State Of Assam & Anr vs Bharat Kala Bhandar Ltd. & Ors on 7 April, 1967

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Author: K.N. Wanchoo

Bench: K.N. Wanchoo, Vishishtha Bhargava, G.K. Mitter

PETITIONER:
STATE OF ASSAM & ANR.

Vs.

RESPONDENT:
BHARAT KALA BHANDAR LTD. & ORS.

DATE OF JUDGMENT:
07/04/1967

BENCH:
WANCHOO, K.N.
BENCH:
WANCHOO, K.N.
BHARGAVA, VISHISHTHA
MITTER, G.K.

CITATION:
1967 AIR 1766 1967 SCR (3) 490

ACT:
Defence of India Rules, 1962, r. 126AA(1) and (4)-Notification under sub. r. (1)-When can be challenged-Notification under sub. r. (4)-If could be issued on the subjective satisfaction of Government-Procedure to be followed-If notification could be made retrospective.
Under r. 126AA of the Defence of India Rules, 1962, the Central or State Government may notify employments and regulate wages and other conditions of service of persons engaged in such notified employments, for securing public safety and maintenance of supplies and services necessary to the life of the community.

HEADNOTE:

On 26th September, 1964, the Governor of Assam notified under r. 126AA(1) a large number of employments as he was of opinion that they were essential for securing the public safety and for maintaining Supplies and services necessary to the life of the community, and under In (4) ordered payment of rupees ten per mensem as ad hoc cost of living allowance to certain workers in the notified employments. On 4th November, 1964, he issued another notification under sub r. (4) by which he ordered payment of 38.46 paise as ad hoc cost of living allowance per day to persons engaged on daily wages in the notified employments. The two notifications under sub. r. (4) were issued to see that there was a contented labour force during emergency. Though the second notification was dated November 4, 1964, the Labour Department of the State Government advised one of the respondents to pay the amount retrospectively from September 26, 1964.

The respondents challenged the validity of the three notifications by writ petitions in the High Court. The High Court held -that :

(i) The notification under r. 126AA(1) was mala fide in law and should be struck down, because, the conditions precedent to the exercise of the power conferred by the rule, namely, that the Governor should form the necessary opinion had not been satisfied since; (a) both the purposes, namely public safety and maintenance of supplies and services, were mentioned as the basis of the notification without indicating which of the two purposes led the State Government to issue the notification; (b) a large number of employments were included in one notification; and (c) the counter-affidavit of the State Government stated that the notification was issued for purposes of "defence" also though. the notification itself did not mention "defence", thus showing that the Governor had not applied his mind.

(ii) The two notifications under r. 126AA(4) were also mala fide in law and should be struck down because; (a) it was not stated in the notifications nor was it shown how the fixation of wages in the employments was necessary for the purpose of securing public safety and for maintaining supplies and services necessary to the life of the community and (b) the notifications replaced proceedings under the Minimum Wages Act which were taken in -respect of some of the notified employments.

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In appeal to this Court,

HELD: (i) The notification under r. 126AA(1) should be upheld with respect to all employments except veneer mills. [501 G]

A notification under r. 126AA(1) could be issued on the subjective satisfaction of the Central or State Government as to the various purposes mentioned in the sub-:rule, which include securing public safety and maintenance of supplies

and services necessary to the life of the community. That opinion could not be challenged in Court unless it was shown to be mala fide, or that no reasonable person could come to that conclusion with respect to the employments specified in the notification. [499 D, F]

(a) The fact that the notification gave both purposes for its issue did not show that the Governor did not apply his mind to the conditions. When the Governor said that the employments were included in the notification for two purposes, he obviously held the opinion that the employments were essential far both purposes, and, it was not necessary for him to specify which of the employments were essential for one purpose and which were essential for the other purpose. Where certain employments are essential for the maintenance of supplies and services necessary to the life of the community, the Governor may very well come to the conclusion that those employments are also necessary for securing public safety, for, if supplies and services necessary to the life of the community are not maintained, there may be danger to public safety. [498 C-E; 500 E-F]

(b) There is nothing in r. 126AA(1) which prevents a notification from being issued with -respect to any number of employments, and the mere fact that a notification included within it a large number of employments is no ground for holding that the Governor did not apply his mind to the conditions. [498 B-C]

(c) As regards the word "defence", it crept into the counter-affidavit mechanically in reply to the petitioners' contention using that word in some of the writ petitions. But that should not have led the High Court to the conclusion that the Government had no clear conception of its powers, for, the High Court had only to see whether the conditions were complied with at the time of the issue of the notification. [499 B-C]

As regards veneer mills which carried on the process of having finer wood on inferior wood for purposes of beautifying furniture, it cannot be said by any 'reasonable person to be essential for the maintenance of supplies and services necessary to the life of the community and for securing public safety. This Court could therefore strike down the notification with respect to veneer mills treating the notification as so many single notifications each relating to. an employment, rolled into one. [501 A-C]

