The Press Trust Of India And Anr. vs Union Of India (Uoi) And Ors. on 23 April, 1974

Equivalent citations: AIR1974SC1044, [1974(29)FLR67], 1974LABLC716, (1974)4SCC638, [1975]3SCR499, AIR 1974 SUPREME COURT 1044, (1974) 4 S C C 688, 1974 LAB. I. C. 716, 45 FJR 509, 39 FAC L R 67, 1975 3 SCR 499, 29 FACLR 67, 1974 4 SCC 638

Bench: P. Jaganmohan Reddy, S.N. Dwivedi

JUDGMENT

1. The appeal and the writ petition No. 40 of 1968 are by the Press Trust of India, while writ petition No. 37 of 1968 is by the Indian National Press (Bombay) Ltd. The appeal and the writ petitions challenge the order dated October 27, 1967 issued by the first respondent-the Union of India, Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) accepting the recommendations of the Wage Board constituted under Section 9 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955)- herein-after referred to as 'the Act'-as violating Articles 14, 19 and 21 of the Constitution of India. The order accepting the recommendations in respect of the wages, scales of pay etc. of the working journalists was subject to certain minor modifications therein specified, being modifications which in the opinion of the Central Government did not effect important alterations in the character of the recommendations. The second respondent is the Indian Federation of Working Journalists.

2. At the outset a preliminary objection was raised on behalf of the first respondent, which was also supported by the second respondent, that the appeal is not maintainable under Article 136 of the Constitution, inasmuch as the Central Government which passed the order dated October 27, 1967 is neither a Court nor a Tribunal, and the order passed by it is not a judicial order but a statutory order-a piece of subordinate legislation. It may here be mentioned that caveats were entered into at the time when special leave petitions came for hearing on September 26, 1968, and this Court granted leave on that day subject to the right to urge the preliminary objection as to the maintainability of the appeals. So far as the writ petitions are concerned, aft objection has also been raised that as the second petitioner A. B. Nair in writ petition No. 37 of 1968 had died during the pendency of the petition, and as an application had been filed in writ petition No. 40 of 1968 to delete the name of the second petitioner Uma Shankar Dikshit, the first petitioner in both the petitions being limited companies, the reliefs claimed could only be confined to Articles 14 and 31 of the Constitution and not to Article 19 under which the guarantee of fundamental rights is only available to a citizen of India, which the limited companies are not. In order to appreciate these objections it is necessary to set cut certain provisions of law and indisputable facts.

3. under Section 9 of the Act, there is power to constitute a Wage Board for fixing or revising rates of wages in respect of working journalists. Once the Board is constituted it shall, by a notice published

in such manner as it thinks fit, call upon newspaper establishments and working journalists and other persons interested in the fixation or revision of rates of wages of working journalists to make such representations as they may think fit (Section 10(1)); every such representation shall be in writing and shall be made within such period as the Board may specify in the notice and shall state the rates of wages which in the opinion of the person making the representation, would be reasonable (Section 10(2)). After taking into account the representations and after examining the materials, the Board shall make such recommendations as it thinks fit to the Central Government for the fixation or revision of rates of wages with effect from a date as may be specified by the Board (Section 10(3)). It is further provided in Section 10(4) that in making any recommendations to the Central Government, the Board shall have regard to the cost of living, the prevalent rates of wages for comparable employment, the circumstances relating to the newspaper industry in different regions of the country and to any other circumstances which to the Board may seem relevant.

4. The Central Government had, in exercise of the powers conferred under Section 9 of the Act, constituted a Wage Board and after receiving the recommendations of that Board published them in the Gazette of India Extra-ordinary dated May 11, 1957. The Commissioner of Labour, Madras, issued a circular on May 30, 1957, calling upon the management of all newspaper establishments in the State to send to him the report of the gross revenue for the 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, i.e. not later : than June 10, 1957. Thereafter writ petitions were filed by Express Newspapers (Private Ltd. etc. challenging the vires of the Act on the ground that the provisions of the Act were violative of the fundamental rights guaranteed by Articles 19(1)(a), 19(1)(g) and 14 of the Constitution. The decision of the Wage Board was challenged on various grounds which were in pari materia with the objections that had been urged by the representatives of the employers in the minutes of dissent which they had appended and it was contended that the implementation of the decision would be beyond the capacity of the petitioners and would result in their total collapse. This Court had in Express Newspapers (Private) Ltd. and Anr. v. The Union of India and Ors. [1959] S.C.R. 12 held certain provisions of the Act to be ultra vires and so far as Section 9(1) of the Act was concerned, it held that that section when properly construed made it incumbent on the Wage Board to take into consideration the capacity of the newspaper industry to pay the rates and scales of wages recommended by it and as there was nothing to indicate that it had done so, its decision was void and inoperative. It further held that the impugned Act, judged by its provisions, was not such a law but was beneficient legislation intended to regulate the conditions of service of the working journalists and the consequences that were adverted to in that case could not be the direct and inevitable result of, it. It also expressed the view that although there could be no doubt that liberty of the press was an essential part of the freedom of speech and expression guaranteed under Article 19(1)(a) and if the law were to single out the press to lay prohibitive burdens it would fall outside the protection afforded by Article 19(2), the impugned act which directly affected the press and fail outside the categories of protection mentioned in Article 19(2) had not the effect of taking away or abridging the freedom of speech and expression of the petitioners and did not, therefore, infringe Article 19(1)(a) of the Constitution. Nor could it be held to be violative of Article 19(1)(g) of the Constitution in view of the test of reasonableness laid down by this Court.

