 during course whereof five awards have been pronounced, which have been implemented and in no manner it has been found violative of the due process of law. He submitted that non-availability of any right of appeal could not be a ground to strike down any legislative instrument on the pretext of violation of due process of law. Further, the NECOSA is not a discriminatory, unjustified or an unreasonable law, as the definition of newspaper employees has not created a separate class between working and non-working journalists and other persons working in the newspaper industry on account of nature of their duties, rather it creates a nexus with the object of the legislation, viz., to regulate the conditions of service of the newspaper employees. The legislation in question, in order to ensure smooth functioning of the newspaper industry and to establish nexus between newspaper establishments and newspaper employees brought about amendments in the Working Journalists (Conditions of Service) Ordinance, 1960 as a result whereof the NECOSA was promulgated and on account of the mechanism

provided for fixation of the wages, all the previous Awards under the NECOSA, except the Seventh Award, have been implemented and the newspaper industry is functioning smoothly and satisfactorily. The learned counsel were of the opinion that the nature of function entrusted to the Wage Board of determining future wages of the newspaper employees under the NECOSA was a legislative act, against which non-providing of right of appeal would not be tantamount to denial of the due process of law.

25. Mr. Shaukat Aziz Siddiqui, learned ASC fully supported the arguments advanced by Mr. Salman Akram Raja and added that the *vires* of the NECOSA for ascertaining whether it is inconsistent with any of the Fundamental Rights as per Article 8 of the Constitution, the petitioners who represent certain newspaper establishments, not more than 80 newspapers in number, are not holding brief on behalf of the whole lot of newspaper establishments, whereas rest of them have not challenged the *vires* of the NECOSA, therefore, from this angle alone, the *bona fides* of the petitioners can be judged. He submitted that the learned counsel for the petitioners has failed to point out any violation of the Fundamental Rights, except claiming a right of appeal against the Award. According to him, equal numbers of representatives of the newspaper establishments (petitioners) and of the newspaper employees (respondents) are nominated to advise the Chairman of the Wage Board, therefore, after joining in the consultative process before the pronouncement of the Award, they cannot insist for providing a right of appeal to them. The non-working journalists are the backbone of the newspaper industry and in absence of the services, which are provided by them for the smooth running of the newspaper industry, the State cannot enforce Article 19 of the Constitution.

26. The learned Attorney General for Pakistan submitted that the NECOSA as well as the Seventh Award dated 25th October, 2001 are not violative of any of the Fundamental Rights of the petitioners or the due process of law as envisaged by the Constitution. Therefore, the same are *intra vires* the Constitution.

27. Under Article 8 of the Constitution this Court is empowered to declare *void* any law or any custom or usage having the force of law if it is inconsistent with, or is in derogation of any of the Fundamental Rights. In the instant case, the petitioners have challenged the constitutionality of the NECOSA on the strength of arguments that it is in derogation of the Fundamental Rights. His specific argument for declaring the NECOSA unconstitutional is that right of appeal has not been provided against the Wage Award, therefore, it is against the due process of law and is also discriminatory in nature.

28. Before dilating upon the respective contentions of the learned counsel for the parties, it is to be noted that under section 9(1) of the NECOSA, the Federal Government *vide* notification No. Lab-II-I(19)/99 dated 8th July, 2000 constituted the Wage Board for fixing the rates of wages in respect of the newspaper employees in accordance with the provisions of the NECOSA. Hon'ble Mr. Justice Afrasiab Khan, former Judge of the Supreme Court was appointed as the Chairman of the Board *vide* notification No. I-19-99-Lab-II dated 19th June, 2000. The petitioners, All Pakistan Newspapers Society, nominated five persons *vide* letter dated 26th January, 2000 as members of the Wage Board. Similarly, five members were nominated on behalf of the newspaper employees. For reference composition of the Board is given below: -

<u>Chairman</u>

Mr. Justice Raja Afrasiab Khan
Former Judge, Supreme Court of Pakistan

Employers Members

(i) Mr. Hameed Haroon, President APNS and Chief Executive Officer, Pakistan Herald Publications (Pvt.) Ltd.
(ii) Mir Shakil-ur-Rahman , Chief Editor Jang
(iii) Mr. Arif Nizami, President, CPNE and Editor, The Nation, Daily Nawa-e-Waqat
(iv) Mr. Arshad A. Zuberi, Editor Business Recorder
(v) Syed Fasih Iqbal, Editor, Daily Balochistan Times

Employees Members

(i) Mr. Abdul Hameed Chhapra, Chairman, APNEC, Karachi
(ii) Mr. I.H. Raashid, President PFUJ, Lahore
(iii) Mr. Pervez Shaukat, Secretary General, APNEC, Rawalpindi
(iv) Mr. Majid Fauz, President, Union of Balochistan Journalists, Quetta
(v) Mr. Abdullah Jan, Assistant Secretary General, PFUJ, Peshawar

Under section 9(2) of the NECOSA, both categories of the members were to advise the Chairman. Under section 9(3) of the NECOSA, the time limit fixed for giving an Award by the Board is 180 days. Under section 10(1) the Board, while fixing rates of wages in respect of newspaper employees [both journalists and non-journalists as per section 2(d)] is required to take into consideration the cost of living, prevailing rates of wages of comparable employment, the circumstances relating to the newspaper industry in different regions of the country and any other circumstances, which the Board may deem relevant. It is important to note that as per section 10(2) of the NECOSA, the Board is also empowered to fix the wages for timework and for piecework.

29. The Board convened its first meeting on 29th August, 2000 at Islamabad. The Members of the newspaper establishments boycotted the first meeting and a letter dated 24th April, 2000 was

addressed to the Director General (Internal Publicity), Ministry of Information, wherein without prejudice to, and subject to the conditions noted therein, it was stated that in absence of clear and categorical assurance in terms of the letter, the persons nominated will not participate in the proceedings of the Board and nomination would be deemed to have been withdrawn. The said conditions were as under: -

> "II. 7. The prior to being signed by the Chairman and publication in the official Gazette the Award must be circulated amongst the members, the members must be allowed to record their concurrence with or dissent from the Award and such concurrences and/or dissents must also be published along with the Award signed by the Chairman.
>
> III. That unless the above requests are acceded to the proceedings before the Board will neither be fair nor will they appear to be fair. That our members have no intention of being part of a Board or of participating in the proceedings thereof unless it conforms to the Fundamental Rights guaranteed by the Constitution, adopts the necessary procedural safeguards and does not deny due process both substantive and procedural to the members of the various newspaper establishment(s) that will appear before it in due course."

Similarly, they also did not attend the second meeting held on 3rd October, 2000 at Chamba House Lahore and the third meeting held on 30th & 31st October, 2000 at Quetta and ultimately they ended their boycott and took part in the deliberations of the Wage Board during the meeting held on 13th & 14th November, 2000 at Peshawar. Pending process of the completion of the proceedings of the Wage Board, an interim relief was given to the employees. Again, for the second time, the representatives of the owners boycotted the Wage Board meeting.

As the decision of the Wage Board had to be given within 180 days of its constitution, therefore, the Chairman visited different places, collected evidence and also procured the evidence of financial experts, namely, Dr. A.R. Kamal and Dr. Muhammad Irfan and on the basis of deliberations and the material so collected, gave the decision.

30. As far as question of declaring the NECOSA unconstitutional on the ground of non-provision of right of appeal against the decision of the Board is concerned, it is necessary to bear in mind the questions as to whether there is any dispute between two parties in an adversarial litigation against each other, which requires to be decided by the Board, and as to whether the claim of entitlement of one of the parties is against the State or any State agency, which requires determination by the Board or the Board is performing a legislative act where there is no existing right or dispute to be decided between the parties. As it has been pointed out while noting the history of all the Wage Board Awards in this country, somewhat similar position has prevailed in the neighbouring country with the difference in the composition of the Board and the duties assigned to the members. Initially, in the said country as well, the Working Journalists (Conditions of Service and Miscellaneous Provisions) Act, 1955 was promulgated, which was subsequently amended in 1974 in pursuance whereof separate wage boards were constituted in respect of working journalists and non-working journalists under sections 9 and 13, however, in both the categories of the Board, the Chairman and the members were to perform their functions collectively whereas under the NECOSA though they have to work collectively, but the members are to give advice, on the basis of which decision is to be given by the Chairman.

31. Article 9 of the Constitution provides that no person shall be deprived of life or liberty save in accordance with law. The word 'life' has been interpreted by this Court in various cases, notably *Shehla Zia v. WAPDA* (PLD 1994 SC 693), *Arshad Mehmood v. Government of Punjab* (PLD 2005 SC 193), *Moulvi Iqbal Haider v. Federation of Pakistan* (PLD 2006 SC 394), *Bank of Punjab v. Haris Steel Industries (Pvt.) Ltd*. (PLD 2010 SC 1109), *In Re: Suo Motu Case No.13 of 2009* (PLD 2011 SC 619). It has been held that the word 'life' is very significant as it covers all facets of human existence. Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally. Further, the right to life also includes the right to livelihood. Under Article 3 of the Constitution, the State is bound to ensure the elimination of all forms of exploitation and the gradual fulfillment of the fundamental principle, from each according to his ability to each according to his work; therefore, a right person is required to be engaged in the right job and there should not be any exploitation whatsoever. The scheme of the NECOSA is required to be understood with reference to the object and purpose of the legislation. It has already been pointed out that the NECOSA is the result of amendment in the Working Journalists (Conditions of Service) Ordinance, 1960, and for this reason, its Preamble recites that it is an Act to repeal and, with certain amendments, re-enact the Working Journalists (Conditions of Service) Ordinance, 1960; therefore, for the purpose of ascertaining the object we have to read the Preamble of the Ordinance No. XVI of 1960, which provided that "whereas it is expedient to regulate certain conditions of service of working journalists and other persons in newspaper establishments." In both the enactments, there was no

difference in the definition of the term "newspaper establishment". According to section 2(e) of the NECOSA, it means "an establishment under the control of any person or body of persons, whether incorporated or not, for the production, printing or publication of one or more newspapers or for conducting any news agency or syndicate." And, in both the laws, same is the position in respect of the definition of the term "wages", which according to section 2(h) of the NECOSA means wages as defined in the Payment of Wages Act, 1936 and includes any gratuity or other payment declared as wages by the Board. Clause (i) *ibid* provides that all words and expressions used but not defined in the Act and defined in the Ordinance shall have the meanings respectively assigned to them in the Ordinance. As it has been pointed out that one of the objects of promulgating the Ordinance of 1960 and the NECOSA was to regulate certain conditions of service of working journalists and other persons employed in newspapers, therefore, to achieve the object of regulating their conditions of service, the newspaper establishments have been bound down under section 3 of the NECOSA to furnish to a newspaper employee at the time of his appointment or transfer or promotion an order in writing showing the terms and conditions of his service. This is one of the substantive provisions of the NECOSA to ensure that the terms and conditions of service of the newspaper employees are documented. Similarly, to provide security of job the newspaper establishment under section 4 is required not to terminate the services of a newspaper employee without good cause shown through a notice, in writing, of such termination (a) of one month, if the total period of continuous service of the newspaper employees with the newspaper establishment is not less than three months but less than two years;