(ii) The reasons given by the High Court for striking down the two notifications under sub-r. (4) were erroneous, because : (a) It was not necessary to recite in the notification under sub-r. (4) that action was being taken for the purpose of securing public safety and for maintaining supplies and services necessary to the life of the community. Nor does the sub-rule require that the notification should show that the two purposes would in fact be achieved by the provision made thereunder. [502 D-E]

(b) The power under the sub-rule is not for fixation of

minimum wages, but to regulate wages and is analogous to the power of industrial tribunals. Therefore, the fact that there is provision in the Minimum Wages Act for fixation of minimum wages was no ground for holding that the power exercised under sub-r. (4) was colourable. [502 F]

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The two notifications should however be struck down, because, before the Government exercises the power under sub-rule (4), it should consult the interests concerned, as the order is not to be passed merely on the subjective satisfaction of the Government, even when there was an emergency. [506 A-B]

Whether the power under a particular provision has to be exercised purely on the subjective -satisfaction of Government or other authority or has to be exercised subject to some objective tests depends upon a number of factors. The language of the Provisions the nature of the power conferred and the purpose for which it has been conferred, the circumstances and the manner of the exercise of power, what things are affected by such exercise and how, and other relevant factors in the context of the particular provision may have to be considered in this behalf. The intention of the legislature is primarily to be gathered from the language used and where the language used is plain and unambiguous, effect must be given to it and there is nothing more to be said. But when the language is not clear all these factors must be weighed to arrive at the final conclusion. [504 E-H]

The power under sub-r. (4) is of a far-reaching nature and not only deals with wages but also with other conditions of service, and, in an emergency may practically supersede all industrial adjudication. It is unlikely that such wide powers were conferred on the Government to be exercised purely on its subjective satisfaction without even consulting the interests concerned, specially, when the language of the sub-rule is not plain and unambiguous indicating that the power could be so exercised. The power, no doubt, was intended to be exercised in an emergency and decisions may have to be taken quickly and delay should be avoided; even so, the Government should evolve some procedure by which there would be some kind of collection of data with the help of the interests concerned and some kind of hearing or conference. The consultation should be employment by employment, for, it may be that the needs of every employment may not be the same. In the present case, there was some indication that the notifications were not issued arbitrarily but on the basis of a report submitted by a sub-committee consisting of Government officials and representatives of the employers and employees; but it was not a consultation employment by employment, and therefore, the consultation fell short of the legal -requirements. [505 D-H; 506 D-H; 507 F]

Kumaon Motor Owners' Union Ltd. v. The State of U.P. [1966]

2 S.C.R. 121, distinguished.
Further, as regards the second notification under r. 126AA(4) the Government could not and did not make it with retrospective effect; and the Labour Department was in error in writing to one of the respondent mills to make the payments retrospectively. [502A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 2114 to 2134 of 1966.

Appeals from the judgment and order dated March 25, 1966 of the Assam and Nagaland High Court in Civil Rule Nos. 104, 105, 147, 149, 150, 169, 170, 174, 175, 205, 206, 207, 237, 238, 246, 258, 259, 262, 263, 264 and 265 of 1965 respectively.

Purshottam Tricumdas and Naunit Lal, for the appellants (in C. As. Nos. 2114-2120 of 1960).

Naunit Lal, for the appellants (in C. As. Nos. 2121-2117 of 1966).

H. R. Gokhale, Hareshwar Goswami, K. RaJendra Chaudhury and K. R. Chaudhuri for respondent No. 1 (in C. As. Nos. 21142117 of 1966).

Vineet Kumar, for respondent No. 3 (in C. As. Nos. 2114 to 2120 of 1966).

I. M. Oberoi, S. K. Mehta and K. L. Mehta, for respondent No. 1 (in C. A. No. 2118 of 1966).

Bishan Narain, Bhuvanesh Kumari, O. C. Mathur, for res- pondent No. 1 (in C. As. Nos. 2119 and 2120 of 1966).

The Judgment of the Court was delivered by Wanchoo, J. These are twenty-one appeals on certificates granted by the High Court of Assam and Nagaland and will be dealt with together as they raise common questions. Facts necessary for present purposes may be briefly narrated. On September 26, 1964, the Governor of Assam issued a notification under r. 126-AA of the Defence of India Rules, 1962 (hereinafter referred to as the Rules). By this notification he applied r. 126-AA to a large number of employments as he was of opinion that the employments notified were essential "for securing the public safety and for maintaining supplies and services necessary to the life of community". On the same day another notification was issued under sub-r. (4) of r. 126-AA. By this notification, the Governor ordered payment of ad hoc cost of living allowance of Rs. 100/per mensem to all workers drawing pay upto Rs. 400/- per mensem engaged in the employments notified for purposes of sub-r. (1) of r. 126- AA. Another notification was also issued on November 4, 1964 under sub-r. (4) by which the Governor ordered payment of ad hoc cost of living allowance of 34.46 paisas per day to all persons engaged on daily wage basis in the employments which had been notified on September 26, 1964 for the purpose of r. 126-AA(1).