5. The question whether the functions performed by the Wage Board are administrative, judicial or quasi-judicial, or legislative in character was also raised before this Court in the Express Newspapers case. (supra) This question was said to assume importance on two grounds, viz., (i) whether the decisions of the wage boards are open to judicial review, and (ii) whether the principle of audi alteram partem applies to the proceedings before the Wage Boards. If the functions performed by them were administrative or legislative in character, they would not be subject to judicial review, and not only would they not be amenable to writs of certiorari or prohibition under Articles 32 and 226 of the Constitution, they would also not be amenable to the exercise of special leave jurisdiction under Article 136. Their decisions, moreover, would not be vulnerable on the ground that the principle of audi alteram partem, i.e. no man shall be condemned unheard, was not followed in the course of the proceedings before them and the procedure adopted by them was contrary to the principles of natural justice. After examining the principles and the cases in which the character of the functions of the Tribunals or the Boards as such had been considered, this Court expressed the view that it was not possible to hold that the functions performed by the Wage Boards are necessarily of a legislative character. The test for determining these controversies was stated thus at pp. 112 & 113:

> ...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 as the future in regard to the wages payable in 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.
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> Having stated that even if on the construction of the relevant provisions of the statute the functions performed by a particular wage board are not of a legislative character, this Court nonetheless observed that "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." After examining this aspect at pp. 117-118 the Court said :
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> There is considerable force in these contentions, but we do not feel called upon to express our final opinion on this question in view of the conclusions 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., provisions 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 on the score of the principles of natural justice having been violated.

6. After the decision in the Express Newspapers' case (supra), Parliament, having regard to the observations made therein, amended the provisions of the Act, and by Act 65 of 1962 substituted Sections 8, 9, 10, 11, 12 and 13 by new Sections 8, 9, 10, 11, 12, 13 and 3-A. The learned Solicitor General contends that after these amendments every person affected was given an opportunity of hearing. The Government was not required to give reasons where it was varying the recommendations, nor was it necessary for it to give reasons where it was accepting the recommendations of the Wage Board, nor did any of the provisions in Sections 8 to 12 provide for a judicial determination of a right, nor did they lay down any principles to be applied to the facts for determining the rights of the parties. On the other hand, these provisions, according to him, are in general terms which indicate the policy and provide merely a general guidance leaving it to the delegated authority, viz. the Government, a substantial scope for a policy decision which can only result in the order being a legislative order. On this aspect he submitted the propositions (i) in the case of a parent law which provides for a judicial determination of a right it must lay down the necessary principles to be applied to the facts so that the rights of the parties could be determined; and (ii) if the parent law in the general terms enunciates the policy and provides merely for general guidance which leaves to the delegated authority a substantial scope for a policy decision, then the order is a piece of subordinate legislation and not a judicial order. In support of these propositions he has cited the decisions in The Edward Mills Co. Ltd., Beawar and Ors. v. The State of Ajmer and Anr. [1965] 1 S.C.R. 735 dealing with the Minimum Wages Act. 1948; MA. Bhikusa Yarnasa Kshatriya v. Seminar Akola Taluka Bidi Kamgar Union [1963] Supp. 1 S.C.R. 324 and the observations of this Court, in the Express Newspapers' case (supra) at pp. 164 & 165. It is contended that the investigation leading upto the order does not involve a decision in terms of the existing law nor is there any requirement of determination of existing rights, nor is the existence of a dispute a condition of the exercise of jurisdiction. All that is required by the Central Government is for it to make an order in terras of the recommendations or subject to such modifications which the Central Government thinks fit. It is not a decision between any contending parties, but is largely a policy decision made within the framework and in the light of the guidance provided by the Act.

7. The learned Advocate for the petitioners on the other hand contends that the procedure laid down in the Act for fixation of the wages is similar to that laid down under the Industrial Disputes Act, the award under which Act has been held by this Court to be an award of a Tribunal within the meaning of Article 136 of the Constitution, accordingly an order made on the recommendations could be challenged by an aggrieved party in an appeal to this Court by way of a special leave.