(b) of two months, if the total period of such service is not less than two years but less than three years; and (c) of three months, if total period of such service is not less than three years. Section 5 of the Ordinance cast a duty upon a newspaper establishment to constitute, for the benefit of its working journalists, a Provident Fund in the prescribed manner. Similarly, the rights of the newspaper employees have also been protected in line with the provisions of the Factories Act, 1934 and their entitlement to receive full wages, medical cover, etc., have been protected/secured under sections 6, 7 & 8 of the NECOSA. Under section 10 of the NECOSA, guidelines for fixing the wages have been provided. Any such right, if in force in any manner, would give rise to adverse dispute between the newspaper employee and the newspaper establishment as a natural person providing service to the newspaper establishment. They, as a matter of right, under Article 9 of the Constitution are entitled to the purpose of securing their lives. Thus, on the same analogy when they are performing their duties in different newspaper establishments; would they not be entitled to the wages of the work performed by them? In the past, as it has been noted above, there had been unrest between the newspaper establishments and the newspaper employees, may be working journalists or the non-working journalist, thus, it was not possible to fully enforce Article 19 of the Constitution, which provides that every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or

morality, or in relation to contempt of court, commission of or incitement to an offence.

32. The Fundamental Right guaranteeing freedom of press has been considered in a number of cases. Reference may be made to *Independent Newspaper Corporation Pvt. Ltd. v. Chairman Fourth Wage Board Award* (1993 SCMR 1533) and *I.E. Newspaper (Bombay) P. Ltd. v. Union of India* (AIR 1986 SC 515). In the latter judgment, a joint petition under Article 32 of the Indian Constitution was filed by certain companies, their shareholders and their employees engaged in the business of editing, printing and publishing newspapers, periodicals, magazines, etc. challenging the validity of imposition of import duty on the newsprint imported from abroad under section 12 of the Customs Act, 1962 etc. The case was remanded to the Government with certain observations and arrangements pending decision with the latter but on the question of freedom of the press it was held that "in today's free world freedom of Press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible in large scale particularly in the developing world where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments. Newspaper being surveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities." Similarly, *In re: Harijai Singh* (AIR 1997 SC 73), it has been held that freedom of press is always regarded as an essential pre-requisite of a democratic form of

Government and also mother of all liberties in a democratic society. Without freedom of press, truth cannot be attained. It is considered necessary not only for the mental health and the well being of society, but also for the full development of the personality of the individual. Under Article 19, not only the newspaper owners but the citizens at large also enjoy the right of receiving independent news and views along with articles, etc. Any disturbance in this industry is bound to cast negative aspersion and it would also be developing a perception, which is against the democratic norms and this is the reason that due to certain defects in the Ordinance of 1960, the smooth functioning of the newspaper industry was not possible. It is reported that on 25th April, 1969, the second Wage Board was constituted with late Mr. Justice Sajjad Ahmad Jan as its Chairman, who unfortunately had to resign, reportedly not for a good reason. He was succeeded by Mr. Justice A.S. Farooqi, Judge of the High Court of West Pakistan in October, 1969.

33. Be that as it may, as discussed hereinbefore, by means of the NECOSA, with a view to remove the defects from the Ordinance of 1960 important amendments were brought about in the said Ordinance. The new law provided a mechanism for fixing the wages after advice rendered to the Chairman by the representatives of the newspaper employees and the newspaper establishments. A perusal of section 9 of the NECOSA, makes it abundantly clear that the Board has to perform the function of fixing of rates of wages of the newspaper employees keeping in view the parameters of the guidelines provided in section 10 of the NECOSA for the purpose of payment of wages to them in future, as is manifest from the provision of section 11(1) of the NECOSA, according to which the decision of the Board is to be

published within a period of one month from the date of its receipt by the Federal Government in the prescribed manner. The decision of the Board published under sub-section 1 shall come into operation on such date, as may be specified in the decision, and where no date is so specified, it shall come into operation on the date of its publication and shall remain in force till it is modified or varied by a later decision of the Board published in the manner provided in sub-section (1). A plain reading of this provision of law, keeping in view the principle of interpretation that ordinary and natural meanings have to be assigned to the language employed in the legislation because it would help in finding out the object and the purpose for which the same has been enacted.

34. Thus, no other interpretation can be given to this provision of the NECOSA except that it is making reference to a certain eventuality, which will happen in future. According to Mr. Salman Akram Raja, learned ASC, the Award applies prospectively whereas Mr. Abdul Hafeez Pirzada, learned counsel for the petitioners has stated that the Seventh Award has been made applicable retrospectively, with effect from 1st July, 2000. We have pointed out to him that the Award has to come into operation on the date specified in the decision, in this case, from the 1st of the month in which the Wage Board was constituted, i.e., 8th July, 2000, therefore, the Award has been made applicable from the said date. Similarly, no adversarial dispute was referred to the Wage Board to resolve or decide any controversy between the parties in respect of a pending dispute. It is to be observed that when there is adversarial nature of litigation between the parties, then it is only the judicial forum which decides the same like the property cases, etc. The learned counsel for the petitioners

himself candidly conceded that the Wage Board does not perform judicial or quasi-judicial function, rather it performs only a delegated executive function of the legislature– be it Federal or the Provincial – of fixing the wages of newspaper employees, as is done by a Pay Commission in fixing salaries of the Government/civil servants. M/S Salman Akram Raja and Shaukat Aziz Siddiqui, ASCs as well as the learned Attorney General for Pakistan stated that the Board performs a legislative act.

35. Mr. Pirzada vehemently contended that the NECOSA is void and liable to be struck down for having failed to provide even a single right of appeal from any adjudicatory or directory orders or actions, interim or final made thereunder, though it has been authoritatively ruled by this Court that at least one right of appeal is an essential component of any statute. To strengthen his argument, the learned counsel submitted that the decision of the Wage Board is to be deemed Award of Full Bench of the National Industrial Relations Commission (NIRC), but the same could not be questioned/challenged by way of appeal/review/revision or otherwise under the provisions of the NECOSA despite the fact that the NIRC Awards could be questioned before a larger Bench of the Commission. He further submitted that the orders of the Implementation Tribunal for Newspaper Employees (hereinafter referred to as "ITNE") were also not appealable, therefore, the proceedings of the Tribunal suffered from that very defect. Reliance was place, *inter alia*, on *Pakistan v. General Public* (PLD 1989 SC 6).

36. Mr. Salman Akram Raja, learned ASC submitted that whenever rates were fixed, it was for the future. Had it been a judicial finding, an appeal would be required. The Board does did not decide

an existing dispute. It is clarified in the judgment of the Indian Supreme Court reported as AIR 1962 SC 12 that the Wage Board implements the policy of the law, the wages determination is done with prospective effect, which is in the nature of rule making [in this case, the subordinate agency is the Wage Board]. There are three kinds of decisions, to be considered and distinguished. First is resolution of dispute between two conflicting parties, which is purely a judicial act. Second is a decision by an administrative body that allows or disallows an entitlement claim against the State or a State Agency, example of which is the case of *Arshad Mehmood v. Government of Punjab* (PLD 2005 SC 193), where the bus owners complained that they were unfairly barred from plying buses on certain routes. They, therefore, sought enforcement of entitlement against the State. Third is a legislative function, where there is no existing right or dispute which is being determined. The Wage Board is given the power to determine wages. There is no existing dispute or right to be determined by it. The proceedings of the Board are neither judicial nor *quasi*-judicial, which is accepted around the world – whether it is price of essential commodities, or anything else. In such a case, rules are laid down for general applicability, may be for a particular industry, class, etc., which are to have prospective effect. They are akin to rules of conduct, which can be challenged in appropriate proceedings, either under Article 199 or Article 184(3) of the Constitution, if it is shown that the Board has acted in a perverse manner. That would be a different kind of challenge, which is available against a legislative activity and the right of appeal would come in where individual right is determined one way or the other. All such cases, including *General Public*, *Arshad Mehmood* and *Mubeen-us-Salam v. Federation of*

Pakistan (PLD 2006 SC 602) relate to the first two categories, and not the third category.

37. In the *case of Pakistan v. General Public* (PLD 1989 SC 6), right of appeal was provided in the cases where there was likelihood of conviction of a person in the service of Pakistan Army, Navy or Air Force, but the statutes which were examined, i.e. Pakistan Army Act, 1952, Pakistan Air Force Act, 1953 and Pakistan Navy Ordinance, 1961 were not declared unconstitutional for non-provision of right of appeal. However, following the dictum laid down in the said case, the said laws were amended and right of appeal was made available to the persons against whom an adverse order or conviction would be passed. As far as the second judgment passed by a seven-member Bench in *Arshad Mehmood's case* is concerned, section 69-A of the Motor Vehicles Ordinance, 1965 was found to be violative of Article 18 of the Constitution, and while disposing of the case four months' time was given to the Government of the Punjab for making necessary amendments in the law. As far as *Mubeen-us-Salam's case* (*supra*) is concerned, again this Court did not declare the relevant law as unconstitutional or void because the right of appeal was not available to the persons who were deemed to be civil servants in terms of the Service Tribunals Act, 1974. However, observations were made that in such a situation, before approaching the Service Tribunal, they can avail right of appeal before the department/administrative authority. It is to be borne in mind that in the said case, no action was declared illegal for want of right of appeal, except that it was held that (a) the cases, which have been decided finally by this Court in exercise of jurisdiction under Article 212(3) of the Constitution shall not be opened, and if any review petition, miscellaneous application or

contempt application, filed against the judgment is pending, the same shall be heard independently and shall not be affected by the *ratio* of that judgment; (b) the proceedings instituted either by an employee or by an employer, pending before this Court, against the judgment of the Service Tribunal, not covered by category (a) before this Court or the Service Tribunal shall abate, leaving the parties to avail remedy prevailing prior to promulgation of section 2-A of the Services Tribunals Act, 1974; (c) the cases or proceedings which are not protected or covered by this judgment shall be deemed to have abated and the aggrieved person may approach the competent forums for redressal of their grievances within a period of 90 days and the bar of limitation provided by the respective laws, shall not operate against them till the expiry of stipulated period; (d) the cases in which the order of Service Tribunal has been implemented shall remain intact for a period of 90 days or till the filing of appropriate proceedings, whichever is earlier; and (e) the Service Tribunal shall decide pending cases under section 2-A of the Service Tribunals Act, 1974 in view of the above observations. However, if any of the cases is covered by clause (c) *ibid*, a period of 90 days shall be allowed to an aggrieved party to approach the competent forum for the redressal of its grievance.