The validity of these three notifications was challenged by writ petitions before the High Court by the respondents on various grounds. It was first urged that r. 126-AA was a case of excessive delegation and was therefore ultra vires. The second contention was that r. 126-AA was beyond the powers conferred under s. 3 of the Defence of India Act (No. 51 of 1962), and was bad on that account. Thirdly, it was urged that the first notification under r. 126-AA (1) was bad as conditions precedent to the exercise of the power conferred by that sub-rule had not been fulfilled inasmuch as (a) the State Government had not formed the opinion necessary before issuing the notification, and (b) no reasonable man could have formed the opinion that notification of various employments mentioned in the schedule was necessary for securing the public safety and for maintaining supplies and services necessary to the life of community. Fourthly, it was contended that the exercise of the power under sub-r. (1) was colourable inasmuch as it was not exercised for the purpose mentioned in the sub-rule but for extraneous purposes on the ground that the notification did not show how it was necessary to notify the employments indicated therein for the purposes mentioned therein, the more so as two purposes had been mentioned in the notification and it did not appear which purpose applied to which employment. Lastly, it was urged that the notification under sub-r. (1) was mala fide. It was on these grounds that the notification under sub-r. (1) was attacked. The respondents also attacked the two notifications issued under sub-r. (4) on three grounds. It was first urged that the notifications fixing ad hoc cost of living allowance were invalid as it was not stated therein that the regulation of wages proposed under the notifications had any connection with securing public safety and maintaining supplies and services necessary to the life of community. Nor was it shown that the two objects of r. 126-AA (1) mentioned in the notification could be achieved by a general notification of the type issued under sub-r. (4). Secondly, it was urged that wages could be regulated under the Minimum Wages Act (No. II of 1948), and in some cases steps bad been taken to do so. Therefore, it was not open to take recourse to r. 126-AA (4) to achieve the same purpose, as the effect of the notification under sub-r. (4) was to deprive the respondents of the right to place materials before the committee empowered to fix minimum wages and it was thus a colourable exercise of the power conferred by the sub-rule. Thirdly, it was urged that these notifications were also mala fide.

The High Court held that r. 126-AA was not a case of exces- sive delegation of power. It also held that the rule was within the power conferred under s. 3 of the Defence of India Act. These two conclusions of the High Court are not being challenged by either party before us and need not be considered any further.

The High Court further held that the conditions precedent to G the exercise of the power conferred by r. 126-AA had not been complied with and therefore the notification under sub- rule (1) was bad. The High Court was of the view that the Governor did not form such opinion as was necessary before the issue of the notification under sub-r. (1). Nor was it shown that the employments included in the impugned notification were essential for securing public safety and for maintaining supplies and services necessary to the life of community. The High Court also held that the exercise of power under sub-rule (1) was colourable as it was not shown that the employments mentioned in the notification under sub-r. (1) were essential for securing public safety and thus one of the purposes mentioned in the notification was non-existent. As such it could not be predicated as to which of the two purposes mentioned in the notification led the State Government to issue the

notification and in consequence the notification under sub- r. (1) was invalid. Finally, the High Court held that the notification under sub-r. (1) was mala fide in law, though there was nothing to show that there were mala fides in fact in the issue of the notification; presumably, the High Court came to the conclusion that the notification, was mala fide in law on the basis of its, view on the other points indicated above.

As to the notifications under sub-r. (4) the High Court held that they were invalid as it was neither stated in the notifications nor was it shown how fixation of wages in the employments included in the notification under sub-r. (1) was necessary for the purposes of securing public safety and for maintaining supplies and services necessary to the life of community. The High Court also seems to have held that these notifications were bad inasmuch as they replaced proceedings under the Minimum Wages Act which had been taken in respect of some of the employments included in the notification under sub-r. (1), though the decision of the High Court on this point is not quite clear. Finally, the High Court held that the notifications under sub-r. (4) were also mala fide. Here again there was no question of mala fide on facts. The High Court seems to have held that the notifications were mala fide in law, presumably on the view it took on other points indicated above.

The result of these findings of the High Court was that the High Court struck down the notification under sub-r. (1) and the two notifications under sub-r. (4) of r. 126-AA. The State of Assam then applied for and obtained certificates from the High Court to appeal to this Court, and that is how the matter has come up before us.

We shall first consider the notification under sub-rule (1) However before we do so we should like to analyse the provisions of r. 126-AA. Sub-rule (1) thereof lays down what are essential services in the context of the emergency which is the basis of the Defence of India Act and the Rules. Under sub-rule (1) all employments under the Central Government or the State Government are essential services. In addition to these employments any employment or class of employment which the Central Government or the State Government, being of opinion that such employment or class of employment is essential for securing the defence of India and civil defence, the public safety, the maintenance of public order, or the efficient conduct of military operation, or for maintaining supplies and services necessary to the life of the community, declares by notification to be essential service, becomes an employment within sub-rule (1) above. The explanation to sub-rule (1) says that "employment" includes employment of any nature, and whether paid or unpaid. Thus there are three classes of employments which are treated as essential services for purposes of sub-r. (1), namely, (i) employments under the Central Government, (ii) employments under the State Government, and (iii) any employment which is declared by notification under sub-r. (1) to be essential for the purposes mentioned therein.

