Supreme Court of India
Abp Pvt.Ltd.& Anr vs Union Of India & Ors on 7 February, 1947
Author: . P.Sathasivam
Bench: P Sathasivam, Ranjan Gogoi, Shiva Kirti Singh

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

1

2 WRIT PETITION (CIVIL) NO. 246 OF 2011

ABP Pvt. Ltd. & Anr. .... Petitioner (s)

Versus

Union of India & Ors. .... Respondent(s)

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4 WITH

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6 WRIT PETITION (CIVIL) NO. 382 OF 2011

7 WRIT PETITION (CIVIL) NO. 384 OF 2011

8 WRIT PETITION (CIVIL) NO. 386 OF 2011

9 WRIT PETITION (CIVIL) NO. 408 OF 2011

10 WRIT PETITION (CIVIL) NO. 510 OF 2011

11 WRIT PETITION (CIVIL) NO. 538 OF 2011

12 WRIT PETITION (CIVIL) NO. 514 OF 2011

13 WRIT PETITION (CIVIL) NO. 546 OF 2011

14 WRIT PETITION (CIVIL) NO. 87 OF 2012

15 WRIT PETITION (CIVIL) NO. 264 OF 2012

16 WRIT PETITION (CIVIL) NO. 315 OF 2012

17 WRIT PETITION (CIVIL) NO. 817 OF 2013

18

19 WITH

20 CONTEMPT PETITION (CIVIL) NO. 252 OF 2012 IN

21 WRIT PETITION (CIVIL) NO. 538 OF 2011

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J U D G M E N T

P.Sathasivam, CJI.

1) These writ petitions, under Article 32 of the Constitution of India, have been filed by the petitioners (management of various newspapers) praying for a declaration that the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (in short 'the Act') is ultra vires as it infringes the fundamental rights guaranteed under Articles 14, 19(1)(a) and 19(1)(g) of the Constitution of India. The petitioners further prayed for quashing of the notification dated 11.11.2011 issued by the Central Government accepting the recommendations made by Justice Majithia Wage Boards for Working Journalists and Non-Journalist Newspaper and News Agency Employees. Factual Background:

2) It is pertinent to give a vivid background of the case before we advent to decide the issue at hand.

Way back in 1955, the Government of India enacted the impugned Act to regulate the conditions of service of Working Journalists and in 1974 via amendment for other Newspaper Employees employed in newspaper establishments. For the purpose of fixing or revising the rates of wages of employees in newspaper establishments, the Central Government is empowered under Sections 9 and 13C of the Act to constitute two Wage Boards, viz., one for the working journalists and other for non-journalist newspaper employees respectively. Likewise, the Act also specifies that the Central Government shall, as and when necessary, constitute these Wage Boards. The composition of the Wage Boards is specified, as mentioned below:-

(a) Three persons representing employers in relation to Newspaper Establishments;

(b) Three persons representing working journalists for Wage Board under Section 9 and three persons representing non-journalist Newspaper Employees for Wage Board under Section 13C of the Act;

(c) Four independent persons, one of whom shall be a person who is, or has been a Judge of the High Court or the Supreme Court, and who shall be appointed by the Government as the Chairman thereof.

3) It is relevant to note that since 1955, six Wage Boards have been constituted for working journalists and four Wage Boards for non- journalist newspaper employees in order to fix or revise the rates of wages. The relevant details of the preceding Wage Boards are as under:-

(i) Divatia Wage Board

Date of Appointment	Date of Acceptance	Challenge
02.05.1956	10.05.1957	In Express Newspaper (P) Ltd. vs. Union of India 1959 SCR 12 the decision of the Divatia Wage Board as well as the constitutional validity of the Act was challenged before this Court. This Court set aside the decision of the Wage Board dt. 30.04.1957 on the ground that it did not take into account the capacity of the industry to pay. As a result of this decision, an ordinance dated 14.06.1958 was promulgated which provided for the establishment of a Special Committee for making recommendations to the Central Government in regard to the rates of wages to be fixed for working journalists. Later, in September 1958, the Working Journalists (Fixation of

		Rates of Wages) Act, 1958 was passed by the Parliament.

(ii) Shinde Wage Board

Date of Appointment	Date of Acceptance	Challenge
12.11.1963/ 25.02.1964	27.10.1967	In Press Trust of India vs. Union of India & Ors. (1974) 4 SCC 638, this Court struck down the recommendations of the second Wage Board insofar as PTI was concerned as unreasonable and far in excess of what the employees themselves were demanding and beyond the financial capacity of the establishment and hence violative of the fundamental rights guaranteed under Part III of the Constitution.