38. It is true that denial of right of appeal is violative of the due process of law in matters where judicial powers are being exercised by a functionary discharging judicial or *quasi*-judicial functions, if the same are being exercised by the executive or the administration as it has been highlighted hereinabove. And as per Injunctions of Islam, denial of right of appeal in adversarial proceedings, both civil and criminal, is considered against the due

process of law and norms of justice, but in exercise of legislative powers or legislative activities, no right of appeal can be extended before the forums, higher in status, within the legislative body which had passed the order or entered into any legislative activity. However, power of judicial review would be available to the superior Courts under Article 199 or Article 184(3) of the Constitution for the purpose of examining the constitutionality of the legislation or sub-legislation. This Court has exercised power of judicial review in a good number of cases, e.g., *Dr. Mubashir Hassan v. Federation of Pakistan* (PLD 2010 SC 265) and *Sindh High Court Bar Association v. Federation of Pakistan* (PLD 2009 SC 879). Para 171 of the latter judgment is reproduced hereinbelow: -

> "171. It is clear from the above survey of the case law that it is a fundamental principle of our jurisprudence that Courts must always endeavour to exercise their jurisdiction so that the rights of the people are guarded against arbitrary violations by the executive. This expansion of jurisdiction is for securing and safeguarding the rights of the people against the violations of the law by the executive and not for personal aggrandizement of the courts and Judges. It is to this end that the power of judicial review was being exercised by the judiciary before 3rd November, 2007. Indeed the power of judicial review was, and would continue to be, exercised with strict adherence to the principles governing such exercise of power, remaining within the sphere allotted to the judiciary by the Constitution."

Reference in this respect may also be made to the case of *Khan Asfandyar Wali v. Federation of Pakistan* (PLD 2001 SC 607), wherein this Court, while examining the question as to whether right of appeal can be granted to a person charged for an offence under the National

Accountability Ordinance, 1999, declared that in absence of any provision in the aforesaid Ordinance to release an accused on bail, the latter can approach the High Court for grant of bail under Article 199 of the Constitution. As far as challenging the validity of the Wage Award due to absence of right of appeal, if at all available to the petitioners, i.e. APNS, is concerned, in this behalf reference may beneficially be made to the case of *Independent News Corporation and others v. Chairman 4th Wage Board and Implementation* (1993 SCMR 1533). Similarly, the power of judicial review was also invoked by the petitioners to challenge the Sixth Wage Award before the Lahore High Court in the case of *Pakistan Herald Publications v. Federation of Pakistan* (1998 CLC 65). There are few other cases as well, in which the power of judicial review of the Superior Courts was invoked, such as the cases of *Shamas Textile Mills Ltd. v. Province of Punjab* (1999 SCMR 1477), *Nabi Bux Khoso v. Pakistan Television Corporation* (PLD 1982 Karachi 725), *Tika Ramji v. State of U.P.* [1956 SC 676 (S) AIR V. 43 C. 112 Oct.], *Express Newspapers Ltd. v. Union of India* (AIR 1958 SC 578), *The P.T.I. v. Union of India* (AIR 1974 SC 1044), *U.C. Bank v. Their Workmen* (AIR 1951 SC 230), *Expess Newspapers v. Somayajulu* (AIR 1964 SC 279), *S.R. Corpn. v. Industrial Tribunal* (AIR 1968 SC 529), *Hochticf Gammon v. Industrial Tribunal* (AIR 1964 SC 1746), *B. Coleman & Co. v. P.P. Das Gupta* (AIR 1970 SC 426), etc.

39. Mr. Salman Akram Raja, ASC, learned counsel for the respondents vehemently argued that the function of fixation of wages of the newspaper employees being performed by the Board is neither judicial/quasi-judicial nor executive in nature rather it is of a legislative character. To substantiate his plea, he relied upon the cases of *Express Newspaper Ltd. v. Union of India* (AIR 1958 SC 578), *Shri*

Sitaram Sugar Company v. Union of India (AIR 1990 SC 1277), *Union of India v. Cynamide India Ltd*. (AIR 1987 SC 1802), *G.K. Krishna v. State of Tamil Nadu* (AIR 1975 SC 583), *S.I. Syndicate Ltd. v. Union of India* (AIR 1976 SC 460), *R.K. Gorg v. Union of India* (1981) 4 SCC 675)], *Pallavi Refractories v. Sigareni Collieeries Co. Ltd.* [(2005) 2 SCC 277], *Williamson v. Lee Optical, Inc.* (348 U.S 483(1955)], *Adkins Et. Al v. Children's Hospital* [261 U.S. 525 (1923)], *Narottamdas Harjiwandas v. State of MP* (AIR 1964 MP 45), *Prentis v. Atlantic Coastline* [211 U.S. 210 (1908)] and *Australian Boot Trade Employees Federation v. Whybrow & Co.* [10 C.L.R. 266 (1910)].

40. In this connection, reference may be made to *Cooley's Constitutional Limitations*, 8th Edn., Vol. I, at p. 185, under the caption "the powers which the legislative department may exercise", which brings out the distinction between a "legislative" and a "judicial act" in the following words: -

> "On general principles, therefore, those inquires, deliberations, orders, and decrees, which are peculiar to such a department, must in their nature be judicial acts. Nor can they be both judicial and legislative; because a marked difference exists between the employment of judicial and legislative tribunals. The former decide upon the legality of claims and conduct, and the latter make rules upon which, in connection with the constitution, those decisions should be founded. It is the province of judges to determine what is the law upon existing cases. In fine, the law is applied by one, and made by the other. To do the first, therefore, is to compare, the claims of parties with the law of the land before established - is in its nature judicial act. But to do the last - to pass new rules for the regulation of new controversies - is in its nature a legislative act; and if these rules interfere with the past, or the present, and do not look wholly to the future, they violate the definition of a law as "a rule of civil conduct", because no rule of conduct can with consistency operate upon what occurred before the rule itself was promulgated. … It is the province of judicial power, also to decide private disputes between or concerning persons; but of legislative power to regulate public concerns, and to make laws for the benefit and welfare of the State. Nor does the passage of private statutes, when lawful, are enacted on petition, or by the consent of all concerned; or

> else they forbear to interfere with past transactions and vested rights."

41. Stason and Cooper in their treatises on *"Cases and other materials on Administrative Tribunals"* point out at pages 150 that "one of the great difficulties of properly classifying a particular function of an administrative agency is that frequently - and, indeed; typically - a single function has three aspects. It is partly legislative, partly judicial and partly administrative. Consider, for example, the function of rate-making. It has sometimes been characterised as legislative, sometimes as judicial. In some aspects, actually, it involves merely executive or administrative powers. For example, where the Interstate Commerce Commission fixes a tariff of charges for any railroad, its function is viewed as legislative. But where the question for decision is whether a shipment of a mixture of coffee and chicory should be charged the rate established for coffee or the lower rate established for chicory, the question is more nearly judicial. On the other hand, where the problem is merely the calculation of the total freight charges due for a particular shipment, the determination can fairly be described as an administrative act." *Robson's Justice and Administrative Law*, 3rd Edn., at p. 608 states "an example of a subordinate body of this type is a Wage Council, which is not an administrative tribunal but a subordinate legislative authority." Barbare Wootton in *"Social Foundations of Wage Policy: Modern Methods of Wage Determination"* at p. 88 observes that "Both arbitration tribunals and courts of inquiry share – with one important difference - the tripartite structure of statutory wage councils; they are composed of equal numbers of representatives of employers and of workers under an independent Chairman, in some cases, together with additional independent members. The essential difference between

their structure and that of statutory wage authorities is that the representative members of the latter are chosen from within the industry concerned, whereas employers and workers on arbitration tribunals come from outside the industry whose disputes they have to resolve; if in any case technical knowledge of a particular industry is required, this is normally supplied by the help of assessors who take no part in the final Award. This difference between the constitution of wage boards and that of arbitration tribunals clearly implies a corresponding distinction between the legislative function of the former and the judicial function of the latter. The wage board drafts law for its own industry, whereas the arbitration court gives judgment on matters submitted by others. The choice of industrial arbitrators unconnected with the industries the merits of whose claims they must pledge, is evidently intended as a guarantee that they, like other judges, will be free from bias arising from personal interest." Schwrtz in his book "Administrative Law", says, "If a particular function is termed "legislative" or "rulemaking" rather than "judicial" or "adjudication", it may have substantial effects upon the parties concerned. If the function is treated as legislative in nature, there is no right to notice and hearing, unless a statute expressly requires them. If a hearing is held in accordance with a statutory requirement, it normally need not be a formal one … …. The characterization of an administrative act as legislative instead of judicial is thus of great significance. … … … … The key factor in the Holmes analysis is time: a rule prescribes future patterns of conduct; a decision determines liabilities upon the basis of present or past facts."