Then comes sub-rule (2) which gives power to the Central Government or the State Government to direct by general or special order that any person or persons engaged in any employment to which sub-rule (1) applies shall not depart out of such area or areas as may be specified in such order. An order under this sub-rule has to be published in such manner as the Government making the order considered best calculated to bring it to the notice of the persons affected by the order. It will be seen that sub-rule(2) is consequential to sub-rule (1). It does not however apply of its own force and

the Central Government or the State Government has to pass an order thereunder and the effect of the order is that any person or persons engaged in any employment to which sub-rule (1) applies cannot leave the area or areas specified in the order. The object of sub- rule (2) clearly is that in emergency persons employed in essential services do not run away with the result that essential services are brought to a stand-still with con- sequent danger to community.

Then comes sub-rule (3). It applies to a person engaged in any employment or class of employment and to an employer of any person so engaged. So far as persons engaged are concerned, subrule (3) lays down that if any person (a) disobeys any lawful order given to him in the course of such employment, (b) without reasonable excuse abandons any such employment or absents himself from work, or (c) departs from any area specified in an order under sub-rule (2) without the consent of the authority making that order, he shall be. deemed to have contravened this rule. As to the employer, sub-rule (3) lays down that if any employer without reasonable cause-(i) discontinues the employment of such person, or (ii) by closing an establishment in which such person is engaged causes the discontinuance of his employment, he shall also be deemed to have contravened this rule. Except for the part which depends upon the order under sub-rule (2), sub-rule (3) comes into force by its own terms and prohibits certain things in the cases both of employer and employee in the essential services mentioned in or notified under sub-r. (1). Thus sub-r. (3) is again consequential to sub-r. (1).

Then we turn to sub-rule (4) with which we are particularly concerned. It is in these terms :-

> "The Central Government or the State Government may by order regulate the wages and other conditions of service of persons or of any class of persons engaged in any employment or class of employment to which this rule applies."

It is again consequential to sub-rule (1) and the obvious object of sub-rule (4) is to see that essential services are maintained during an emergency and if it is necessary to regulate wages and other conditions of service in that behalf that can be done by an order by the Central Government or the State Government. It also appears that as sub-r. (3) prohibits employers and employees from doing certain things, sub-r. (4) has been enacted to see that there is a contented labour force during an emergency so that essential services as specified in sub-rule (1) or declared by a notification thereunder are maintained. Then follows sub-rule (5) which lays down punishment for contravention of any of the provisions contained in r. 126- AA.

This analysis of r. 126-AA shows that it is a provision for maintenance of essential services during an emergency, and it is with that object that various powers are conferred on the Central Government or the State Government including the power of regulating wages and other conditions of service of persons engaged in essential services indicated in sub-r. (1) or declared to be such thereunder. It is with this background of emergency that we have to construe the provisions contained in sub-r. (1) and also sub-r. (4) with which we are particularly concerned in the present appeals. Turning first to stb-Rule (1), we have already indicated that this sub-rule by its own force declares all employments under the Central Government or the State Government to be essential services for its purposes. Besides these two classes of employment,,, the Central Government or the State Government has

been given the power to declare other employments also to be essential for the purpose of sub-rule (1) and to be covered thereby. This the Central Government or the State Government can do by notification, if it is of opinion that such employment or class of employments is essential for securing any of the purposes mentioned in the sub-rule. It was Linder this power- that the Governor of Assam issued the notification dated September 26, 1964 under sub-rule- (1). The notification refers to a large number of employments and states that the Governor of Assam was of opinion that the employments specified there in were essential for securing public -safety and for maintaining supplies and services necessary to the Supp. CI/67-2 life of the community. The notification has been issued under the authentication of the Joint Secretary to the Government of Assam, Labour Department. As it stands the notification is clearly in compliance with the provisions contained in sub-r. (1) of r. '126-AA. It is true that the notification has included a large number of employments in it; but we do not see why one notification may not be issued with respect to any number of employments, though there can be no objection to the Government issuing one notification with respect to one employment only. The mere fact that a notification includes within it a large number of employ- ments is no ground for holding, as the High Court seems to have held, that the Governor did not apply his mind to the conditions precedent to the issue of the notification. Nor do we think that the fact that the notification in question gave two purposes for its ,issue. Damely, for securing public safety and for maintaining supplies and services necessary to the life of the community shows that the Governor did not apply his mind to the conditions precedent to the issue of the notification. Further when the Governor says in the notification that the employments included therein were essential for securing the public safety and for maintaining supplies and services necessary to the life of the community, he obviously holds the opinion that these employments were essential for both purposes. It was not therefore necessary for the Governor to specify which of the employments were essential for the purpose of maintaining supplies and services necessary to the life of the community and which were essential for the purpose of securing public safety. The notification, as it reads, indicates that in the opinion of the Governor these employments were essential for both purposes. We do not think therefore that the High Court was right in holding that as the notification does not show which employment was essential for which purpose, the Governor had not applied his mind and the notification was therefore colourable and mala fide in law.