(iii) Palekar Wage Board

Date of Appointment	Date of Acceptance	Challenge
11.06.1975/ 06.02.1976	26.12.1980	The constitution of Wage Board was challenged on 20.07.1981 on the ground of lack of independence. In December 1977, the employers' representatives wrote to the Central Government that they were withdrawing from the Wage Board as desired by the organizations. The government made several efforts to resolve the dead lock. On 28.08.1978, Writ Petitions were filed by the Indian and Eastern Newspaper Society and Others in the High Court at Bombay challenging the constitution of the Wage Boards. In order to find a solution, the President promulgated on 31.01.1979 the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions (Amendment), Ordinance 1979. This ordinance provided for the constitution of a Tribunal consisting of a person who is/or has been a Judge of the High Court or Supreme Court in place of each such Board and the abolition of such Boards upon the constitution of such Tribunals and for the continuance of the interim wages notified by the Government after taking into account the recommendations of such Boards.

(iv) Bachawat Wage Board

Date of Appointment	Date of Acceptance	Challenge
17.07.1985	31.08.1989	The award was challenged in Indian Express Newspapers (Pvt.) Ltd. and Ors. vs. Union of India & Ors. 1995 Supp (4) SCC 758.

(v) Manisana Wage Board

Date of Appointment	Date of Acceptance	Challenge
09.09.1994	5.12.2000/15.12.2000 by Notification.	This Wage Board's award was challenged in Karnataka and Delhi High Court. The Court while deciding the challenge struck down the award on the ground that the proviso to Section 12(2) was not followed. However, despite the Manisana Award being struck down it was implemented by all the newspaper establishments.

(vi) Narayana Kurup Wage Board - Majithia Wage Board from 04.03.2009 |Date of |Date of |Challenge | |Appointment |Acceptance | | |24.05.2007 |31.12.2010 |With a slight modification, the | | | |government notified it on 11.11.2011. | | | |Its report is accepted and impugned in| | | |these proceedings on various asserted | | | |grounds. | Constitution of Justice Majithia Wage Boards

4) The Government constituted two Boards on 24.05.2007, one for the Working Journalists and the other for Non-Journalist Newspaper Employees under Sections 9 and 13C of the Act under the Chairmanship of Dr. Justice Narayana Kurup. The Chairman and six of the remaining nine members were common to both the Wage Boards. The remaining three members each representing the Working Journalists and Non-Journalist Newspaper Employees had been nominated by their respective Unions. The Wage Boards were given three years' duration to submit their Reports to the Central Government.

5) However, due to sudden change of events, Dr. Justice K. Narayana Kurup, the Chairman of the aforesaid Wage Boards submitted his resignation effective from 31.07.2008 after completing more than one year's tenure. Subsequently, Justice Gurbax Rai Majithia, a retired judge of the High Court of Mumbai was appointed as the common Chairman of the two Wage Boards for Working Journalists and other Newspaper Employees who took over the charge on 04.03.2009. Another significant change in the composition of the Wage Boards occurred due to sudden demise of Shri Madan Phadnis representing the All India Newspaper Employees Federation, who was a member of the Wage Board for Non-Journalist Newspaper Employees. In his place, Shri M.C. Narasimhan, as nominated by the same Federation, was substituted as member of the Board for Non-Journalist Newspaper Employees. Since then, the composition of the two Wage Boards has been as under:-

Wage Board for Working Journalists |1. |Justice Gurbax Rai Majithia, retired Judge |Chairman | | |of the High Court of Bombay at Mumbai | | |2. |Shri K.M. Sahni, Former Secretary, Ministry |Independent | | |of Labour and Employment |Member | |3. |Shri B.P. Singh |Independent | | | |Member | |4. |Shri P.N. Prasanna Kumar |Independent | | | |Member | |5. |Shri Naresh Mohan, representing Indian |Representing | | |Newspaper Society |Employers | |6. |Shri Gurinder Singh, representing All India |Representing | | |Small and Medium Newspapers |Employers | |7. |Shri Prataprai, Tarachand Shah, representing|Representing | | |Indian language Newspaper Association |Employers | |8. |Shri K. Vikram Rao, President, Indian |Representing | | |Federation of Working Journalists |Working | | | |Journalists | |9. |Dr. Nand Kishore Trikha, President, National|Representing | | |Union of Journalists (India) |Working | | | |Journalists | |10. |Shri Suresh Akhouri, President, Indian |Representing | | |Journalists Union |Working | | | |Journalists | Wage Board for Non-Journalist Newspaper Employees |1. |Justice Gurbax Rai Majithia, retired Judge |Chairman | | |of the High Court of Bombay at Mumbai | | |2. |Shri K.M. Sahni, Former Secretary, Ministry |Independent | | |of Labour and Employment |Member | |3. |Shri B.P. Singh |Independent | | | |Member | |4. |Shri P.N. Prasanna Kumar |Independent | | | |Member | |5. |Shri Naresh Mohan, representing Indian |Representing | | |Newspaper Society |Employers | |6. |Shri Gurinder Singh, representing All India |Representing | | |Small and Medium Newspapers |Employers | |7. |Shri Prataprai, Tarachand Shah, representing|Representing | | |Indian language Newspaper Association |Employers | |8. |Shri M.C. Narasimhan, Vice President, All |Representing | | |India Newspaper Employees Federation |Non-Journalist | | | |Newspaper | | | |Employees | |9. |Shri Uma Shankar Mishra, Vice President, |Representing | | |National Federation of Newspaper Employees |Non-Journalist | | | |Newspaper | | | |Employees | |10. |Shri M.S. Yadav, General Secretary, |Representing | | |Confederation of Newspapers and News |Non-Journalist | | |Agencies Employees' Organizations. |Newspaper | | | |Employees |