42. In *Prentis v. Atlantic Coast Line Co. Ltd.*, [211 U.S. 210 (1908)] it is held that "a judicial inquiry investigates, declares, and

enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule, to be applied thereafter to all or some parts of those who are subject to its power. The establishment of a rate is the making of a rule for the future, and therefore, is an act legislative not judicial in kind. That question depends not upon the character of the body, but upon the character of the proceedings. The nature of the final act determines the nature of the previous enquiry." [emphasis supplied]

43. In 1918, in the case of *Hammer v. Dagenhart*, [247 U.S. 251 (1918)] the Supreme Court of United State of America held unconstitutional the federal child-labor law passed two years earlier. In 1923, in *Adkins v. Children's Hospital* [261 U.S. 525 (1923)] the Court voided a District of Columbia minimum wage law for women on the ground that such a law was 'a naked, arbitrary exercise' of legislative power in violation of the due process clause of the Fifth Amendment. The Supreme Court in *A.L.A. Schechter Poultry Corp. v. United States* [295 U.S. 495 (1935)] unanimously struck down the National Industrial Recovery Act, holding that it exceeded the federal government's power under the Commerce Clause and that it was an unconstitutional delegation of legislative authority to the executive branch. One year later the Court in *Morehead v. New York*, [298 U.S. 587 (1936)] ruled that a New York minimum wage law was unconstitutional. Based on these decisions it appeared that the Court would not sanction a bill similar to the one that Hugo Black had proposed earlier on minimum wages and maximum hours. The Supreme Court in *West Coast Hotel v. Parrish* [300 U.S. 379 (1937)]

upheld a Washington state minimum wage law for women and minors similar to the New York statute it had overturned. *Adkins's case* was specifically overruled as the court emphasized the need for minimum wage regulation. And finally, in *Wolff Co. v. Industrial Court* [262 U.S. 522] it was held that the mere declaration by the legislature that a particular kind of property or business is affected with a public interest is not conclusive upon the question of the validity of the regulation and invalidity of the wage-fixing provision of the compulsory arbitration statute of Kansas as applied to a meat packing establishment. The power of a legislature, under any circumstances, to fix prices or wages in the business of preparing and selling food was seriously doubted, but the court concluded that, even if the legislature could do so in a public emergency, no such emergency appeared, and, in any event, the power would not extend to giving compulsory continuity to the business by compulsory arbitration. The matter is one which is always open to judicial inquiry. [emphasis supplied]

44. At this juncture, it is necessary to examine the case of *Adkins v. Children's Hospital* [261 U.S. 525 (1923)] in some detail. There, the question presented for determination before the Court was the constitutionality of the Act of 19th September, 1918, providing for the fixing of minimum wages for women and children in the District of Columbia. The Act provided for a board of three members, to be constituted, as far as practicable, so as to be equally representative of employers, employees and the public. The Board was authorized to have public hearings, at which persons interested in the matter being investigated may appear and testify, to administer oaths, issue subpoenas requiring the attendance of witnesses and production of books, etc., and to make rules and regulations for carrying the Act into

effect. The Court held that it has been said that legislation of the kind now under review is required in the interest of social justice, for whose ends freedom of contract may lawfully be subjected to restraint. The liberty of the individual to do as he pleases, even in innocent matters, is not absolute. It must frequently yield to the common good, and the line beyond which the power of interference may not be pressed is neither definite nor unalterable, but may be made to move, within limits not well defined, with changing need and circumstance. Any attempt to fix a rigid boundary would be unwise, as well as futile. But, nevertheless, there are limits to the power, and when these have been passed, it becomes the plain duty of the courts in the proper exercise of their authority to so declare. To sustain the individual freedom of action contemplated by the Constitution is not to strike down the common good, but to exalt it, for surely the good of society as a whole cannot be better served than by the preservation against arbitrary restraint of the liberties of its constituent members. Finally, it was concluded that it follows from what has been said that the Act in question passes the limit prescribed by the Constitution, and, accordingly, the decrees of the court below were affirmed.

45. In *Williamson v. Lee Optical, Inc.* [348 U. S. 483 (1955)], it was held as under: -

> The day is gone when this Court used the Due Process Clause of the Fourteenth Amendment to strike down state laws, regulatory of business and industrial conditions because they may be unwise, improvident, or out of harmony with a particular school of thought. *See Nebbia v. People of State of New York,* 291 U. S. 502; *West Coast Hotel Co. v. Parrish,* 300 U. S. 379; *Olsen v. State of Nebraska ex rel. Western Reference & Bond Ass'n,* 313 U. S. 236; *Lincoln Union v. Northwestern Iron & Metal Co.,* 335 U. S. 525; *Daniel v. Family Sec. Life Ins. Co.,* 336 U. S. 220; *Day-Brite Lighting, Inc., v. State of Missouri,* 342 U. S. 421. We emphasize again what Chief Justice Waite said in *Munn v. State of Illinois,* 94 U. S. 113, "For

> protection against abuses by legislatures, the people must resort to the polls, not to the courts."

46. Reference may also be made to the case of *Australian Boot Trade Employees Federation v Whybrow & Co* [(1910) HCA 8; (1910) 10 CLR 266] from the Australian jurisdiction, where the High Court of Australia, which is the apex Court of that country, held as under: -

> "The function of a tribunal, of whatever kind, is to declare and administer the law, not to make it — *dicere non dare leges*. Nothing could be more unfortunate than that an idea should arise that this Court, or any other Court, Federal or State, has a legislative authority. The legislative and judicial powers of a sovereign State are exercised by different agencies, whose operations are in different planes, and cannot come in conflict with one another. The judicial agency must obey the behests of the legislative, and that may make provisions for enforcing the judgments of the judiciary, but does not, by doing so, alter their intrinsic character. The suggested conflict is therefore impossible. In support of this view we were invited to accept the argument that, although the Commonwealth Parliament has admittedly no power to interfere directly with the domestic industry or police power of a State, and cannot delegate a power which itself it does not possess, yet it may by appointing a Judge and calling him an arbitrator empower him to interfere. The statement of the argument is its own answer, and I waste no more words upon it.
>
> ..... It is well to begin by clearing the ground of one or two matters. We have had before us the Statutes under which these Wages Boards have been appointed, and under which they have made their determinations. In New South Wales they are termed awards, but the substance of the thing done is the same under each State Statute. The Wages Boards are not tribunals of arbitration but subsidiary legislative bodies deriving their authority from the State legislatures. Their determinations are obligatory, not merely on parties or organizations at variance, but on all citizens within their range, whether the jurisdiction covers a whole State or a limited area merely. The rates of wages, when fixed by the Boards, are to all intents and purposes the law on the subject. They are as distinct from the judgment of a Court as they are from the award of an arbitrator.
>
> ..... Nevertheless, although the term "arbitration" of itself does not necessarily indicate that the decision is a judgment in the ordinary sense, there are some awards which do partake of that nature. And to ascertain them and differentiate them from awards of other character some guiding principle is essential. There

is one clear and decisive principle which at once distinguishes between judicial and legislative action.

..... If the dispute is as to the relative rights of parties as they rest on past or present circumstances, the award is in the nature of a judgment, which might have been the decree of an ordinary judicial tribunal acting under the ordinary judicial power. There the law applicable to the case must be observed. If, however, the dispute is as to what shall in the future be the mutual rights and responsibilities of the parties—in other words, if no present rights are asserted or denied, but a future rule of conduct is to be prescribed, thus creating new rights and obligations, with sanctions for non-conformity—then the determination that so prescribes, call it an award, or arbitration, determination, or decision or what you will, is essentially of a legislative character, and limited only by the law which authorizes it. If, again, there are neither present rights asserted, nor a future rule of conduct prescribed, but merely a fact ascertained necessary for the practical effectuation of admitted rights, the proceeding, though called an arbitration, is rather in the nature of an appraisement or ministerial act.

There are some authorities, if authorities were needed, of high character which exemplify the propositions I have stated. As recently as 1908, the Supreme Court of the United States, in a case to which on a former occasion I referred, had to consider the distinction between a judicial and a legislative act. In *Prentis v. Atlantic Coast Line Co.* [(1908) 211 U.S., 210, at p. 226.], *Holmes* J. whose personal distinction as a lawyer no less than his official position entitles his opinions to the greatest respect, in delivering the decision of the Court, said:—"A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation on the other hand looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power. The establishment of a rate is the making of a rule for the future, and therefore is an act legislative not judicial in kind."

..... It is upon such considerations that I agree with the view that the decision of a Wages Board, made under the authority of a law, is of legislative character. It is part of the law of the land, just as is an Act fixing rates of taxation, though the compulsive and enforcement provisions are found elsewhere. As expressed in *Knoxville v. Knoxville Water Co.*[(1909) 212 U.S. 1, at p. 8.], "the function of ratemaking is purely legislative in its character, and this is true, whether it is exercised directly by the legislature itself or by some subordinate or administrative body, to whom the power of fixing rates in detail has been delegated. The completed Act derives its authority from

> the legislature and must be regarded as an exercise of the legislative power." The Wages Board determination, precisely like a State industrial award, has just as much authority as, and no more than, the State Act itself. [emphasis supplied]

In *Shri Sitaram Sugar Company v. Union of India* (AIR 1990 SC 1277), the Indian Supreme Court held as under: -

> "45. Price fixation is in the nature of a legislative action even when it is based on objective criteria rounded on relevant material. No rule at natural justice is applicable to any such order. It is nevertheless imperative that the action of the authority should be inspired by reason.
>
> 52. The true position, therefore, is that any act of the repository of power, whether legislative or administrative or quasi-judicial, is open to challenge if it is in conflict with the Constitution or the governing Act or the general principles of the law of the land or it is so arbitrary or unreasonable that no fair minded authority could ever have made it.
>
> 58. Price fixation is not within the province of the courts. Judicial function in respect of such matters is exhausted when there is found to be a rational basis for the conclusions reached by the concerned authority. As stated by Justice Cardozo in Mississippi Valley Barge Line Company v. United States of America, 292 US 282-290, 78 Led 1260, 1265: "The structure of a rate schedule calls in peculiar measure for the use of that enlightened judgment which the Commission by training and experience is qualified to form ..... It is not the province of a court to absorb this function to itself ..... The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body"."

In *Union of India v. Cynamide India Ltd*. [(1987) 2 SCC 720], it was held as under:-

> " ..... legislative action, plenary or subordinate, is not subject to rules of natural justice. In the case of Parliamentary legislation, the proposition is self-evident. In the case of subordinate legislation, it may happen that Parliament may itself provide for a notice and for a hearing ..... But where the legislature has not chosen to provide for any notice or hearing, no one can insist upon it and it will not be permissible to read natural justice into such legislative activity ..... It is true that, with the proliferation of delegated legislation, there is a tendency for the line between legislation and administration to vanish into an illusion. Administrative, quasi-judicial decisions tend to merge in legislative activity and, conversely, legislative activity tends to fade into and

> present an appearance of an administrative or quasi-judicial activity".
>
> "A price fixation measure does not concern itself with the interests of an individual manufacturer or producer. It is generally in relation to a particular commodity or class of commodities or transactions. It is a direction of a general character, not directed against a particular situation. It is intended to operate in the future. It is conceived in the interests of the general consumer public. The right of the citizen to obtain essential articles at fair prices and the duty of the State to so provide them are transformed into the power of the State to fix prices and the obligations of the producer to charge no more than the price fixed. Viewed from whatever angle, the angle of general application, the prospectiveness of its effect, the public interest served, and the rights and obligations flowing therefrom, there can be no question that price fixation is ordinarily a legislative activity".