We may also refer to a ground which was urged in the High Court, namely, that the notification was issued for the purposes of "defence" also as stated in the counter- affidavit of the appellant, though the notification itself did not mention "defence" at all. The High Court thus thought that defence had been introduced in the counter- affidavit as one of the grounds for making the declaration while there was no mention of it in the notification itself, and that also showed that there was no application of mind by the Governor to the conditions precedent to the issue of the notification under sub-r. (1). It appears that in some of the writ petitions "defence" was introduced by the petitioners as a -round for the issue of the notification of sub-r. (1); so in the reply of tile State the same ground was mechanically repeated in the counteraffidavit without carefully looking into 'the notification which had been issued under sub-r. (1). It is because of this mechanical introduction of defence by the State in the counter- affidavit that the High Court has held that it showed that the authority ha(equated public safety with defence and that the Government misconceived its powers and had no clear conception of the scope. and ambit thereof. There is no doubt that the word "defence" came in the counter-affidavit mechanically in reply to the introduction of the word

"defence" in many of the writ petitions. What the court has to see is whether the conditions precedent were complied with at the time of the issue of the notification. It is unfortunate that in the counter-affidavit the word "defence" was introduced mechanically in reply to what was said in the writ petitions. But that in our opinion should not have led the High Court to the. conclusion at which it has arrived, namely, that the Government misconceived its powers and had no clear conception of 'the scope. and ambit thereof. In the circumstances we are inclined to attach no importance to the introduction of the word "defence" in the counter- affidavit filed on behalf of the State as it seems that that word came in mechanically in reply to the introduction of the word "defence" in some of the writ petitions. It is clear that a notification under sub-r. (1) is conditioned on the subjective satisfaction of the Central Government or the State Government as to the various purposes mentioned in sub-r. (1). The High Court was also conscious of the fact that this subjective opinion was generally speaking not justiciable and it was not open to a court to see if the opinion of the authority was justified by objective tests. The High Court was also conscious of the fact that it was not open to the court to examine the adequacy of the material on which the opinion rested. Further the High Court also held that the reasonableness of the opinion could not be examined by the court. This statement of the law by the High Court is well-settled and was accepted by the High Court. The High Court further held that the validity of an order might be challenged on the ground of mala fide and this again is well settled. The High Court further stated that a court could examine whether the, opinion was formed at all before the issue of the. notification. To this again, there can be no exception. Finally, the High Court held that it was open to the court to see whether the opinion was relevant and germane to the circumstance% which fell to be considered under the rule and whether they were such as could possibly and rationally support the conclusion drawn by the authority. Having thus stated the law correctly, the High Court con- sidered whether it could be said in this case that the conditions precedent had been satisfied before the issue of the notification under sub-r. (1) and came to the conclusion that they were not satisfied, mainly because two purposes were mentioned as the basis of the notification and a large number of employments, were included in one notification, as already pointed out by us above. We are of opinion that both these grounds for holding that the conditions precedent to the issue of the notification under sub-r. (1) have not been fulfilled cannot be sustained. As the notification reads, it shows that the employments mentioned therein were essential for both purposes and this must be held to be the opinion of the Governor. That opinion cannot in our view be challenged in court unless it is shown to be mala fide or it is shown that no reasonable man can come to that conclusion in the context of the employments specified in the notification. We cannot agree with the High Court that simply because a large number of employments were mentioned in one notification that can by itself show that the Governor had not applied his mind. Nor can we agree with the High Court that because two purposes were mentioned as the basis of the notification and as there was nothing to show which employment referred to which purpose, there is no formation of opinion. As we read the notification it must be held that the Governor's opinion was formed with respect to the employments specified in the notification on the basis of both the purpose, mentioned in the notification. The only thing that the High Court could see was whether considering the nature of the employments it was impossible for any reasonable man to come to the opinion. that those employments were essential for securing public safety, and for maintaining supplies and services necessary to the life of the community, and this has to be judged in the context of are emergency. It seems to us that where certain employments are essential for the maintenance of supplies and services necessary to the life of the community the

Governor may very well come to the conclusion that those employments are also necessary for securing public safety, for if supplies and services necessary to the life of community are not maintained, there may be danger to public safety. In these circumstance-,; we cannot agree with the High Court that the two purposes mentioned in the notification have no nexus with the employments specified therein, except in on case. We cannot also agree with the High Court that no reason, able man could come to the conclusion that the employment mentioned in the notification were essential for the two purpose which were the basis of the notification except again in the case of one employment. We have looked through all the employments which are included in the notification and it is enough say that except in one case it cannot be said that no reasonably man could come to the conclusion that those employments we, essential for securing public safety and for maintaining supplier and services necessary to the life of the community.