6) Owing to the unexpected change of the members constituting the Wage Boards, they could not finalize and submit their reports within the prescribed period of three years as originally notified i.e., by 23.05.2010. As such, their term was then extended up to 31.12.2010. It is this recommendation submitted by the Wage Boards, which was subsequently accepted by the Central Government and notified on 11.11.2011 that is impugned in the given proceedings.

Discussion

7) In succinct, the petitioners herein, challenged the recommendations of the Wage Boards and the notification dated 11.11.2011 mainly on the following grounds:-

i) Constitutional validity of the Act and the Amendment Act, 1974.

ii) Improper Constitution of the Wage Boards

iii) Irregularity in the procedure adopted by Majithia Wage Boards.

iv) Majithia Wage Boards overlooked the relevant aspects and considered extraneous factors while drafting the recommendations We shall examine and deliberate distinctively on each contested

point surfaced by the petitioners herein in the succeeding paragraphs.

8) Heard Mr. Anil B. Divan, Mr. K.K. Venugopal, Mr. P.P. Rao, Mr. Aman Lekhi, Mr. S.S. Ramdas, Mr. Brijender Chahar, learned senior counsel for the petitioners, Mr. Gopal Jain, Mr. Akhil Sibal, Mr. Nachiket Joshi, Mr. Anil Shrivastav, Ms. Bina Gupta, Mr. Manoj Goel, Mr. E.C. Agrawala, learned counsel for the petitioners, Mr. Mohan Parasaran, learned Solicitor General for the official respondents, Mr. Colin Gonsalves, learned senior counsel and Mr. Parmanand Pandey and Mr. Thampan Thomas, learned counsel for other respondents – journalists/non-journalists.

Constitutional validity of the Act and Amendment Act, 1974

9) At the outset, almost all the learned counsel for the petitioners, challenged the vires of the Act on twin grounds. Firstly, the Act infringes the guaranteed fundamental rights under Articles 14 and 19 of the Constitution. Secondly, the Act has become obsolete with the passage of time.

10) It is submitted by learned counsel for the petitioners that misplaced classification and singling out of a specific business industry being the Newspaper Industry is violative of Article 14 since the Act only regulates the print media and not electronic media. Also, in the era of globalization and liberalization, to shackle one part of the industry with regulations is unreasonable, unfair and arbitrary and, therefore, violative of Articles 19(1)(a) and 19(1)(g).

11) Learned senior counsel for the petitioners besides objecting to the constitutionality of the Wage Boards also placed heavy reliance on the fact that in other industries such as cotton, sugar, tea, coffee, rubber, cement, jute, all the Wage Boards have been abolished over a period of time (sugar being the last in 1989). They further emphasized on the fact that the National Commission on Labour in 2002 also unequivocally recommended that there was no need for a Wage Board to be constituted for any industry.

12) Likewise, it is the stand of the petitioners that due to significant socio-economic changes having taken place in the Indian economy after de- regulation and privatization, the necessity for Wage Boards has eclipsed. In order to establish this, learned counsel referred to the object and purpose of the Act i.e. to ameliorate the conditions of service. According to learned senior counsel, this purpose has been achieved today as journalists are paid a fair wage and also given a compensation package. Resultantly, the requirement for controlling and regulating the conditions of service of newspaper employees that was prevalent in earlier phase (1955 onwards) is no longer required.

13) Precisely, learned counsel for the petitioners stressed on the ensuing four points to substantiate their claim that there is a complete change in the scenario since 1955 when the Press Commission was constituted to go into the conditions of employment of working journalists:

> (a) The journalists are an essential and vital part of a newspaper establishment. As an outcome, newspaper establishments require skills, qualification and expertise to ensure the best content as this is necessary for attracting, retaining and increasing viewership which, in turn, requires the full support of journalists.

(b) Through bilateral negotiations and discussions, the petitioners have entered into contracts with a vast majority of journalists and offered them wages, salaries and compensation package to retain top class talent.