In the case of *Union of India v. Cynamide India Ltd*. (AIR 1987 SC 1802), it was held as under: -

> 7. The third observation we wish to make is, price fixation is more in the nature of a legislative activity than any other. It is true that, with the proliferation of delegated legislation, there is a tendency for the line between legislation and administration to vanish into an illusion. Administrative, quasi-judicial decisions tend to merge in legislative activity and, conversely, legislative activity tends to fade into and present an appearance of an administrative or quasi-judicial activity. Any attempt to draw a distinct line between legislative and administrative functions, it has been said, is 'difficult in theory and impossible in practice'. Though difficult, it is necessary that the line must sometimes be drawn as different legal fights and consequences may ensue. The distinction between the two has usually been expressed as 'one between the general and the particular'. 'A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy'. 'Legislation is the process of formulating a general rule of conduct without reference to particular cases and usually operating in future; administration is the process of performing particular acts, of issuing particular orders or of making decisions which apply general rules to particular cases.' It has also been said "Rule making is normally directed toward the formulation of requirements having a general application to all members of a broadly identifiable class" while, "an adjudication, on the other hand, applies to specific individuals or situations". But, this is only a broad distinction, not necessarily always true. Administration and

administrative adjudication may also be of general application and there may be legislation of particular application only. That is not ruled out. Again, adjudication determines past and present facts and declares rights and liabilities while legislation indicates the future course of action. Adjudication is determinative of the past and the present while legislation is indicative of the future. The object of the rule, the reach of its application, the rights and obligations arising out of it, its intended effect on past, present and future events, its form, the manner of its promulgation are some factors which may help in drawing the line between legislative and non-legislative acts. A price fixation measure does not concern itself with the interests of an individual manufacturer or producer. It is generally in relation to a particular commodity or class of commodities or transactions. It is a direction of a general character, not directed against a particular situation. It is intended to operate in the future. It is conceived in the interests of the general consumer public. The right of the citizen to obtain essential articles at fair prices and the duty of the State to so provide them are transformed into the power of the State to fix prices and the obligation of the producer to charge no more than the price fixed. Viewed from whatever angle, the angle of general application the prospectivity of its effect, the public interest served, and the rights and obligations flowing therefrom, there can be no question that price fixation is ordinarily a legislative activity. Price-fixation may occasionally assume an administrative or quasi-judicial character when it relates to acquisition or requisition of goods or property from individuals and it becomes necessary to fix the price separately in relation to such individuals. Such situations may arise when the owner of property or goods is compelled to sell his property or goods to the Government or its nominee and the price to be paid is directed by the legislature to be determined according to the statutory guidelines laid down by it. In such situations the determination of price may acquire a quasi-judicial character. Otherwise, price fixation is generally a legislative activity. We also wish to clear a misapprehension which appears to prevail in certain circles that price-fixation affects the manufacturer or producer primarily and therefore fairness requires that he be given an opportunity and that fair opportunity to the manufacturer or producer must be read into the procedure for price-fixation. We do not agree with the basic premise that price fixation primarily affects manufacturers and producers. Those who are most vitally affected are the consumer public. It is for their protection that price-fixation is resorted to and any increase in price affects them as seriously as any decrease does a manufacturer, if not more.

27. We are unable to agree with the submissions of the learned counsel for the respondents either with regard to the applicability of the principles of natural justice or with

regard to the nature and the scope of the enquiry and review contemplated by paragraphs 3 and 27 while making our preliminary observations, we pointed out that price fixation is essentially a legislative activity though in rare circumstances, as in the case of a compulsory sale to the Government or its nominee, it may assume the character 'of an administrative or quasi-judicial activity. Nothing in the scheme of the Drugs (Prices Control) Order induces us to hold that price fixation under the Drugs (Prices Control) Order is not a legislative activity, but a quasi-judicial activity which would attract the observance of the principles of natural justice. Nor is there anything in the scheme or the provisions of the Drugs (Prices Control) Order which otherwise contemplates the observance of any principle of natural justice or kindred rule, the non-observance of which would give rise to a cause of action to a suitor. What the order does contemplate however is 'such enquiry' by the Government 'as it thinks fit'. A provision for 'such enquiry' as it thinks fit' by a subordinate legislating body, we have explained earlier, is generally an enabling provision to facilitate the subordinate legislating body to obtain relevant information from any source and it is not intended to vest any right in any body other than the subordinate legislating body. In the present case, the enquiry contemplated by paragraph 3 of Drugs (Prices Control) Order is to be made for the purposes of fixing the maximum price at which a bulk drug may be sold, with a view to regulating its equitable distribution and making it available at a fair price. The primary object of the enquiry is to secure the bulk drug at a fair price for the benefit of the ultimate consumer an object designed to fulfil the mandate of Art. 39(b) of the Constitution. It is primarily from the consumer public's point of view that the Government is expected to make its enquiry. The need of the consumer public is to be ascertained and making the drug available to them at a fair price is what it is all about. The enquiry is to be made from that angle and directed towards that end. So, information may be gathered from whatever source considered desirable by the Government. The enquiry, obviously is not to be confined to obtaining information from the manufacturers only and indeed must go beyond. However, the interests of the manufacturers are not to be ignored. In fixing the price of a bulk drug, the Government is expressly required by the Order to take into account the average cost of production of such bulk drug manufactured by 'an efficient manufacturer' and allow a reasonable return on 'net worth'. For this purpose too, the Government may gather information from any source including the manufacturers. Here again the enquiry by the Government need not be restricted to 'an efficient manufacturer' or some manufacturers; nor need it be extended to all manufacturers. What is necessary is that the average cost of production by 'an efficient manufacturer' must be ascertained and a reasonable return allowed on 'net worth'. Such enquiry as it thinks fit is an enquiry in which information is sought from whatever

> source considered necessary by the enquiring body and is different from an enquiry in which an opportunity is required to be given to persons likely to be affected. The former is an enquiry leading to a legislative activity while the latter is an enquiry which ends in an administrative or quasi-judicial decision. The enquiry contemplated by paragraph 3 of the Drug (Prices Control) Order is an enquiry of the former character. The legislative activity being a subordinate or delegated legislative activity, it must necessarily comply with the statutory conditions if any, no more and no less, and no implications of natural justice can be read into it unless it is a statutory condition. Notwithstanding that the price fixation is a legislative activity, the subordinate legislation had taken care here to provide for a review. The review provided by paragraph 27 of the order is akin to a post decisional hearing which is sometimes afforded after the making of some administrative orders, but not truly so."

In *Saraswati Industrial Syndicate Ltd. v. Union of India* (AIR 1975 SC 460), it was held as under: -

> 13. The petitioners did not challenge the price fixation on the ground that a quasi-judicial procedure had to be adopted before prices are fixed even if such price fixation affects, as it must each factory. Price fixation is more in the nature of a legislative measure even trough it may be based upon objective criteria found in a report or other material. It could not, therefore, give rise to a complaint that a rule of natural justice has not been followed in fixing the price. Nevertheless, the criterion-adopted must be reasonable. Reasonableness, for purposes of judging whether there was an "excess of power" or an "arbitrary" exercise of it, is really the demonstration of a reasonable nexus between the matters which are taken into account in exercising a power and the purposes of exercise of that power. This was made clear by this Court in the two cases cited on behalf of the appellants Shree Meenakshi Mills Ltd v. Unions of India [AIR 1974 SC 366]: The Panipat Cooperative Sugar Mills V. the Union of India [AIR 1973 SC 537].

In *Prag Ice & Oil Mills v. Union of India* [(1978) 3 SCC 459], it was held as under:-

> "We think that unless, by the terms of a 'particular statute, or order, price fixation is made a quasi-judicial function for specified purposes or cases, it is really legislative in character in the type of control order which is now before us because it satisfies the tests of legislation. A legislative measure does not concern itself with the facts of an individual case. It is meant to lay down a general rule applicable to all persons or objects or transactions of

> a particular kind or class. In the case before us, the Control Order applies to sales of mustard oil anywhere in India by any dealer. Its validity does not depend on the observance of any procedure to be complied with or particular types of evidence to be taken on any specified matters as conditions precedent to its validity. The test of validity is constituted by the nexus shown between the order passed and the purposes for which it can be passed, or in other words by reasonableness judged by possible or probable consequences."

In the case of *Pallavi Refractories v. M/S. Singareni Collieries Co. Ltd*.

[(2005) 2 SCC 227], it was held as under: -

> 13. This Court in *Union of India v. Cynamide India Ltd.* [AIR 1987 SC 1802] has held that price fixation is generally a legislative activity. It may occasionally assume an administrative or quasi-judicial character when it relates to acquisition or requisition of goods or property from individuals and it becomes necessary to fix the price separately in relation to such individuals. Such situations may arise when the owner of the goods is compelled to sell goods to the Government or its nominee and the price is to be determined according to the statutory guidelines laid down by the Legislature. In such situations, the determination of price may acquire a quasi judicial character but, otherwise, price fixation is generally a legislative activity. After observing thus, the Court held that price fixation is neither the function nor the forte of the Court. The Court is neither concerned with the policy nor with the rates. But in appropriate proceedings it may enquire into the question, whether relevant considerations have gone in and irrelevant considerations kept out while determining the price. In case the Legislature has laid down the pricing policy and prescribed the factors which should guide the determination of the price then the Court will, if necessary, enquire into the question whether policy and factors were present to the mind of the authorities specifying the price. The assembling of raw materials and mechanics of price fixation are the concern of the Executive and it should be left to the Executive to do so and the Courts would not revaluate the consideration even if the prices are demonstrably injurious to some manufacturers and producers. .....
>
> 14. A Constitution Bench of this Court in M/s. Shri Sita Ram Sugar Co. Ltd. v. Union of India [AIR 1990 SC 1277] (in paras 57 & 58) has held that in judicial review the Court is not concerned with the matters of economic policy. The Court does not substitute its judgment for that of the Legislature or its agent as to the matters within the province of either. The Legislature while delegating the powers to its agent may empower the agent to make findings of fact which are conclusive provided, such

> findings satisfy the test of reasonableness. In all such cases, the judicial enquiry is confined to the question whether the findings of facts are reasonably based on evidence and whether such findings are consistent with the laws of the land. The Court only examines whether the prices determined was with due regard to the provisions of the Statute and whether extraneous matters have been excluded while making such determination. It was further observed that price fixation is not within the province of the Courts. Judicial function in respect of such matters stands exhausted once it is found that the authority empowered to fix the price has reached the conclusion on rational basis."

In the case of *Narottamdas Harijwandas v. State of Madhya Pradesh* (AIR 1964 MP 45), it was held as under: -

> "In our opinion, it cannot be argued with any degree of force that the purpose and end of the Act is to investigate, declare and enforce liabilities under any law supposed to be already existing. It only prescribes a rule of conduct when it fixes minimum rates of wages in certain employments. In enacting the legislation, the Legislature has not attempted to exercise any judicial power. It has only discharged a function of legislative character. There is no analogy between the nature of the functions performed by wage boards constituted under the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955, and the functions discharged by the State Legislature in placing the Act on the statute book, and the observation of the Supreme Court in the case of 1959 SCR 12 : (AIR 1958 SC 578) (supra), that it is impossible to state that "the functions performed by the wage boards are necessarily of a legislative character'' is of no assistance to the petitioners."