8. In so far as the contention that no relief in the writ petition is available under Article 19 is concerned, it is urged that the prayer for substitution of Shri Jai Kumar Karmani a shareholder in the first petitioner company in place of the deceased A. B. Nair in writ petition No. 27 of 1968 and of Shri K. Narendra a shareholder in the first petitioner company in place of Shri Uma Shankar Dikshit in writ petition No. 40 of 1968 being manifestly just should be granted. If these prayers are granted, the second petitioners in the respective two writ petitions can also challenge the impugned order under Article 19. It may be mentioned that in the first petition the substitution is necessitated by the death of the second respondent and in the second as Shri Uma Shankar Dikshit had been appointed a Central Minister, another shareholder is sought to be substituted. It is contended on behalf of the second respondent that the those petitions should not be allowed, nor should the petitioners' Advocate be permitted to raise any question of infringement of the rights conferred under Art, 19. nor is it right to say that no question of limitation arises in the matter of enforcement of fundamental rights. It is also submitted that even otherwise a shareholder can enforce only his rights under the law and no such infringement can arise in this case. It appears to us that though it may be that no specific mention had been made in the petitions of any of the Articles which are alleged to have been infringed by the impugned order the facts stated and the contentions urged in the petition entitle the petitioners to invoke also Article 19 A shareholder can challenge the order if the restriction on his right under Article 19(1)(f) is unreasonable. If the impugned order places a heavy burden on the resources of the company or the wage has been fixed without taking into consideration the capacity to pay. or where the higher wage than what the journalists asked for is fixed without hearing the employer, then that burden will effect the shareholders also. In such a case it will not be valid to contend that the right of a shareholder is not infringed. We think the petitioners can validly challenge the order under Art.

9. Even if we reject the prayer in the second petition (C.M.P. No. 1034 of 1974 in Writ Petition No. 40 of 1968) as there is nothing to debar a Central Minister from continuing to be a petitioner and the petitioners cannot be denied relief under Article 19. Similarly, if we reject the prayer in the first petition (Writ Petition No. 37 of 1968) on a technical plea that the second respondent having died no relief can be granted under Article 19, there is nothing to prevent another writ petition being filed by a shareholder of the first petitioner company, challenging the impugned order under Article 19. The rejection of the prayer, therefore, will merely prolong the litigation. The argument that such a petition would be barred by limitation cannot be considered unless the circumstances under which a fresh petition has been filed and the question whether the petitioner has been guilty of laches or tried to purpose his remedy diligently are examined. It may be that the circumstances urged for filling the petition late may justify it being entertained. In our view, as the prayer for the substitution in each of the writ petitions will further interests of justice and as the balance of convenience would justify granting the petitions, we accordingly direct the persons named above to be brought on record in the respective writ petitions as second petitioners.

10. Now coming to the merits of the case, the petitioners in writ petition filed by the Press Trust of India (hereinafter referred to as 'the P.T.I.') complain of violation of Articles 14, 19 and 31 of the Constitution inasmuch as the P.T.I. has been discriminated against both in respect of the classification and in the fixation of wages based on that classification. As regards the classification of jobs, and grouping of journalists with functional definitions, it is contended that the

recommendations were made by the Wage Board without the matters being referred to it, nor were they based on any case urged by any of the parties appearing before it. It is also contended that the recommendations of the Wage Board and the consequent decision of the Central Government are invalid, as the Wage Board has acted totally against the provisions of Section 10 of the Act by not taking into consideration the representations of the P.T.I. either in respect to its capacity to pay or with reference to the other circumstances relevant to such wage fixation as are mentioned in the representations. This apart, the Wage Board has arbitrarily discriminated against the petitioner in the matter of assessment of gross revenue for the purposes of classification as also in including it without any evidence in Class II instead of in Class III. It is further submitted that the Board has acted in excess of its jurisdiction by awarding to the employees wages higher than what were demanded by them both in respect of the scales of pay and increments, that it has not fixed a rational wage structure dependent on relevant considerations, nor was it based on the capacity of the industry to pay and that it has erred in classifying differently the P.T.I. and the United News of India-'hereinafter called 'the U.N.I.'-both national agencies, instead of putting them in the same category.

11. It may be mentioned that the Press Commission in its report Part I published in 1954 pointed out that there are two major news agencies, the P.T.I. and the United Press of India. It was said that there was a third news agency, namely, Hindustan Samachar, which is not really comparable to the other two. It was further pointed out that the P.T.I. provides three categories of services-'A', 'B', and 'C'- which are intended to meet the specific requirements of newspapers of different classes. The 'A' service is the fullest service they provide. The 'B' service is considerably shorter and is intended to carry 50 per cent. of the 'A' service, and the 'C' service is abbreviated service and carries only about 25 per cent. In the case of the United Press of India the classification of services does not appear to be regulated by any well-defined lines of demarcation and the main distinction would appear to be between those papers (mainly located in Calcutta) which take the full "local" coverage that the United Press of India provides and others which do not require this special service. Another special feature of the United Press of India service is that it can be taken with or without the inclusion of foreign news, the latter apparently being intended for the convenience of those papers which take the P.T.I. service and are satisfied with Reuter's coverage of international events.

12. The three categories of the P.T.I. service are charged for on the basis set out below :

> 'A' Service . . . . . Rs. 3,600 per month. 'B' Service . . . . . Rs. 2,000 per month. 'C' Service . . . . . Rs. 1,200 per month.

13. These rates apply to newspapers published in English, the subscription for Indian language newspapers is half that for the same category of service for English papers.