(c) The newspaper industry itself has undergone a sea change – people 'sleep with the news' (due to the advent of news channels on television). Further, printing technology has changed as a consequence and the newspapers now offer a better quality product. Manpower management has been strengthened to attract the best talent.

(d) There is greater competition from the internet, digital media in news channels and from foreign newspapers, therefore, there is already an obligation on the print media to retain the best talent by providing fine working conditions.

In brief, it was contended that in the present times of economic liberalization, the Act has become obsolete. As a result, Wage Boards have lost their utility and purpose for which they were set up and the 1955 Act have become outdated and have outlived its utility especially with the advent of the electronic media and other avenues.

14) Moreover, learned senior counsel submitted that the track record and report of the Wage Board is another pointer to this effect. Most of the decisions of the Wage Board have been quashed. The recommendations of the first Wage Board were set aside by this Court in Express Newspaper (P) Ltd. vs. Union of India 1959 SCR 12 and the previous Manisana Wage Board (Vth Wage Board) was also set aside by the Karnataka High Court and the Delhi High Court on effective grounds. In view of the above assertions and taking into account the ground realities, the petitioners prayed that they must be given a free hand and should not be burdened with an outdated and antiquated statute. Henceforth, they pleaded for abolishment of the Wage Boards and to declare the Act unconstitutional.

15) In support of the above proposition, learned counsel for the petitioners also relied on the decisions of this Court in John Vallamattom vs. Union of India (2003) 6 SCC 611, Malpe Vishwanath Acharya vs. State of Maharashtra (1998) 2 SCC 1 and Indian Handicrafts Emporium vs. Union of India (2003) 7 SCC 589.

16) Mr. Mohan Parasaran, learned Solicitor General and Mr. Colin Gonsalves, learned senior counsel effectively responded to all the contentions raised by the petitioners, by relying on Constitution Bench decisions of this Court and prayed for rejection of their arguments.

17) This is not the first time when the aspect as to the Constitutional Validity of the Act as being ultra vires the Constitution and violative of fundamental rights is being encountered by this Court. It has already been expressly decided by a Constitution Bench of this Court in Express Newspaper (P) Ltd. vs. Union of India AIR 1958 SC 578 and has been held to be intra vires the Constitution. The relevant portions of the said judgment are extracted hereunder:

Challenge qua Article 19(1)(a):

> "153. In the present case it is obvious that the only justification for the enactment of the impugned Act is that it imposes reasonable restrictions in the interests of a section of the general public viz. the working journalists and other persons employed in the newspaper establishments. It does not fall within any of the categories specified in Article 19(2) viz.
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> "In the interest of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence." Article 19(2) being thus out of the question, the only point that falls to be determined by us is whether the provisions of the impugned Act in any way take away or abridge the petitioners, fundamental right of freedom of speech and expression.
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> 154. It was contended before us by the learned Attorney-General that it was only legislation directly dealing with the right mentioned in Article 19(1)(a) that was protected by it. If the legislation was not a direct legislation on the subject, Article 19(1)(a) would have no application, the test being not the effect or result of legislation but its subject-matter..." *** *** *** "160. ...It could therefore hardly be urged that the possible effect of the impact of these measures in conceivable cases would vitiate the legislation as such. All the consequences which have been visualized in this behalf by the petitioners viz. the tendency to curtail circulation and thereby narrow the scope of dissemination of information, fetters on the petitioners freedom to choose the means of exercising the right, likelihood of the independence of the press being undermined by having to seek government aid; the imposition of penalty on the petitioner's right to choose the instruments for exercising the freedom or compelling them to seek alternative media etc, would be remote and depend upon various factors which may or may not come into play. Unless these were the direct or inevitable consequences of the measures enacted in the impugned Act, it would not be possible to strike down the legislation as having that effect and operation. A possible eventuality of this type would not necessarily be the consequence which could be in the contemplation of the legislature while enacting a measure of this type for the benefit of the workmen concerned.
>
> 161. Even though the impugned Act enacts measures for the benefit of the working journalists who are employed in newspaper establishments, the working journalists are but the vocal organs and the necessary agencies for the exercise of the right of free speech and expression, and any legislation directed towards the amelioration of their conditions of service must necessarily affect the newspaper establishments and have its repercussions on the freedom of press. The impugned Act can therefore be legitimately characterized as a measure which affects the press, and if the intention or the proximate effect and operation of the Act was such as to bring it within the mischief of Article 19(1)(a) it would certainly be liable to be struck down. The real

> difficulty, however, in the way of the petitioners is that whatever be the measures enacted for the benefit of the working journalists neither the intention nor the effect and operation of the impugned act is to take away or abridge the right of freedom of speech and expression enjoyed by the petitioners.