A perusal of the above quoted passages makes it abundantly clear that the wage fixation is a legislative function, and not a judicial or quasi-judicial act or an administrative function.

47. In India, the working journalists were scattered all over the country. They agitated that some means should be found to enable them to have their wages, salaries, other allowances, retirement benefits, rules of leave and other conditions of service, enquired into

by some impartial agency or authority, which was empowered to fix just and reasonable terms and conditions of service for working journalists as a whole. The Government of Uttar Pradesh on 18th June, 1947 and the Government of Central Provinces & Berar on 27th March, 1948, appointed committees to enquire into the conditions of work of the employees of the newspaper industry. The matter remained pending when eventually the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 was passed. Under section 8 of the Act, the Central Government *vide* notification dated 2nd May, 1956 constituted a Wage Board for fixing rates of wages in respect of working journalists in accordance with the provisions of the said Act. The decision of the Wage Board was published in the Extraordinary Gazette on 11th May, 1957. The Commissioner of Labour, Madras issued circular dated 30th May, 1957, calling upon the managements of all the newspaper establishments in the State to send him the report of the gross revenue for three years, i.e., 1952, 1953 and 1954, within a period of one month from the date of the publication of the Board's decision. The newspaper owners challenged the *vires* of the said Act before the Indian Supreme Court by means of Constitution Petitions under Article 32 of the Constitution in the case of *Express Newspaper Ltd. v. Union of India* (AIR 1958 SC 578). One of the questions for consideration before the Court was as to whether the functions performed by the Board were administrative, judicial, quasi-judicial or legislative in character. The Court after detailed analysis of the nature and functioning of the Wage Boards established around the world held that:-

> "116..... it is impossible to state that the functions performed by the wage boards are necessarily of a legislative character. It is no doubt true that their

determinations bind not only the employers and the employees in the present, but they also operate when accepted by the appropriate government or authorities and notified in accordance with law, to bind the future employers and employees in the industry. If that were the only consideration the dictum of Justice Holmes cited above would apply and the functions performed by these wage boards would be invested with a legislative character. This is however not all, and regard must be had to the provisions of the statutes constituting the wage boards. If on a scrutiny of the provisions in regard thereto one can come to the conclusion that they are appointed only with a view to determine the relations between the employers and the employees in the future in regard to the wages payable to the employees there would be justification for holding that they were performing legislative functions. If, however, on a consideration of all the relevant provisions of the statutes bringing the wage boards into existence, it appears that the powers and procedure exercised by them are assimilated to those of Industrial Tribunals or their adjudications are subject to judicial review at the hands of higher Tribunals exercising judicial or quasi-judicial functions, it cannot be predicated that these wage boards are exercising legislative functions. Whether they exercise these functions or not is thus to be determined by the relevant provisions of the statutes incorporating them and it would be impossible to lay down any universal rule which would help in the determination of this question.

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

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

> functions with an administrative character and in spite of their being administrative bodies they can nevertheless be exercising quasi-judicial functions if certain conditions are fulfilled.
>
> 123. There is considerable force in these contentions, but we do not fell called upon to express our final opinion on this question in view of the conclusion which we have hereafter reached in regard to the ultra vires character of the decision of the Wage Board itself. We are however bound to observe that whatever be the character of the functions performed by the wage boards whether they be legislative or quasi-judicial, if proper safeguards are adopted of the nature discussed earlier, e.g., provision for judicial review or the adopting of the procedure as in the case of the recommendations of the wage councils in the United Kingdom, or the reports of the advisory committees which come to be considered by the administrator under the Fair Labour Standards Act of 1938 in the United States of America, no objection could ever be urged against the determinations of the wage boards thus arrived at one the score of the principles of natural justice having been violated."

48. In response, Mr. Muhammad Akram Sheikh, Sr. ASC submitted that it is true that the NECOSA does not give right of appeal to an individual against the Award given by the Board, but, in fact, it lays down a mechanism akin to arbitration proceedings where the Chairman of the Wage Board does not pass any unilateral order, rather there is equal representation of employees and employers on the Board. He further submitted that if it was an order of a judge or an individual, the legislature would have provided right of appeal. In the present case, there were 11 years of litigation before different forums, and though there was an allegation of bias against Justice Gandapur, ITNE, but no such allegation was ever made against Justice Raja Afrasiab Khan, Chairman of the Seventh Wage Board.

49. In view of the stand taken by the petitioners' counsel himself that Wage Board is neither judicial nor quasi-judicial body as it

exercises executive/administrative function, we have gone through the relevant provisions, i.e. sections 9, 10 & 11 of the NECOSA, and the *ratio decidendi* of the judgments noted hereinabove. Keeping in view the nature of the task assigned to a Wage Board of fixation of wages is neither judicial/*quasi*-judicial nor executive/administrative function, but partakes of legislative activity and the Chairman being the delegate of the Federal Government, with the advice and consultation of the members of the newspaper establishments and newspaper employees, gives its decision fixing the wages of different categories of the newspaper employees including working and non-working journalists. As far as the process of performing a legislative activity is concerned, it is to be done following the guidelines provided in section 10 of the NECOSA. We tend to agree with Mr. Shaukat Aziz Siddiqui, learned ASC that if this Court comes to the conclusion that a right of appeal is necessary to honour the requirements of due process of law in terms of Article 10A of the Constitution, the question would be as to whom right of appeal will be available against the Award of Wage Board because the petitioners being the representatives of the newspaper establishments and the respondents being the representatives of the newspaper employees are themselves associated with the Chairman equally in the process of fixing the wages, therefore, a possibility cannot be ruled out that in such a situation whenever any demand of any of the members is not accepted, they would be agitating the matter against the Chairman and remaining members and so on and so forth and this process ultimately would never come to an end, thus, the object for which the law has been promulgated would be squarely defeated. To buttress the plea so taken by him, one can imagine whether the Parliamentarians

are ever heard of filing appeal against legislation done by them. It is to be noted that in the instant case as well during proceedings before the Wage Board the representatives of the newspaper establishments/owners boycotted twice as it has been highlighted hereinabove and they offered to end the boycott subject to fulfillment of their demands. It may not be out of context to note that the *vires* of the Award on the ground of its acceptability on factual side has not been challenged except before the High Court or before this Court raising technical objection that the Award is not sustainable. Incidentally, not a single affidavit was filed before the High Court on behalf of the petitioners to controvert the factual aspect of the Award relating to fixation of the wages, which have been allowed. Contrary to it, the respondents filed affidavits in support of their contention that the Award did not suffer from any factual defect. Therefore, for want of adequate material, the NECOSA cannot be declared *ultra vires* the Constitution, being contrary to Article 18 of the Constitution as well as Article 3 as the wages of the newspaper employees have been fixed following the object and purposes of the legislation. The contents of the Award suggest to hold that full opportunity was given to the stakeholders to put forward their respective viewpoint, enabling the Board to reach a correct conclusion. In this connection, the Chairman and Members of the Wage Board travelled to different cities in the country, recorded the evidence, inasmuch as evidence of the experts was also obtained and calculations made for the purpose of fixing rates keeping in view the ground realities. These facts also indicate that to lay down a formula for the purpose of fixing the rates of wages, the activities so undertaken by the Wage Board, when examined in the light of above facts and circumstances, strengthen the argument of Mr.

Salman Akram Raja, learned Counsel that all such bodies and functionaries who have been assigned the task, being a body exercising sub-legislative powers, get involved themselves in performing legislative activity and same is the *ratio decidendi* of the judgments, which have been referred to hereinabove.

50. As far as appeal is concerned, it is continuation of the original proceedings and it provides a mechanism for the scrutiny of the findings/determination already recorded by a subordinate forum whereas the wage determination, which is done with a view to regularize its payment to the newspaper employees, being a legislative activity is open to judicial review before the superior Courts if violation of any provision of the Constitution is made out. The learned counsel for the petitioners submitted that assuming that the determination of wages was a legislative activity having prospective effect, under the Seventh Award, the wages were fixed retrospectively, inasmuch as the same were ordered to be paid from 1st July, 2000. In reply, the learned counsel for the respondents submitted that the wages determined under the Award dated 25th October, 2001 have been ordered to be paid from the date of the constitution of the Board, and not from an earlier date, therefore, the same could not be said to have retrospective effect. We agree with the learned counsel for the respondents that the direction to pay the wages determined under the Award from the date of constitution of the Board does not make it a retrospective activity. The argument of the learned counsel for the petitioners, therefore, cannot be accepted.

51. The learned counsel for the petitioners himself submitted that the Wage Board is not performing a judicial or *quasi*-judicial function, and on the contrary executive powers of determining the

wages have been conferred upon the Board, which, according to him, undermines access to justice and does not satisfy the irreducible or minimum requirement of administration of justice, besides being violative of the fundamental principle of trichotomy of power and independence of the judiciary. In view of the admission of the learned counsel that the Board is performing a function, which is neither judicial nor quasi-judicial, the argument that it is violative of the principle of access to justice is not well founded. Reference in this behalf may be made to the cases of *Mehram Ali v. Federation of Pakistan* (PLD 1998 SC 1445) and *Iftikhar Ahmed v. President, National Bank of Pakistan* (PLD 1998 SC 53). In the first mentioned case, it has been held that the right of "access to justice to all" is a Fundamental Right, which cannot be exercised in absence of an independent judiciary providing impartial, fair and just adjudicatory framework i.e. judicial hierarchy. The Courts/Tribunals, which are manned and run by executive authorities without being under the control and supervision of the High Court in terms of Article 203 of the Constitution can hardly meet the mandatory requirement of the Constitution. On the touchstone of the above, it cannot be argued that departure has taken place from the process of access to justice. As it has been held hereinabove that the Wage Board determines the wages of the newspapers employees like a Pay Commission, therefore, hardly it is possible to stress that process of access to justice while discharging legislative activities has been denied. There is no cavil with the proposition that when the individual rights are being determined/decided by a forum exercising judicial function, aggrieved person is entitled to right of appeal, but if powers are exercised other than judicial or administrative as a delegatee on behalf of the Federal

Government empowered to give Award as per supporting legislation, like framing of the rules, which is not carried out by the legislature but by the authority in the concerned statute.