14. The Press Commission after examining the working of the P.T.I. and other news agencies made certain recommendations for an increase in the rate of subscription. This recommendation, it has been urged, was made the basis for special classification by the Wage Board as far as the P.T.I. is concerned. This has been challenged before us. According to the learned Advocate for the petitioners, the P.T.I. should have been placed in Class III even if the criteria laid down by the Wage

Board was applied. The Wage Board has, without any justification or any evidence, put the P.T.I. in a higher classification, namely, Class II. It is, according to the learned Advocate, idle to draw upon the Press Commission's recommendations that the P.T.I. should increase its rates of subscription or to say that if it increases its subscription it will have the capacity to pay the wages of the higher category of Class II in which it was placed. The contention of the learned Advocate is that the P.T.I. has been singled out for higher categorisation and put in a separate category which is not founded on any intelligible differentia which distinguishes the P.T.I. from other news agencies or newspapers. Nor has the differentia any rational relation to the objects sought to be achieved by the Act under which the Wage Board is constituted, because under the Act there is only one class of "newspaper establishments" and there is one definition of the term which under Section 2(d) of the Act means "an establishment under the control of any person or body of persons, whether incorporated or not, for the production of publication of one or more newspapers or for conducting any news agency or syndicate." We do not think that the definition of "newspaper establishment" can be drawn on for the purposes of justifying only one classification of all the establishment included in that definition. The definition of the term "newspaper establishment" is provided for on understanding of the statutory provisions to facilitate brevity and to avoid all that is mentioned in the definition being repeated over and over again. If the Act itself provides for the basis of classification, namely, the taking into consideration the capacity to pay or to any other circumstances which may seem relevant to the person making the representation in relation to his representation as has been specifically provided for in Section 10(2), the recommendations and the order made thereon alone indicate the criteria to be adopted by the Board for classifying the various catergories of news media specified in the definition. Obviously newspapers and news agencies have different functions. They have different sources of revenue and the services rendered by each are different. This broad classification between the two categories may again be sub-divided and sub-classified according to the capacity of each of the categories. The Wage Board in its recommendations has stated that for the purposes of fixation of wages for working journalists, newspapers and news agencies should be classified in the manner therein provided and that such classification should be based on the gross revenues for the accounting years 1963, 1964 and 1965. The gross revenues of the seven classes into which the respective news media, that is, both for newspapers and for news agency have been divided are as follows:

Class and Gross Revenue :

I Rs. 200 lakhs and above.

II Rs. 100 lakhs and above and less than Rs. 200 lakhs.

III Rs. Rs. 50 lakhs and above and less than Rs. 100 lakhs.

IV. Rs. 25 lakhs and above and less than Rs. 50 lakhs.

V. Rs. 12 lakhs and above and less than Rs. 25 lakhs.

VI. Rs. 5 lakhs and above and less than Rs. 12 lakhs.

VII Rs. Less than Rs. 5 lakhs.

Gross revenue in the case of newspaper has been defined by the Board as the entire revenue earned by the establishment from one center, and in the case of a group the entire revenue of a unit is to consist of its circulation and advertisement revenue and that part of the rest of the revenue which is proportionate to its circulation and advertisement revenue. In the case of news agency the entire revenue of the establishment by whatever sources earned by the establishments has to be taken as the gross revenue.

15. It is submitted that there is discrimination between newspapers and news agencies because even the earnings which have nothing to do with the activities of the news agency as such under the above criteria is included in the gross revenue. In this connection it is said that the P.T.I. has built a building by taking loan from the Government and has been earning revenue from rents. Even this income which has nothing to do with news agency business has been taken into consideration. At any rate, the classification of the newspapers and news agencies which were being based on average revenues of the three accounting years 1963, 1964 and 1965 (see para 4.3) has not been kept in view by the Wage Board in the case of the P.T.I., thus discriminating it from other newspapers and news agencies to which the above criteria laid by it was applied. It was admitted by the Wage Board in para 3.9 that, "although the classification of the news agencies is the same as that of the daily newspapers, on account of the special position enjoyed by P.T.I., as a national agency it is placed in class II. Although its present revenue at the end of 1965 is about Rs. 85 lakhs, as a national agency, P.T.I. has to cater even for top class papers. Besides the aspects of objectivity, speed, accuracy and integrity are the special characteristics which mark the work of working journalists in a news agency". Again, in para 3.33 although it is shown that the average net profit of the P.T.I. for three years, i.e. 1963-1965 is Rs. 3.87 lakhs, the financial burden on account of the implementation of the final proposals of the Wage Board would be Rs. 6.78 lakhs which would clearly indicate that it has not the capacity to bear the burden of the Wage Board's recommendation. The Wage Board, however, in para 3.34 has given the reasons why it is treating the U.N.I. differently from the P.T.I. because that is a new concern hardly 8 years; old and has still got to build up its business. As far as the P.T.I. is concerned, it observed that there is recurring burden of Rs. 7 lakhs, and having regard to the average profit for 1963, 1964 and 1965 being Rs. 3.87 lakhs, the deficit on account of arrears would be to the tune of Rs. 3.5 lakhs. In spite of this recognition, the Board says that "it should not be difficult for the P.T.I. to make up this deficiency by increasing the rate of subscription and also by tightening up the organisation".