162. The gravamen of the complaint of the petitioners against the impugned Act, however, has been the appointment of the Wage Board for fixation of rates of wages for the working journalists and it is contended that apart from creating a class of privileged workers with benefits and rights which were not conferred upon other employees of industrial establishments, the act has left the fixation of rates of wages to an agency invested with arbitrary and uncanalised powers to impose an indeterminate burden on the wage structure of the press, to impose such employer-employee relations as in its discretion it thinks fit and to impose such burden and relations for such time as it thinks proper. This contention will be more appropriately dealt with while considering the alleged infringement of the fundamental right enshrined in Article 19(1)(g). Suffice it to say that so far as Article 19(1)(a) is concerned this contention also has a remote bearing on the same and need not be discussed here at any particular length." Challenge qua Article 19(1)(g) "209. This attack of the petitioners on the constitutionality of the impugned Act under Article 19(1)(g) viz. that it violates the petitioners' fundamental right to carry on business, therefore fails except in regard to Section 5(1)(a)(iii) thereof which being clearly severable from the rest of the provisions, can be struck down as unconstitutional without invalidating the other parts of the impugned Act."

18) In succinct, the Constitution Bench of this Court in the aforesaid case held that the impugned Act, judged by its provisions, was not such a law but was a beneficent 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 fall 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.

19) Alternative challenge to the constitutionality of the Act was on the basis that selecting working journalists for giving favored treatment is violative of Article 14 as it is not a reasonable classification as permissible in the aforesaid Article. The Constitution Bench dealt with this aspect in the following terms:

Challenge qua Article 14 "210. Re: Art 14.- The question as formulated is that the impugned Act selected the working journalists for favoured treatment by giving them a statutory guarantee of gratuity, hours of work and leave which other persons in similar or comparable employment had not got and in providing for the fixation of their salaries without following the normal procedure envisaged in the Industrial Disputes Act, 1947. The following propositions are advanced:

1. In selecting the Press industry employers from all industrial employers governed by the ordinary law regulating industrial relations under the Industrial Disputes Act, 1947 and Act 1 of 1955 the impugned Act subjects the Press industry employers to discriminatory treatment.

2. Such discrimination lies in

(a) singling out newspaper employees for differential treatment;

(b) saddling them with a new burden in regard to a section of their workers in matters of gratuities, compensation, hours of work and wages;

(c) devising a machinery in the form of a Pay Commission for fixing the wages of working journalists;

(d) not prescribing the major criterion of capacity to pay to be taken into consideration;

(e) allowing the Board in fixing the wages to adopt any arbitrary procedure even violating the principle of audi alteram partem;

(f) permitting the Board the discretion to operate the procedure of the Industrial Disputes Act for some newspapers and any arbitrary procedure for others;

(g) making the decision binding only on the employers and not on the employees, and

(h) providing for the recovery of money due from the employers in the same manner as an arrear of land revenue.

3. The classification made by the impugned Act is arbitrary and unreasonable, insofar as it removes the newspaper employers vis-à-vis working journalists from the general operation of the Industrial Disputes Act, 1947 and Act 1 of 1955.

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212. We have already set out what the Press Commission had to say in regard to the position of the working journalists in our country. A further passage from the Report may also be quoted in this context:

“It is essential to realize in this connection that the work of a journalist demands a high degree of general education and some kind of specialized training. Newspapers are a vital instrument for the education of the masses and it is their business to protect the rights of the people, to reflect and guide public opinion and to criticize the wrong done by any individual or organization however high placed. They thus form an essential adjunct to democracy. The profession must, therefore, be manned by men of high intellectual and moral qualities. The journalists are in a sense creative artists and the public rightly or wrongly, expect from them a general omniscience and a capacity to

express opinion on any topic that may arise under the sun. Apart from the nature of their work the conditions under which that work is to be performed, are peculiar to this profession. Journalists have to work at very high pressure and as most of the papers come out in the morning, the journalists are required to work late in the night and round the clock. The edition must go to press by a particular time and all the news that breaks before that hour has got to find its place in that edition. Journalism thus becomes a highly specialized job and to handle it adequately a person should be well-read, have the ability to size up a situation and to arrive quickly at the correct conclusion, and have the capacity to stand the stress and strain of the work involved. His work cannot be measured, as in other industries, by the quantity of the output, for the quality of work is an essential element in measuring the capacity of the journalists. Moreover, insecurity of tenure is a peculiar feature of this profession. This is not to say that no security exists in other professions but circumstances may arise in connection with profession of journalism which may lead to unemployment in this profession, which would not necessarily have that result in other professions. Their security depends to some extent on the whims and caprices of the proprietors. We have come across cases where a change in the ownership of the paper or a change in the editorial policy of the paper has resulted in a considerable change in the editorial staff. In the case of other industries a change in the proprietorship does not normally entail a change in the staff. But as the essential purpose of a newspaper is not only to give news but to educate and guide public opinion, a change in the proprietorship or in the editorial policy of the paper may result and in some cases has resulted in a wholesale change of the staff on the editorial side. These circumstances, which are peculiar to journalism must be borne in mind in framing any scheme for improvement of the conditions of working journalists." (para 512).