The only exception we find is veneer mills. Veneering, v. understand, is a process by which thin flat plates or slips of file wood or other suitable material are applied to other inferior wood in cabinet work or similar other furniture. In the Concise Oxford Dictionary, the word "veneer" means cover (wood, furniture etc.) with thin coating of finer wood, and that is the meaning which must be given to veneer mills as entered at No. 5 of the notification for that entry is "employment in plywood and veneer mills". Veneering, we understand, is done for the purpose of beautifying furniture etc. We fail to see how veneer mills which carry on this process of laying finer wood on inferior wood for purposes of beautifying furniture etc. can be said by any reasonable man to be essential for the maintenance of supplies and services necessary to the life of the community and for securing- public safety. It is open to us to strike down the notification tinder sub-r. (1) with respect to veneer mills alone, for the present notification including a large number of employments can be read to amount to so many single notifications, relating to each employment, rolled into one. Therefore, as we see the notification under sub- r. (1) we see no reason to hold that the Governor had not applied his mind to the conditions precedent before he issued the notification in question. We are also satisfied except in the case of veneer mills that it cannot be said that no reasonable man could have come to the conclusion that the employments included in the notification were not essential for securing public safety and for maintaining supplies and services necessary to the life of the community. In this view of the matter we cannot see how the notification under sub-r. (1) can be said to be for any extraneous purpose unconnected with the purposes mentioned in the sub-rule; nor is there any reason to hold that the employments mentioned in the notification (except one) were not essential for securing public safety in addition to maintenance of supplies and services necessary to the life of the community. Nor do we see any reason to hold that the notification under sub-rule (1) was mala fide. We have already mentioned that there are no mala fides in fact and we do not think there can be any question of any mala ride in law in view of what we have said above. We therefore uphold the notification under sub-rule (1) dated September 26, 1964 except in the case of veneer mills. We strike down the notification only with respect to the veneer mills mentioned it item 5 of the employments included therein. We now come to the two notifications under sub-r. (4). Incidentally we, may mention that though the second notification is dated November 4, 1964, the letter written by the Department of Labour, Government of Assam, to the Charduar Cotton Mills says that the cost of living allowance for persons engaged on daily wages provided in the notification of November 4, 1964 should be paid from September 26, 1964. Now there is nothing in the notification of November 4, 1964 to show that it was retrospective, and we cannot understand how

the Department of Labour advised the Mill in question to pay cost of living allowance to persons engaged on daily wages from September 26, 1964, which was the date of the notification under sub-r. (1). Nor do we think that there is anything in sub-r. (4) which authorises the Government to make an order thereunder with retrospective effect.

But apart from this, we have to consider whether the two notifications under sub-r. (4) are valid or not. The High Court .struck them down on the ground that there was nothing in the two notifications to show that it was necessary to pay cost of living allowance which comes within the ambit of the words "regulation of wages' for purposes of securing public safety and maintaining supplies and services necessary to the fife of the community and that those purposes would be achieved by the notification. The High Court also seems to have struck down the notifications on the ground that action should have been taken under the Minimum Wages Act and thus the power exercised under sub-r. (4) of r. 126-AA was a colourable exercise of power. For these two reason, the High Court also held that the notifications were mala fide in law, though there was nothing to suggest that they were in fact mala fide. We cannot agree with the High Court that it was necessary to recite in the notifications under sub-r. (4) that action was being taken thereunder for the purpose of securing public safety and for maintaining supplies and services necessary to the life of' the community. Nor do we think that sub-r. (4) requires that notifications should show that the two purposes would in fact be achieved by the provision made thereunder. Further it is clear that the power under sub-r. (4) is not for fixation of minimum wages. It is power to regulate wages and this power is analogous to the power of industrial tribunals and therefore the fact that there is provision in the Minimum Wages Act for fixation of minimum wages is no -round for holding that the power exercised by sub-r. (4) must be colourable. The two reasons given by the High Court for striking down the two notifications and hold- ing them maala fide do not appear to us to be correct. But this in our opinion is not the end of the matter. The real question is whether the power under sub-r. (4) is a power which can be exercised merely on the subjective opinion of Government or whether sub-r. (4) requires anything more. The notifications seem to proceed on the view that powers exercised thereunder are entirely within the subjective satisfaction of Government and it is that view which we must examine now. It is true that this aspect of the matter was not put forward in clear terms before the High Court, but it so clearly arises that we have permitted learned counsel for the respondents, when they raised this aspect of the matter, to do so.

We have already indicated that the power conferred by sub-r. (4) is consequential to the issue of a notification under sub-r. (1), in case of employments other than those under the Central Government or the State Government. Once the notification under sub-r. (1) is issued, the Central Government or the State Government has the power to regulate the wages and other conditions of service of persons or any class of persons engaged in any employment or class of employment included in the notification, of course, the wages and other conditions of service of Central Government and State Government employees are also liable to be regulated under sub-r. (4). But it is unnecessary to refer to that aspect of the matter and what we say hereafter may be taken to apply only to those employments which are brought under r. 126AA by issue of a notification under sub- r. (1) thereof.