16. It is this classification of the P.T.I. that has been attacked as being discriminatory and arbitrary and is said to be without any basis. In so far as the U.N.I. is concerned, there is no doubt that it falls under Class V but, as stated already, there can be no doubt that the service rendered by the P.T.I. is certainly higher. Similarly, newspapers and news agencies arc in a different class. In these circumstances there can be no question of any discrimination among unequals. The classification is based on an intelligible differentia, namely, the capacity of each news agency to pay and between newspapers and news agencies, on the nature of the service rendered, the sources of income and the manner in which that service is rendered. The criteria for classification also bears a rational

relationship to the object to be achieved, namely, wages to be fixed. The only question will be whether even on the criteria laid down by the Board, are its recommendations in respect of the P.T.I. arbitrary and do they single it out for discrimination? It is well established that even where legislative action or any action taken is under any law against a single individual or thing or several individual persons or things where no reasonable basis for classification may appear in the face of it or deductible from the surrounding circumstances, that action is liable to be struck down as an instance of discrimination : (see Ameerunnissa Begum and Ors. v. Mahbood Begum and Ors. [1953] S.C.R. 404 Ram Prasad Narayan Sashi and Anr. v. The State of Bihar and Ors. [1953] S.C.R. 1129 Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar and Ors. [1959] S.C.R. 279 at 299. It is clear that taking into consideration the capacity or the gross revenue which, has been made the basis of classification, there is substance in the submission of the learned Advocate for the petitioners that the P.T.I. has been singled out without any reasonable basis. It is, however, contended by the learned Advocate for the second respondent that the P.T.I. being a consumer co-operative, i.e., where the shareholders themselves are the main consumers, there is no incentive or scope for the agency to show any substantial profits and in fact by keeping the subscription low, the payment of the low subscription by these shareholders who are also newspapers result in their getting back in due course the capital they have invested. In this connection the learned Advocate has referred us to the award of Salim M. Merchant, Presiding Officer, National Industrial Tribunal, in a dispute between the P.T.I. and their workmen published in the Gazette of India, Part II, Section 3(II), at p. 3565. In that award, in paragraph 62 a reference was made to the observations made by the Press Commission which in paragraph 419 had observed :

> The Press Trust of India has in the course of its working incurred losses amounting to a substantial proportion of its capital. We would like to emphasise in this connection that the losses we refer to are not really losses in the usual sense of the term. The newspapers themselves are the shareholders, and if the agency has been recovering from them, as subscriptions, less than what it cost the agency to provide the service, the shareholders have had the benefit each year of the amount that is now shown as an accumulated loss. Each year, they have paid for the services less than in equity they should have, and thus got their money back in instalments. The loss, if any, is only to these shareholders (publishers of monthlies and periodicals) who did not take a news service and could not therefore get their capital back in this manner.

> After discussing the various aspects, the award of Salim M. Merchant sets out the following conclusions in paragraph 62 as under :

> The conclusion to be drawn from this discussion is that I am more than satisfied that the P.T.I. has the capacity to meet the financial burden of the more favourable terms of employment for both its working journalists and non-working journalists in respect of the various matters referred to in the schedule to the order of reference which I propose to grant by this award, and that if necessary it can easily raise the requisite funds by increasing its rates of subscriptions.

17. The recommendations of Press Commission Report of 1954 which formed the basis of Salim Merchant's Award of 1960 and which is now being pressed into service by the respondents to justify the Wage Board recommendations in placing the P.T.I. in Class II instead of Class III have been described by the petitioners' learned Advocate as fallacious and the approach of the Wage Board as totally opposed to the provisions of the Act. It is submitted that the Press Commission's recommendations were based on certain premises which ceased to exist since they have not been accepted by the Government or governmental agencies. The recommendations of the Press Commission, it is pointed out, were a composite recommendations as can be discerned from the following :

> Our recommendations for the revision of tariffs of the Press Trust of India, the transfer of the responsibility for purchase and maintenance of teleprinters to Government a concession in respect of reception charges, "and an increase in the subscriptions paid by All India Radio, should all be taken together along with our recommendations for the reConstitution of the Press Trust of India as a public Corporation managed by a Board of Turstees.
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> It is therefore, pointed out that the recommendations were to be taken together and had not to be singled out. None of these recommendations have been accepted by the Government except the price-page schedule in respect of which the Newspapers (Price & Page) Act, 1956, was enacted. The Act was, however, struck down by this Court in Sakal Papers Private Ltd. and Ors. v. Union of India . The P & T Department refused to take over the teleprinters. The All India Radio refused to increase the subscription to the extent recommended by the Press Commission. The Press Commission even went to the "extent of saying that the P.T.I. should offer three categories of service, Class I, Class II and the Summary Service. The Summary Service should be taken by the newspapers not exceeding twenty-four pages per week of standard size and having less than 5,000 circulation; those publishing a larger number of pages but not exceeding thirty-two pages per week should take the Class II service, and others publishing more pages per week should take the Class I Service. It also provides for reduction of 25 per cent. On the royalties to any newspaper that subscribes also to a service from the United Press of India (see paragraph 392). While so, in paragraph 413 the Press Commission observed that "a public corporation forced otherwise than on the basis of a co-operative effect by the newspapers may be open to the danger of newspapers not taking a service from them. The corporation has, therefore, to be built up on the present foundations, whatever may be the changes in its control and operation."