213. These were the considerations which weighed with the Press Commission in recommending the working journalists for special treatment as compared with the other employees of newspaper establishments in the matter of amelioration of their conditions of service.

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215. ...The working journalists are thus a group by themselves and could be classified as such apart from the other employees of newspaper establishments and if the legislature embarked upon a legislation for the purpose of ameliorating their conditions of service there was nothing discriminatory about it. They could be singled out thus for preferential treatment against the other employees of newspaper establishments. A classification of this type could not come within the ban of Article 14. The only thing which is prohibited under this article is that persons belonging to a particular group or class should not be treated differently as amongst themselves and no such charge could be levelled against this piece of legislation. If this group of working journalists was specially treated in this manner there is no scope for the objection that that group had a special legislation enacted for its benefit or that a special machinery was created, for fixing the rates of its wages different from the machinery employed for other workmen under the Industrial Disputes Act, 1947. The payment of retrenchment compensation and gratuities, the regulation of their hours of work and the fixation of the rates of their wages as compared with those of other workmen in the newspaper establishments could also be enacted without any such disability and the machinery for fixing their rates of wages by way of constituting a Wage Board for the purpose could be similarly

devised. There was no industrial dispute as such which had arisen or was apprehended to arise as between the employers and the working journalists in general, though it could have possibly arisen as between the employers in a particular newspaper establishment and its own working journalists. What was contemplated by the provisions of the impugned Act, however, was a general fixation of rates of wages of working journalists which would ameliorate the conditions of their service and the constitution of a Wage Board for this purpose was one of the established modes of achieving that object. If, therefore, such a machinery was devised for their benefit, there was nothing objectionable in it and there was no discrimination as between the working journalists and the other employees of newspaper establishments in that behalf...

216. ... Even considering the Act as a measure of social welfare legislation the State could only make a beginning somewhere without embarking on similar legislations in relation to all other industries and if that was done in this case no charge could be levelled against the State that it was discriminating against one industry as compared with the others. The classification could well be founded on geographical basis or be according to objects or occupations or the like. The only question for consideration would be whether there was a nexus between the basis of classification and the object of the Act sought to be challenged. In our opinion, both the conditions of permissible classification were fulfilled in the present case. The classification was based on an intelligible differentia which distinguished the working journalists from other employees of newspaper establishments and that differentia had a rational relation to the object sought to be achieved viz. the amelioration of the conditions of service of working journalists."

20) The above position has been reiterated by this Court in the form of observations in Express Publications (Madurai) Ltd. vs. Union of India (2004) 11 SCC 526. The relevant portion of the said judgment is extracted hereunder:

> "29...The observations in the judgment were pressed into service in support of the contention that freedom of speech and expression would be adversely affected by continuing the definition of "excluded employee" in respect of the newspaper industry which has been singled out for harsh treatment. As can be seen from above, observations have been made in a different context. In any case, the decision, far from supporting the contention of the petitioners, in fact, to an extent lends support to the benefit that was given to the employees of the newspaper industry in the year 1956 as a result of the impugned provision. It has to be remembered that in spreading information, the employees of newspaper industry play a dominant role and considering the employees of newspaper industry as a "class", this benefit was extended almost at the same time when the Working Journalists Act was enacted. Thus, there can be no question of any adverse effect on the freedom of press. The financial burden on the employer, on facts as herein, cannot be said to be a "harsh treatment". The contention that now the petitioners are unable to bear the financial burden which they have been bearing for the last over forty-five years is wholly irrelevant. It is for the petitioners to manage their affairs if they intend to continue with their activity as newspaper establishment.

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31. This Court noticed that the journalists are but the vocal organs and the necessary agencies for the exercise of the right of free speech and expression and any legislation directed towards the amelioration of their conditions of service must necessarily affect the newspaper establishments and have its repercussions on the freedom of press. The impugned Act can, therefore, be legitimately characterised as a measure which affects the press and if the intention or the proximate effect and operation of the Act was such as to bring it within the mischief of Article 19(1)(a), it would certainly be liable to be struck down. The real difficulty, however, in the way of the petitioners is that whatever be the measures enacted for the benefit of the working journalists neither the intention nor the effect and operation of the impugned Act is to take away or abridge the right of freedom of speech and expression enjoyed by the petitioners. The question of violation of right of freedom of speech and expression as guaranteed under Article 19(1)(a) in the present case on account of additional burden as a result of the impugned provision does not arise.