52. Constitutionality of the ITNE was also questioned on behalf of the petitioners, contending that no judicial or quasi-judicial powers are available to the ITNE for recording evidence and effecting recovery of the wages, therefore, the authority so conferred upon the ITNE is against the concept of due process of law, inasmuch as the functions being performed by the ITNE do not specify the irreducible minimum requirement for safe administration of justice as well and is tantamount to setting up a forum, which is much beyond the status of parallel judicial system. Thus, sections 12A and 13 may be declared violative of Article 4 and the Fundamental Right enshrined in Article 9 of the Constitution. On the other hand, the learned counsel for the respondent contended that the ITNE so far has not awarded conviction nor any such order if passed has been challenged or brought before this Court, therefore, to the extent of powers of the ITNE under section 13(1)(a) in the instant proceedings need not to be examined. As far as the remaining powers of the Tribunal are concerned, the same are of administrative nature, meant for the purpose of implementation of the decision of the Board.

53. We tend to agree with the learned counsel that as presently no matter relating to awarding of punishment under section 55 of the IRO 1969 has been brought before us, therefore, examination of the said provisions will be undertaken in some other appropriate case.

54. As far as the powers conferred upon the Tribunal under section 13(4) of issuing direction which a Labour Court is empowered

to issue under section 51(1) of IRO 1969 for recovery of wages as arrears of land revenue of public demand, it is an admitted feature of the case that in this behalf the Tribunal is performing function of effecting recovery of the wages which has already been determined by the Board. Such powers, if exercised, cannot be considered contrary to the due process of law or against Article 9 of the Constitution because on the revenue side as well as in banking matters or the Cooperative Societies Act, such powers are available to the authorities mentioned therein as Collectors of Revenue, therefore, we are of the opinion that the Tribunal cannot be debarred from implementing the Award in absence whereof it would not be possible to implement the Award because the Chairman of the Board becomes *functus officio* after pronouncement of the Award, which the Board has to do in 180 days of its constitution, and its publication in the official gazette. If the Award is not implemented, the whole exercise undertaken in this behalf shall be a futile one because no remedy is available to implement the same. Therefore, under the special circumstances, and keeping in view the background on the basis of which the newspaper employees have been treated as a separate class from the other employees working in different industries would be left with no remedy. It is a cardinal principle of law that where there is a right, there is a remedy.

55. It is also contended by the learned counsel with vehemence that objection was raised on the procedure being followed during the proceedings of the Board as there was a perception of bias. He has relied upon certain documents, i.e. letter dated 24th April, 2000 addressed to the Director General (Internal Publicity), Ministry of Information (relevant excerpt reproduced hereinabove) letter dated

17th December, 2000 addressed to the Chairman of the Board on the manner of proceedings of the Board, letters dated 20th August, 2001 and 25th, October, 2001 addressed to the then Minister of Labour for repeal of the NECOSA, etc., letters dated 22nd December, 2001 and 16th May, 2002 addressed to the Secretary Information, and letter dated 15th August, 2002 addressed to the Secretary, Ministry of Labour, but in our considered opinion attempts have been made to persuade the Court at a belated stage that the Award should be set aside on the perception of bias. Firstly, this ground was never pleaded, and secondly, provision of interim relief, holding inquiry in absence of the petitioners, instead of reflecting upon the conduct of the Board goes against the petitioners because they were not cooperating with the Board, inasmuch as they had twice boycotted the proceedings. As held in *Asif Ali Zardari v. The State* (PLD 2001 SC 568), bias is said to be of three different kinds: -

(a) A Judge may have a bias in the subject-matter which means that he is himself a party or has direct connection with the litigation, so as to constitute a legal interest.

A 'legal interest' means that the Judge is 'in such a position that a bias must be assumed'.

(b) Pecuniary interest in the cause, however, slight, will disqualify the Judge, even though it is not proved that the decision has in fact been affected by reason of such interest. For this reason, where a person having such interest sits as one of the Judges the decision is vitiated.

(c) A Judge may have a personal bias towards a party owing to relationship and the like or he may be personally hostile to a party as a result of events happening either before or during the trial. Whenever there is any allegation of personal bias, the question which should be satisfied is - "Is there in the mind of the litigant a reasonable

> apprehension that he would not get a fair trial?" The test is whether there is a 'real likelihood of prejudice', but it does not require certainty.' 'Real likelihood' is the apprehension of a reasonable man apprised of the facts and not the suspicion of fools or 'capricious persons'.

Testing the case on the above touchstone, it does not fall in any of the above categories of bias. Further, he has relied on the Pinochet case (2) reported as *R v Bow Street Metropolitan Stipendiary Magistrate* [(1999) 1 All ER 577]. Briefly stated, the facts of the case were that Senator Pinochet brought the petition to set aside an order made by the House of Lords, allowing the appeal of the Commissioner of Police of the Metropolis and the Government of Spain from the decision of the Queen's Bench, granting the petitioner judicial review by way of certiorari to quash the provisional warrant issued for the arrest of the petitioner to await his extradition to Spain. The grounds of the petition were that Lord Hoffmann's links with Amnesty International, which had been granted leave to intervene in the appeal, gave the appearance of possible bias. It was held as under:-

> "The principle that a judge was automatically disqualified from hearing a matter in his own cause was not restricted to cases in which he had a pecuniary interest in the outcome, but also applied to cases where the judge's decision would lead to the promotion of a cause in which the judge was involved together with one of the parties. That did not mean that judges could not sit on cases concerning charities in whose work they were involved, and judges would normally be concerned to recuse themselves or disclose the position to the parties only where they had an active role as trustee or director of a charity which was closely allied to and acting with a party to the litigation. In the instant case, the facts were exceptional in that AI was a party to the appeal, it had

> been joined in order to argue for a particular result and the Law Lord was a director of a charity closely allied to AI and sharing its objects. Accordingly, he was automatically disqualified from hearing the appeal. The petition would therefore be granted and the matter referred to another committee of the House for rehearing *per curiam*."

The other case relied by the learned counsel in the above connection was *R v Gough* [(1993) 2 All ER 724] wherein the appellant claimed that the learned judge should on his own motion have required the prosecution to proceed on an indictment containing eight substantive counts of robbery and not on the conspiracy count. That submission was rejected by the Court of Appeal. The other ground of appeal was that by reason of the presence on the jury of a lady who was appellant's brother's next door neighbour, there was a serious irregularity in the conduct of the trial and for that reason the conviction of the appellant should be quashed. That too was rejected. In the appeal to the House of Lords, it was held as under: -

> "Except where a person acting in a judicial capacity had a direct pecuniary interest in the outcome of the proceedings, when the Court should assume bias and automatically disqualify him from adjudication, the test to be applied in all cases of apparent bias, whether concerned with justices, members of other inferior tribunals, jurors or arbitrators, was whether, having regard to the relevant circumstances, there was a real danger of bias on the part of the relevant member of the tribunal in question, in the sense that he might unfairly regard or have unfairly regarded with favour or disfavour the case of a party to the issue under consideration by him …"

56. The facts and circumstances of the said cases are quite different and are not attracted in the present case. As far as the Chairman is concerned, it has already been held that the Board

performs a function, which is a legislative activity and not a judicial or *quasi*-judicial act, as such, in the performance of his functions as Chairman, he is not a Judge even though he be or may have been a Judge. It is well settled that *mala fides* cannot be attributed to legislature. Even otherwise, bias, or the perception of bias has to be established, but here it appears that there was no bias because the petitioners were not cooperating with the Board, which is evident from the letters filed by them. Another important thing in this behalf is that the notification of appointment of the Chairman was never challenged on the ground of bias or perception of bias, either when the matter came before this Court earlier in 2004, or before the High Court, therefore, at this stage, this argument is not available to the petitioners. Thus, from this angle too, no case for interference with the Award or the proceedings of the Board is made out.

57. Learned counsel next contended that legislature has completely abdicated its powers, as it has made excessive delegation of powers to the Wage Board without any guidelines. On the other hand, the learned counsel for the respondents stated that the petitioners have not shown with reference to any specific instances from the Award that the Board has acted in excess of the authority conferred upon it and not a word has been said about it. The Court will not enter into an academic exercise. Therefore, this argument fails because it has not been made with reference to any particular item in the Award. He has relied upon *Muhammad Ismail & Co. v. Chief Cotton Inspector* (PLD 1966 SC 388, *Province of East Pakistan v. Sirajul Haq Patwari* (PLD 1966 SC 854), *Zaibtun Textile Mills v. Central Board of Revenue* (PLD 1983 SC 358) and *Abdur Rahim v. Federation of Pakistan* (PLD 1988 SC 670). The ratio decidendi of the aforesaid cases

is that it is only the essential legislative power that is incapable of being constitutionally delegated. Within the framework laid down by the legislating authority, power can be delegated to a subordinate agency to carry into effect the purposes of the enactment by making detailed rules in conformity with the policy thus laid down. What is prohibited by the Legislature is the delegation of its function to make the law but not the authority exercised under and in pursuance of the law itself to another agency in regard to the provision of details when by the very nature these are incapable of being laid down by the legislature itself. The legislature can delegate authority to subordinate or outside authorities for carrying laws into effect and operation. Considering the above line of authorities, it is not possible to uphold the argument of the learned counsel for the petitioners. It is to be noted that under section 9 of the NECOSA the Chairman was appointed along with 10 members representing owners of the newspapers and the newspaper employees having equal representation to advise the Chairman for fixing the wages. The whole proceedings of the Board have been incorporated in the Award dated 25th October, 2001, a perusal whereof indicates that after collecting evidence and thoroughly conducting inquiry and as a result of intensive efforts to achieve the object of the legislation the Award was given. The petitioners had never pointed out during the proceedings or thereafter as to how the Chairman exceeded his authority to support the argument that the Federal government had abdicated its authority/jurisdiction which was conferred upon the Board in terms of section 10. In fact, the petitioners had not participated in proceedings of the Board as they disassociated themselves twice from the proceedings as is evident from the contents of the Award and at one

stage they intended to join proceedings subject to accepting some of their conditions. Above all, when they gave the names of owners of the newspapers to represent them, even at that stage they incorporated in the letter dated 24th April, 2000 that prior to being signed by the Chairman and publication in the official gazette, the Award must be circulated amongst the members, the members must be allowed to record their concurrence with or dissent from the Award and such concurrences and/or dissents must also be published along with the Award singed by the Chairman, knowing well that the objections/demands so raised by them were not in terms of the NECOSA or the Working Journalists (Wage Board) Rules, 1960. It is pertinent to mention here that no rules have been framed under the NECOSA, therefore, as per section 24 of the General Clauses Act, the rules framed under the Ordinance of 1960 would be holding the field.