18. In view of this conclusion, it is submitted by the learned Advocate for the petitioners that the Press Commission itself has realised the futility of its recommendations in jacking up subscriptions in that no legal compulsion can be exercised in this behalf" and has accordingly recommended the continuance of the present system of a cooperative proprietary ownership by newspapers of the P.T.I. It is the case of the petitioners that the P.T.I. has made consistent efforts during the past years to increase the subscriptions and that out of the total subscription revenue, only roughly 30 per cent

is contributed by the shareholders, i.e. out of total number of 170 newspapers subscribers only 90 are shareholders. All these shareholders are not first class newspapers. Apart from the newspapers, the All India Radio and governmental agencies and commercial houses and embassies also subscribe to the news service of the P.T.I. and contribute in a large measure to its revenue. The P.T.I. has no legal means available to compel any increase. It has found in the past that the revenues do not proportionately increase with increase in subscription, because the newspapers either refuse to continue subscriptions or switch over to lower class of service. The Press Commission itself noticed in paragraph 402 of its report that the representative of All India Radio candidly observed that it is better for them to start a news service of their own rather than pay a higher subscription.

19. It does not appear to what extent the Wage Board has considered the relevant materials either of the Press Commission, Salim Merchant's Award or the circumstances adverted to by the learned advocate for the petitioners in the light of any representations made to them. Whether the financial potentiality of the P.T.I. was considered as the basis for including it in Class II category instead of in Class III category, contrary, to the criteria prescribed by the Wage Road itself, is also not evident from the recommendations of the Board. All that is discernable is that because the P.T.I. has the status of a national news agency which enters even for top class papers, it should be placed in Class II category. How the position of the P.T.I. as a national news agency has any relevance to the criteria relatable to its gross revenue has not been specified, nor are we able to as certain as to how the catering to the top class papers would increase its gross revenue. On the other hand, the P.T.I. has been placed in the category of Class II instead of Class III, to which it admittedly belongs, and that it was required to continue to be in that class as long as it satisfies the criteria for Class III. namely so long as its gross revenue is less than Rs. 100 lakhs. This, in our view, is arbitrary and singles out the P.T.I. for discrimination. The two dissenting members of the Board. Mr. K. K. Mathew and Mr. K. Nattakalappa indeed adverted to this aspect when they said :

> We cannot agree with the recommendations that P.T.I.'s position should be raised and placed in class II even though, as per its revenue it should really fall in class III. We cannot agree with the recommendation as it involves certain fundamental points and is discriminatory. Having decided on classification of news agency on the basis of revenues, the majority of Wage Board chose to elevate P.T.I. by one class without any sound argument. In our opinion such a decision to elevate P.T.I. is not correct and is utterly irrational and discriminatory.
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> Certain statements of profits and loss for the years 1962 to 1972 have been placed before us to show that though there was a heavy increase of subscription in the years 1966, 1968 and 1971, it did not produce commensurate profits. In 1966, there was a loss of Rs. 291-00; in 1968 Rs. 3.19,449-00 and in the year 1971 there was a meagre profit of Rs. 1,86,597-00 and this in spite of the enormous Vent revenue received by the P.T.I. from its own building. This apart, a statement has been filed to show that the increase in the burden of the Wage Board recommendations would increase from 6.69 in 1966 to 12.29 lakhs in 1968 and 16.78 lakhs in 1969 which is a burden far in excess of its capacity each year. On the other hand, on behalf of the second respondent figures of subscription were sought to be placed before us for the years

> 1971, 1972 and 1973 to meet the argument that a substantial portion of the revenue of the P.T.I. came from the All India Radio, Government agencies and embassies and commercial services though no facts and figures were given. As is clear, most of the data, whether produced by the petitioners or by the second respondent has not been accepted by one or the other. Each one of the parties has drawn its own conclusions from that data and has not accepted even the figures. In our view, yield from subscription for the years 1971, 1972 and 1973 are not relevant for fixation of the wages in 1967. These may justify a wage revision by another Board.

20. It was urged by the learned Advocate for the second respondent that the burden of Rs. 7.78 lakhs per annum referred to in para 3.33 of Wage Board's recommendations is not really such a heavy burden as is sought to be made out. In fact the amount shown in the above referred paragraph is the estimated annual burden on the basis of implementation of the recommendations of the Wage Board for Both working journalists and non-working journalists. In so far as the working journalists are concerned, the burden as from 1st July 1967 at the rate of Rs. 29,000/- per month will amount to only Rs. 3.48 lakhs which is less than the average profit of Rs. 3.67 lakhs. The financial burden, therefore, according to the learned Advocate for the second respondent, is not heavy. He further contends that the wage bill has to come out of the revenues and net profits arise only after deductions are made from the gross revenue of any particular year. Accordingly, the argument that the increased wage burden has to come out of the net profit has been described as wholly without basis and unsound in law.