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34. In the light of the aforesaid principles, in Express Newspaper the Court considered whether the Act impugned therein violated the fundamental right guaranteed under Article 14. It was observed that in framing the Scheme, various circumstances peculiar to the press had to be taken into consideration. These considerations weighed with the Press Commission in recommending special treatment for working journalists in the matter of amelioration of their conditions of service. The position as prevailing in other countries was also noticed. In a nutshell, the working journalists were held as a group by themselves and could be classified as such. If the legislature embarked upon a legislation for the purpose of ameliorating their conditions of service, there was nothing discriminatory about it. They could be singled out for preferential treatment. It was opined that classification of this type could not come within the ban of Article

14. Considering the position in regard to the alleged discrimination between press industry employers on one hand and the other industrial employers on the other, it was said that even considering the Act as a measure of social welfare legislation, the State could only make a beginning somewhere without embarking on similar legislations in relation to all other industries and if that was done in this case no charge could be levelled against the State that it was discriminating against one industry as compared with the others. The classification could well be founded on geographical basis or be according to objects or occupations or the like. The only question for consideration would be whether there was a nexus between the basis of classification and the object of the Act sought to be achieved. Both the conditions of permissible classification were fulfilled. The classification was held to be based on an intelligible differentia which had a rational relation to the object sought to be

achieved viz. the amelioration of the conditions of service of working journalists. The attack on constitutionality of the Act based on Article 14 was negatived.

35. Though challenge in the aforesaid case was to special treatment to working journalists but what is to be seen is, that the press industry was held to be a class by itself. The definition of "newspaper employee" takes into its fold all the employees who are employed to do any work in, or in relation to, any newspaper establishment. The decision in Express Newspaper case amply answers the main contention about the press industry having been singled out, against the petitioners. This decision also holds that to provide social welfare legislation and grant benefit, a beginning had to be made somewhere without embarking on similar legislation in relation to other industries. The fact that even after about half a century similar benefit has not been extended to the employees of any other industry, will not result in invalidation of benefit given to employees of press industry. It is not for us to decide when, if at all, to extend the benefit to others. In view of the aforesaid, we are unable to accept the contention that the impugned provision is violative of Article 14 on the ground that it singles out newspaper industry by excluding income test only in regard to the said industry.

36. Apart from the fact that it may not be always possible to grant to everyone all benefits in one go at the same time, it seems that the impugned provision and the enacting of the Working Journalists Act was part of a package deal and that probably is the reason for other newspaper establishments not challenging it and the petitioners also challenging it only after lapse of so many years. Further, Sections 2(i), 4 and Schedule I of the Provident Fund Act show how gradually the scope of the Act has been expanded by the Central Government and the Act and Scheme made applicable to various branches of industries.

From whatever angle we may examine, the attack on the constitutional validity based on Article 14 cannot be accepted." Challenge qua Amendment Act, 1974

21) The petitioners herein have also challenged the vires of the Amendment Act, 1974 on the ground that extending the benefit of the Act to employees other than working journalists is against the object that was sought to be achieved by the original Act since the benefits to other newspaper employees has no rational nexus between the differentia and the object sought to be achieved. In this regard, as already discussed, challenge as to the singling out of the newspaper industry per se was rejected by the Constitution Bench in Express Newspaper (P) Ltd. (supra) and the newspaper industry was held to be a class by itself. All that the 1974 amendment did was to only bring the other employees of the newspaper industry (i.e. non-working journalists) into the ambit of the Act and extend the benefits of the Act to them. Thus, the same is also covered as per the reasoning of the Constitution Bench decision of this Court. Therefore, the challenge as to the Amendment Act, 1974 stands disallowed.

22) Although, the aspect of violation of Article 14 was intricately decided by the Constitution Bench, it is the stand of the petitioners herein that while there may have been some justification for dealing only with newspaper establishments in 1955, however, with the revolution in information technology, there is no justification for confining regulation only to print media as in the existing scenario persons engaged in the same avocation (journalism) would be subject to different restrictions and would be unreasonably hampered in the social and industrial relations with each other. Further, it is submitted by the petitioners that the classification between journalists in newspaper establishments and others does not bear any relationship with the object. Therefore, the continuation of such a provision would create a disadvantaged class i.e. newspaper establishments without there being a rational basis for the same and consequently affecting both the incentive and capacity to achieve the object for which classification is made. After the very lapse of a long period from the date of enactment of the Act and the connected change of circumstances during this period has made the law discriminatory as it is now arbitrarily confined to a selected group out of a large number of other persons similarly situated. Henceforth, it is the stand of the petitioners that the grab of constitutionality that the Act may have possessed earlier has worn out and its constitutionality is open to a successful challenge.