The main argument on behalf of the respondents in this behalf is that there is nothing in sub-r. (4) to show that the regulation envisaged therein by an order depends entirely on the subjective satisfaction of the Central Government and the State Government. It is urged that sub- r. (4) gives power to Government which is analogous to the power of industrial tribunals and enables Government to interfere with contractual relations between employers and employees and even in many cases with relations between employers and employees established by industrial awards. It is therefore urged that when there is nothing express in sub-r. (4) to show that the power thereunder can be exercised merely on the subjective satisfaction of Government it should be held that power thereunder can only be exercised after consolation with employers and employees concerned. On the other hand it is urged on behalf of the appellant that these powers are meant to be exercised in a real emergency and therefore though the powers conferred by sub-rule (4) are analogous to the powers of industrial tribunals they are still meant to be exercised on the subjective satisfaction of Government. It is submitted that in a real emergency it would not be possible for Government to go through the elaborate procedure of industrial tribunals, for a real emergency may require immediate action.

Learned counsel for the appellant also referred to certain other provisions of the Rules where according to him there was no express provision with respect to subjective satisfaction and still the powers conferred thereunder were intended to be exercised on subjective satisfaction of Government. Particular reference in this connection is made to Kumaon Motor Owners' Union Limited v. The State of Uttar Pradesh(1) and it was pointed out that in that case the power conferred on the State Government under r. 131 (2) (gg) and (i) was held to be exercisable on the subjective satisfaction of Government. That case dealt with control of road transport (1966) 2 S.C.R. 121.

during emergency, which in our opinion stands on a different footing- altogether from regulation of wages and other conditions of service of employees. The particular provisions considered in that case, provided for prohibition and restriction of carriage of persons or goods by any vehicle or class of vehicles, either generally or between any particular places or on any particular route and making of other provisions in relation to road transport. The order in that case was passed in the interest of defence of India, and civil defence prohibiting certain class of vehicles from plying in certain areas near the Chinese border with India. Considering the nature of the power conferred and the purpose for which it was conferred and its effect, this Court in the context of that provision held that the rule envisaged subjective satisfaction of Government. The present case however which deals with regulation of wages and ,other conditions of service and has a far-reaching effect on industrial relations based on contracts or even on industrial awards stands on a different footing altogether and cannot be governed by the ratio of that case.

We do not think it necessary in the present appeals to consider the various other rules to which reference has been made. Nor would it be desirable to do so for those rules do not arise for interpretation in the present appeals. We propose therefore to confine ourselves to sub-r. (4) with which alone we are concerned in these ,cases. Now the question whether the power under a particular pro- vision has to be exercised purely on the subjective satisfaction of Government or- other authority or has to be exercised subject to some objective tests depends upon a number of factors. The language of the provision, the nature of the power conferred and the purpose for which

it has been conferred, the circumstances and the manner of the exercise of power, what things are affected by such exercise and how, and other relevant factors, in the context of the particular provision, may have to be considered in deter- mining whether the power envisaged can be exercised merely on the subjective satisfaction of Government or other authority, or there are to be some objective tests before the power can be exercised. The intention of the legislature is primarily to be gathered from the language used and where the language used is plain and unambiguous, effect must be given to it and there is nothing more to be said. But where the language is not clear, all these factors must be weighed to arrive at the final conclusion whether the power conferred depends entirely on the subjective satisfaction of Government or the authority concerned or there have to be some objective tests before the power can be exercised. It is on the basis of these principles that we have to decide whether sub-r. (4) gives power to Government to regulate wages and other conditions of service purely on its subjective satisfaction.

We have already set out sub-r. (4) and a perusal of its language will show that there is nothing in the words themselves which plainly and unambiguously indicates that the power exercised thereunder depends purely on the subjective satisfaction of Government. It is true that sub- r. (4) so far as it applies to employments other than those of Government is consequential on a notification under sub- r. (1). But that does not mean in the absence of express in sub-r. (4) that the power exercised thereunder depends purely on the subjective satisfaction of Government. We have already indicated that the power under sub-r. (4) is analogous to the power of industrial tribunals to decide disputes between employers and employees. The result of the exercise of the power under sub-r. (4) is to vary the contractual relations between employers and employees concerned in employments with respect to which a notification under sub-r. (1) has been. issued. The effect of the exercise of such power is to unsettle relations between employers and employees which may be existing for a long time and which may be the outcome either of contractual relations or even of industrial awards. Sub-rule (4) not only deals with wages but also with other conditions of service and thus in a real emergency may practically supersede all industrial adjudication. The power conferred is thus of a far-reaching nature in the field of industrial relations and may have the effect of disturbing all such relations for the duration of a real emergency. The question therefore arises whether in the absence of express words in sub-r. (4) to indicate that the power is to be exercised purely on the subjective satisfaction of Government we should hold that an order under sub-r. (4) call be passed purely on such subjective satisfaction. When the effect of orders passed under sub-r. (4) can be so far- reaching and so wide in its impact we would be loath to hold that such wide and far-reaching powers were conferred on Government to be exercised. purely on its subjective satisfaction without even consulting the interests concerned specially when the language is not plain and unambiguous and there is no indication in the sub-rule itself that. the power can be exercised purely on the subjective satisfaction of Government. We are not unmindful of the fact that the power under sub-r. (4) has to be exercised in a real emergency. But the ambit of the power therein is analogous to the power of industrial courts. The power under sub-r. (4) may be exercised instead of referring industrial disputes relating to wages and other condition., of service to industrial tribunals. We are also not unmindful of the fact that in a real emergency, decisions may have to be taken quickly and delay inevitable in the elaborate procedure provided for resolution of industrial disputes by industrial tribunals may not be desirable. Even so in the absence of express words in sub-r. (4) to show that the power thereunder depends for its exercise entirely on the subjective satisfaction of Government