21. In our view, whether the burden of Rs. 6.78 lakhs is in respect of the working journalists or in respect of both the working and non-working journalists, it is none-the-less the burden which the P.T.I. has to bear. In judging the financial capacity of the employer we have to look at the burden as a whole and that is what the Wage Board has done when it recognised that the burden is a heavy one. It cannot be said that the establishment should pay the working journalists first the recommended wages and utilise whatever balance remains for payment to the non-working journalists irrespective of whether they can be paid the wage recommended or not. This is not what is envisaged in the term capacity to pay. No doubt the wage increases will have to be met from the revenue and only thereafter the profits can be computed. Merely because the Wage Board has stated that the average burden for three years is Rs. 6.78 lakhs and the recurring deficit is about Rs. 3.5 lakhs, that cannot be said that it has deducted the average profits of Rs. 3.67 lakhs from the annual recurring financial burden of Rs. 6.78 lakhs. In fact, if this is what it has done, the financial burden will be only Rs. 3.11 lakhs and not Rs. 3.5 lakhs. We, therefore, presume that the Wage Board were aware of the method of computation suggested by the learned Advocate for the second respondent when they gave Rs. 6.78 lakhs as the recurring financial burden which would have to be borne by the P.T.I. on account of the implementation of their final proposals. At any rate, we cannot say that it has not done so. While recognising that the burden was heavy, the Wage Board assumed without any discussion that the P.T.I. could increase its subscription and tighten its organisation. But assumptions are not enough. What the Act says is, ascertain the financial capacity and fix the wage according to that capacity.

22. The observations in the Express Newspapers case (supra) at p. 192 arc apt in their application to this case. This Court in that case said, ".... all the members of the Board seem to have lost sight of the fact that the essential pre-requisite of deciding the wage structure was to consider the capacity of the industry to pay and this in our opinion introduces fatal infirmity in that decision of the Board." No doubt, in that case it was observed that if the Board had considered this aspect they would have been reluctant to accept any challenge to the validity of the decision on the ground that their capacity to pay had not been properly considered. That was, however, a case where the essential conditions for fixation of wage structure, namely, the capacity to pay had been completely ignored. But if it had not been, would this Court have held the recommendation to be valid, even where on the very face of it it came to the conclusion that the wage structure would, having regard to the average income of three years, impose a heavy financial burden. We do not understand the observations to which our attention has been drawn as supporting the proposition that as soon as it is apparent that the Board in some way or other has touched upon the matter no challenge can be entertained.

23. Apart from this, there is one other infirmity in the impugned order which has accepted the recommendations of the Wage Board and that is in prescribing a wage higher than that asked for by the employees of the P.T.I. The employers (the P.T.I.) could only meet the claim of the employees, but could not meet the recommendation for a higher wage than asked for. The Wage Board has thus not complied with the principles of natural justice which have been incorporated in Section 10 of the Act. The provisions of this section are as under:

> 10. (1). The Board shall by notice published in such manner as it thinks fit, call upon newspaper establishment and working journalists and other persons interested in the fixation or revision of rates of wages of working journalists to make such representations as they may think fit as regards the rates of wages which may be fixed or revised under this Act in respect of working journalists.

(2) Every such representation shall be in writing and shall be made within such period as the Board may specify in the notice and shall state the rates of wages which, in the opinion of the person making the representation, would be reasonable, having regard to the capacity of the employer to pay the same or to any other circumstance, whichever may seem relevant to the person making the representation in relation to his representation.

(3) The Board shall take into account the representations aforesaid, if any, and after the materials placed before it make such recommendations as it thinks fit to the Central Government for the fixation or revision of rates of wages in respect of working journalists; and any such recommendation may specify, whether prospectively or retrospectively, the date from which the rates of wages should take effect.

Sub-section (3) enjoins on the Board to take into account the representations of those mentioned in Sub-section (1) and after considering the materials, to make recommendations to the Central Government for the fixation or revision of rates of wages. Sub-section (2) requires the Board to take the capacity of the employer to pay into consideration. When, as we have noticed, the recurring financial capacity of the P.T.I. is itself according to the Wage Board not sufficient to bear the burden

placed by it, the recommendations of the Wage Board of a wage higher than what has been asked for by the employees without notice to the employers, shows how unreasonable and arbitrary the recommendations of the Board are.

24. The Federation of the P.T.I. employees union in its reply to Part I and II of the questionnaire issued by the Wage Board suggested the following scales of pay for Class 'A' news agency having a gross revenue of Rs. 50 lakhs and over as against which is given the recommendation of the Wage Board :

> ---------- Federation's scale or pay for working Wage Board's proposed scale of pay journalists. for the P.T.I. ---------- Group I- Not less than Rs. 1600/- p.m. Group I-A- Rs. 800-75-1100-125-1600 (8 years) Group I-B- Rs. 750-78-1140-120-1500 (8 years) Group II- Rs. 650-50-1000-75-1600 Group II- Rs. 650-40-850-70-1200- (15 years) 100-1400- (12 years) Group IIA-Rs. 550-50-1000-60-1300 Group IIA- Rs. 375-34-345-55-1095-85- (14 years) 1350 (18 years) Group IIB- Rs. 400-30-610-40-810-50-900 (14 years) Group III- Rs. 250-25-450-30-600-40-800 Group III- Rs. 375-30-525-45-975- (18 Years) 1200-(18 years) ----------