58. Learned counsel also objected that as there was no industrial dispute, therefore, the Government, *suo motu* could not appoint the Wage Board for fixation of wages of the newspaper employees. The argument so raised by the learned counsel is not tenable as under section 9 (1) of the NECOSA, it is prerogative of the Federal Government to constitute whenever it so considers necessary by notification in the official gazette the Wage Board for fixing the wages of the newspaper employees. This very question engaged the attention of the Indian Supreme Court in the case of *Express Newspapers* (*supra*) wherein it was held that as the appointment of the Wage Board for the purpose of fixing the rates of wages could not be, and was not, challenged, as such the constitution of such a Wage Board is one of the appropriate methods for fixing the rates of wages of the newspaper employees.

59. In the instant case as well, *vide* notification dated 19th June, 2000 the Chairman was appointed, followed by another notification dated 8th July, 2000 in pursuance whereof the employer members and the employee members were appointed and no challenge was thrown to this notification, therefore, this argument is not available to the petitioners. Besides, in view of the plain language of section 9(1), there is hardly any need for the Government to wait till the time an industrial dispute is raised. In our opinion, the prior existence of an industrial dispute is absolutely unnecessary in view of various provisions of the NECOSA, which has been promulgated to regulate certain conditions of service of the newspaper employees as defined therein. As far as payment of the wages is concerned, it is one of the conditions of service of newspaper employees. The term "wage" has been defined in section 2(h) of the NECOSA, which means wages as defined in the Payment of Wages Act, 1936 and includes any gratuity or other payment declared as wages by the Board. The contention of the learned counsel in respect of directions contained in the Award relating to granting of grades, etc. to the newspapers has also no force because grading has been done in view of the ground realities based on evidence collected by the Board.

60. Undoubtedly, the Chairman has control/powers as envisaged by section 10 of the NECOSA as has been pointed out hereinabove. It is pertinent to mention that this Court, in the case of *Herald Publications Ltd.* (*supra*) interfered in the Wage Award to the extent it was found beyond the scope/jurisdiction of the Board, but the Wage Board Award was kept intact. No demonstration has been made before us to substantiate that the petitioners led any evidence or produced any material being the representatives of the newspaper

establishments to persuade the Board not to award different grades or rates of wages to the newspaper employees, hence no other discussion in this behalf is called for.

61. Learned counsel contended that all the newspapers (owners of the newspapers) do not have financial capacity to make the payment of wages to the newspaper employees as per the Award. This argument has been seriously controverted by the learned counsel for the respondents, particularly by Mr. Shaukat Aziz Siddiqui, ASC. According to him, the petitioners control 85% news publications in Pakistan, therefore, there is no match between them and the newspapers like *Kohistan*, *Ta'amir*, etc., or the newspapers being issued from the far-flung areas of D.I. Khan of Khyber Pakhtunkhwa or Mastung, Sibi, etc., of Balochistan. Be that as it may, this very contention had already been decided against the newspaper owners in the case of *Herald Publications* (*supra*) on the basis of the material brought before the Wage Board at that time. In this case as well, the employers/owners of the newspapers had pleaded before the Board that they had no capacity to pay the employees as per their demands. As per the expert opinion presented before the Board by Dr. A.R. Kamal, cost of living is 46.3 percent and per capita income is 51.8 percent. Similarly, another expert Dr. Irfan opined that cost of living is 47% while the per capita income is 52%. It is significant to note that despite non-producing material/data as was required to be filed by the newspaper establishments to assess their capacity to pay the wages fixed in the Award, at one stage, i.e. on 4th October, 2001 M/S Syed Fasih Iqbal and Mr. Arshad Zubari appeared on behalf of newspaper owners and urged that burden of inflation is to be shared by the owners and the newspaper employees in 60 : 40 *ratio*. According to

the owners, after deduction of the share of the workers @ 40%, the balance will come to 24%. On this formula, the owners concluded that they were ready to increase the wages of the workers to the extent of 24%. Another concession was offered by the owners that 7% weightage may also be shared in 60 : 40 *ratio*, which will come to 28% to 29%. It was further declared that if this formula was accepted they would have no objection if the decision of the Board was made operative w.e.f. 1st July, 2000. On the other hand, the representatives of the newspaper employees brought into the notice of the Board that the 4th Wage Award was given on the basis of overall 90% increase in the cost of living. The 5th Wage Award was announced on the basis of 71% increase. Similarly, the 6th Wage Award was founded on the ground that the cost of living was 70%. The workers produced reliable evidence before the Board that prices of various articles had increased from 100% to 150%. This evidence was not rebutted by the owners. As the parties were not agreed, therefore, on the basis of material produced by the respondents and the oral assertions made by the petitioners, the Board decided that 50% increase in the cost of living would be made the basis of the increase in the wages of the newspaper employees.

62. Since no material was produced as indicated hereinabove by the petitioners to show that financially they did not have the capacity to increase the wages, the Board though did not approve the rates of wages demanded by the employees, found out a middle way to fix the wages.

63. The contention raised by the learned counsel on behalf of the petitioners that the NECOSA is a fraud on the Constitution, as according to him, though the Board is an independent body having

equal representation of both the sides but the members are denied the power to participate in the decision making as the Award is to be given by a single person “Chairman”.

64. Again it is to be seen that at the time of constitution of the Board, no objection was raised nor any challenge was thrown in the Court to challenge the constitution of the Board while invoking power of judicial review of the superior Courts. Secondly, in view of the past experience prevailing since 1951 onward, on account of unrest in the newspaper industry and also to ensure that this industry functions smoothly and rights guaranteed under Article 19 of the Constitution were enforced/implemented, the representatives of the employers and the employees were engaged to provide advice in regard to the observation that no effective participation was made by the owners or their representatives as is evident from the facts and circumstances noted hereinabove.

65. Learned counsel for the petitioners also contended that the NECOSA is a redundant and superfluous law in a heavily occupied field by incorporating several laws without which it cannot operate, such as the Provident Funds Act, 1925, the Factories Act, 1934, the Payment of Wages Act, 1936, West Pakistan Employees’ Social Security Ordinance, 1965, the Industrial and Commercial Employment (Standing Orders), Ordinance 1968, the National Industrial Relations Ordinance, 1969, etc. To elaborate his argument, he referred to sections 2(h), 5(5), 17 & 19 of the NECOSA as in these sections procedure for redressal of the grievances of the newspaper employees in the statutes named hereinbefore has been made applicable. He further contended that due to application of these laws, several other laws are also attracted, which shall be applicable to the newspaper

employees, namely, Employees Cost of Living Relief Act, 1973, Companies Profits Workers Act, 1968, Workers Welfare Fund Ordinance, 1971, Minimum Wages Ordinance, 1969, etc. As far as the laws mentioned in the later part of the argument are concerned, they have not been made applicable expressly, therefore, to their extent argument is based on presumptive consideration. As far as the question of redundancy and superfluity of the NECOSA is concerned, it is without substance. The scheme of the NECOSA makes it abundantly clear that a comprehensive procedural-cum-substantive Code has been provided to the newspaper employees by the legislature in view of the nature of their duties which they have to perform necessarily other than the workers or workmen as defined in the Factories Act or the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, therefore, by means of the NECOSA, their rights and obligations have been protected. This is not the only statute of its nature where Payment of Wages Act, etc., have been applied by following the process of adoption of laws, which is well settled approach in the modern jurisprudence. Reference in this behalf may be made to *Re Wood's Estate* [(1866) 31 Ch. D. 607] wherein Lord Esher M.R. said, "If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act just as if they had been actually written in it with the pen, or printed in it, and the moment you have those clauses in the latter Act, you have no occasion to refer to the former Act at all. Similarly, a statute may adopt all or only a part of another statute by express reference or by re-enactment of the former in verbatim or in substantially the same language." [Understanding Statutes – Cannons of Construction, Edition

2008 by S.M. Zafar]. Therefore, no redundancy or superfluity can be attributed to the NECOSA on this score. In this behalf, argument of the learned counsel for the respondents being worth consideration is also to be noted that the Legislature is not debarred from promulgating such laws as general or special laws, vis-à-vis general civil laws, special rights, procedures, etc., therefore, the NECOSA is not superfluous and it cannot be declared *ultra vires* the Constitution.

66. Learned counsel vehemently argued that as per section 12A, a decision of the Board published under section 11 shall be deemed to be award of the Full Bench of the NIRC constituted under section 22A of the Ordinance [section 2(b) of the NECOSA]. Under section 38C of the IRO 1969, the Award shall remain in force for a period of three years or until it is modified or varied by a later decision of the Wage Board. Therefore, according to him, treating the Wage Board Award as having come to an end after the expiry of three years from 25th October, 2001, the date of its publication in the Gazette of Pakistan. The argument advanced by the learned counsel has been seriously controverted by the learned counsel appearing for the respondents as according to him, it has no force because the deeming clause in a statute is to be read to the extent of its application and not beyond it as in the instant case the Award is to be deemed award of the Full Bench of the NIRC, but it is not said that its period of enforcement will also be the same. In the case of *Mubeen-us-Salam v. Federation of Pakistan* (PLD 2006 SC 602), it has already been observed that the purpose of importing a deeming clause is to place an artificial construction upon a word/phrase that would not otherwise prevail and sometimes it is to make the construction certain. It was further held that a deeming clause is a fiction, which cannot be

extended beyond the language of the section by which it is created or by importing another fiction. Therefore, on the basis of such deeming clause, the period of enforcement of the Award cannot be fixed at three years. It is provided in section 11(2) that decision of the Board shall remain in force until it is modified or varied by a later decision of the Board. In the facts and circumstances of the case, the learned counsel emphasized that all the previous Awards were continued to remain in force for a period of five years, but in the instant case, a period of more than 10 years has passed, as such following the past practice, it may be held that the Award is no more applicable. The argument has no substance because no period of time has been fixed under section 11 of the NECOSA.

67. Thus, for the foregoing reasons, the Newspaper Employees (Conditions of Service) Act, 1973 [NECOSA] is *intra vires* the Constitution. Consequently, the Seventh Wage Board Award dated 25th October, 2001 shall hold the field until it is modified or varied by a later decision of the Board published in the manner provided in section 11(2) *ibid*. Accordingly, we are not inclined to interfere with the impugned judgments of the High Court of Sindh. All the three petitions are dismissed with costs.

IFTIKHAR MUHAMMAD CHAUDHRY, CJ

TARIQ PARVEZ, J. GHULAM RABBANI, J.

Announced in open Court on 19th October, 2011

CHIEF JUSTICE

APPROVED FOR REPORTING