we would not be prepared to hold that that is what sub-r. (4) indicates. We have already said that the effect of sub-r. (4) is to disturb settled industrial relations whether based on contracts or on industrial awards, and it seems to us that before Government exercises the power under sub-r. (4) it should even in a real emergency consult the interests concerned before taking action thereunder. It is not for us to indicate in detail what should be the procedure adopted by Government in a real emergency to consult the interests concerned, as that is a matter for Government to evolve for itself. But we may indicate that some kind of public notice to the particular interest,; should be given indicating what the Government intends to do and inviting representations from those interests and if necessary calling for data from them and also giving an oral hearing to the representatives of the interests concerned. This does not mean that notice should be given to individual employers or employees. Nor do we mean to say that this consultation should be of the same amplitude as adjudication by a quasi-judicial tribunal. It is not necessary that oral evidence should lie taken and witnesses should be called, examined and cross-exanamed and documents produced or called for and arguments heard 'is if the matter was being tried by a quasi-judicial tribunal. But .some kind of collection of data with the help of the interests concemed and some kind of hearing or conference with the interests concerned seems to us to be the barest minimum necessary to enable Government to exercise the power conferred under sub-r. (4), for we have no doubt that this sub-rule does not intend that Government should have power of the far-reaching nature conferred there tinder purely on its subjective satisfaction. Further if such consultation is necessary under sub-r. (4) and it seems to us that it is necessary- before an order can be passed thereunder, it would in our opinion be more convenient to hold consultation employment by employment, for it may be that needs of every employment may not be the same. After such consultation and consideration of data collected by Government itself as well as supplied by the interests concerned, it would be open to Government to pass an order under sub-r. (4) indicating that it has considered the data and consulted the interests concerned. We have indicated this procedure merely to illustrate what we say; but it is for Government to evolve such procedure as it considers will meet the needs of sub-r. (4). Once it is clear, as we have no doubt that it is so, that the order under sub-rule (4) is not to be passed merely on the subjective satisfaction of Government, it seems to us that even in a real emergency this consultative procedure should not take long and should be over within a few weeks. It has been urged on behalf of the appellant that though the appellant's contention has been that the power under sub-r. (4) can be exercised purely on the subjective satisfaction of Government, in effect the Government had consulted the interests concerned before issuing the two notifications under sub-r. (4) and therefore the two notifications should be upheld. In this connection, an affidavit was filed on behalf of the appellant in this Court and the contention that there was consultation is based on that affidavit. The facts stated in that affidavit are these. Soon after the Chinese invasion in 1962, the Labour Minister Assam called an emergent meeting at Gauhati of the representatives of employers and workmen. 49 persons including about 17 representatives of employers attended the meeting. Unanimous resolutions were passed exhorting the employers and workmen to keep industrial peace and it was resolved to set up a Sub-Committee for the purpose of working out details of a machinery to be set up for adjustment of D.A. to neutralise any rise in the cost of living. A Sub- Committee consisting of three officials, three representatives of employers and three of workmen was set up. This Sub-Committee submitted its report in July 1964 and evolved a formula to neutralise any rise in working class cost of living of workers getting a salary of Rs. 400/- or less. Complaints were received from Industrial Workers Unions of Tinsukia and Kamrup Districts in 1963 and 1964 about

rise in prices of essential commodities and requests were made to Government to grant substantial emergency allowance. Consequently after consultation with the Director of Statistics on the rise in the cost of living, the Government on a consideration of all this material and the report of the Sub-Committee decided to issue the notifications in questions ordering payment of ad hoc cost of living allowance of Rs. 10/- per mensem to all workers drawing upto Rs. 400/- per mensem whether monthly rated or daily rated. This affidavit has been challenged on behalf of the respondents; but accepting it as correct, it still in our opinion fall& short of the consultation necessary under sub-r. (4). As we have said already, the consultation must be with the interests concerned including employers and employees and should be employment by employment, for needs of every employment may not be the same. All that we may accept after considering the affidavit filed on behalf of the appellant is that the notifications in question were not issued entirely arbitrarily but we do not think that the consultation to which reference was made in the affidavit of the appellant was enough for the purpose of sub-r. (4). We are therefore of opinion that the two notifications should be struck down and we do so, but for reasons different from those which commended themselves to the High Court. We therefore partly allow the appeals and uphold the notification under sub-r. (1) except to veneer mills. The order of the High Court striking down the notifications under sub-rule (4) is upheld, though for different reasons. In the circumstances we order parties to bear their own costs in all the appeals.

V.P.S. Appeals allowed in part.,