25. It is apparent from the above table that in the recommendations for each of the groups, the Wage Board has proposed a higher scale than what has been asked for by the Federation of the P.T.I. Employees Union. The P.T.I. points out that the Wage Board has gone beyond the scales suggested by the Federation which, as an employees organisation, will always demand the maximum. Not only the Wage Board has raised the minimum and maximum over the Federation's demand, but also increased the quantum of annual increment and enlarged the classification of the working journalists. Similarly, for Group 1I-A, corresponding to Group II-B of the Federation, the Board has recommended the maximum of Rs. 1350/- starting from Rs. 375/- as against the Federation's demand of Rs. 900/- starting from Rs. 400/-, a difference of Rs. 450/- in the maximum. For Group II, corresponding to group II-A of the Federation, the Wage Board's proposal is Rs. 650/-to Rs. 1400/-as against the Federation's of Rs. 550/- to Rs. 1300/-and for Group I-B, corresponding to the Federation's Group II, the Board's proposal is Rs. 750/- to Rs. 1500/- against the Federation's of Rs. 650/- to Rs. 1600/-. The learned Advocate for the second respondent challenges the submission that the proposal of scales of pay is higher than what was asked for. It is pointed out that the wage fixation. by the Central Government under Section 12 of the Act is not based upon the dispute or demand, and if the wages are fixed according to what has been asked for by the Union, a principle, if accepted, would make the scheme of wage fixation under the Act either wholly impossible or unworkable. Even factually it is denied that the Employee Federation had wanted to confine themselves to the payscales specified in the questionnaire. No doubt, they did state in their supplementary memorandum that having regard to the status of the P.T.I., the total emoluments for various categories may be awarded for the highest class of newspapers, together with the provision for progressively increasing their emoluments in line with the rise in gross revenue above Rs. 50 lakhs both in the case of Class 'A' newspaper and Class 'A' news agency. While this was a general statement asking for higher wages, the wages asked for by the employees of this premier news

agency which was the only one of its kind was one shown in the statement given earlier. As we have seen, Section 10 confers a right of representation on both employers and employees and has prescribed a procedure for calling upon the newspapers establishments and working journalists and other persons interested in the fixation or revision of wages for working journalists to make representations and thereafter it is incumbent upon the Board to take into account these representations and examine the material placed before it in the light of those representations for making its recommendations. Any infringement of this procedural safeguard would affect its recommendations.

26. A law providing reasonable restrictions in the exercise of the right conferred by Article 19 may contain substantive provisions as well as procedural provisions. The reasonableness of the restriction whether substantively or procedurally has to be judged from the point of view of the right that has been in fact restricted. In Dr. N. B. Khare v. The State of Delhi, [1950] S.C.R. 521 Kania; C.J., at p.524 said; "The law providing reasonable restrictions of the exercise of the right conferred by Article 19 may contain substantive provisions as well as procedural provisions. While the reasonableness of the restrictions has to be considered with regard to the exercise "of the right, it does not necessarily exclude from the consideration of the Court the question of reasonableness of the procedural part of the law. It is obvious that if the law prescribes five years externment or ten years externment, the question whether such period of externment is reasonable, being the substantive part, is necessarily for the consideration of the Court under Clause (5). Similarly, if the law provides the procedure under which the exercise of the right may be restricted, the same is also for the consideration of the Court, as it has to determine if the exercise of the right has been reasonably restricted. I do not think by this interpretation the scope and ambit of word "reasonable" as applied to restrictions on the exercise of the right, is in any way unjustifiably enlarged."

27. In our view, the recommendations of the Wage Board, in so far as the P.T.I. is concerned, are unreasonable. They are far in excess of what the employees themselves demanded and are beyond the financial capacity of the establishment. The order, in so far as the P.T.I. is concerned, is, therefore, violative of the fundamental rights guaranteed to the petitioner and must be struck down. It is, however, submitted on behalf of the P. T. I. that it has entered into an agreement with its employees represented by the Federation of the P.T.I. Employees Union which gives them a wage higher than was recommended for Class III and somewhat less than that recommended for Class II. In accordance with that agreement, the working journalists are being paid during the pendency of those proceedings. It has been stated before us that the P.T.I. is prepared to pay all its employees the wages agreed to by the very Federation which had made representation before the Wage Board from the date directed by the order and will continue to do so till the wages are refixed by another Wage Board.

28. In the case of the Indian National Press the only objection urged was that there is a deficit of Rs. 50,000/- between the average net profits and the yearly burden. We do not think any case has been made out that this petitioner has not the capacity to meet the wage increase, particularly when it has been placed in the appropriate class in which is should be placed, having regard to its gross profits. No other objection was raised and accordingly Writ Petition No. 37 of 1968 is dismissed.

29. No orders in Civil Appeal No. 2102 of 1968, Writ Petition No. 40 of 1968 is allowed, the order of the Central Government in S.O. 3883 dated October 27, 1967, in so far as the petitioner P.T.I. is concerned, is struck down, and it is directed that the petitioner will pay the wages agreed to between the petitioner, the P.T.I., and the Federation of the P.T.I. Employees Union as from the date when the recommendations of the Wage Board were payable and will continue to pay them accordingly till they arc refixed by the Central Government on the recommendations of another Wage Board constituted under that Act. There will be no order as to costs.