23) While this argument may be as appealing as it sounds, yet we are not inclined to interfere on this point of challenge in order to maintain the equity among parties. It is important that this Court appreciates the realm of Article 14 of the Constitution in the light of the interest of both employers and the employees and not in one-sided manner. The argument of the petitioners that it is violative of Article 14 is one version of the story i.e. employers grievance, whereas this Court must look into the perspective of employees also while determining the issue at hand.

24) For the ensuing two reasons, this Court is opting for not to interfere on this alleged ground of challenge. Firstly, the petitioners cannot espouse the grievance of those employees working in the electronic media for non-inclusion and, more particularly, when those employees are not before this Court. Secondly, the fact that similar benefits are not extended to the employees of other similar industry will not result in invalidation of benefit given to the employees of press industry. Recalling that media industry is still an upcoming sector unlike the press industry, which is as ancient as our independence itself, the scope for potential policies in future cannot be overruled. In view of the same, this ground of challenge is rejected.

25) As regards the second ground of challenge, i.e., the Act over the passage of time has outlived its utility and the object that was sought to be achieved originally has become obsolete especially in view of the fact that Wage Boards for other industries have been abolished, it is our cogent opinion that mere passage of time by itself would not result in the invalidation of the Act and its object. The validity once having been upheld by a Constitution Bench of this Court in Express Newspapers (P) Ltd. (supra), the same cannot be now challenged saying that it has outlived its object and purpose and has been worn out by the passage of time. The principles laid down in Motor General Traders vs. State of Andhra Pradesh (1984) 1 SCC 222 and Ratan Arya vs. State of Tamil Nadu (1986) 3 SCC 385 are squarely inapplicable as has been held in the context of identical factual scenario.

26) When this Court was considering the case of a newspaper establishment qua para 82 of the Employees' Provident Funds Scheme in Express Publications (Madurai) Ltd. (supra), the said judgment also puts the challenge as to the vires of the Act like the one made by the petitioners in the present case, but beyond pale of any doubt, it consciously reiterates the spirit of law laid down in Express Newspaper (P) Ltd. (supra).

27) The petitioners relied on the Report of the Second National Commission of Labour to contend that the Act has become archaic. In this regard, it is relevant to note that the aforementioned Report is not relevant, as the Government has not accepted the said Report insofar as the Statutory Wage Boards are concerned. Thus, any observation in the said Report as to the non-requirement of Wage Boards generally, cannot be the basis for not complying with the statutory obligations under the Act. Insofar as the 2002 National Commission of Labour Report is concerned, as stated above, the same has not been accepted by the Government of India, in respect of the functioning of the Act.

28) In the light of the aforesaid discussion, we are of the opinion that the challenge as to the vires of the Act on the premise of it being ultra vires the Constitution and violative of fundamental rights is wholly unfounded, baseless and completely untenable.

29) It is true that newspaper industry, with the advent of electronic media, continues to face greater challenges similar to the ones as observed by the Press Commission as noted in the Express Newspaper (P) Ltd. (supra) enumerated hereinabove. Thus, the contention of the petitioners that though the newspaper industry may be growing, the growth of the electronic media is relatively exponential, in fact, substantiates the very necessity of why a wage board for working journalists and other newspaper employees of the newspaper industry should exist.

Improper Constitution of the Wage Boards

30) As reiterated hitherto, the Wage Boards constituted under Sections 9 and 13C of the Act are required to be comprised of 10 members i.e. one Chairman, three independent members, three representatives for employers and three representatives for employees. On behalf of the petitioners herein (newspaper management), it was contended that there was a defect in the constitution of the Wage Boards as Mr. K.M. Sahani and Mr. Prasanna Kumar were not independent members thus, it fatally vitiates the constitution and proceedings of the Majithia Wage Boards. On the other hand, it was pointed out by learned Solicitor General for the Union of India and the employees that the constitution of the Wage Boards have been undertaken strictly in accordance with the Act and the "Independent Members", so required, under Sections 9(c) and 13C(c) of the Act have been appointed in accordance with the law. Let us examine this point of strife based on the factual matrix.

31) The petitioners' main ground of challenge to Mr. K.M. Sahni's independence is that since at the relevant time he was a former Secretary of Ministry of Labour and Employment, Government of India and during his tenure the decision to constitute the Wage Board was taken and, thus, he cannot be expected to be an independent and free from bias. It is seen from the materials placed on record by the Union of India that in order to operationalize the Boards, Shri K.M. Sahni, who had superannuated as Secretary to Government of India on 31.12.2006 was appointed as Member-

Secretary on 24.01.2007 for a period of three years or till the duration of the Wage Board, whichever is earlier. Merely because a person was in the employment of the Government, he does not cease to become "independent" for the purposes of being an independent member of the Committee to recommend the fixing of wages.

32) Similar fact underlying this issue has been the subject-matter of this Court in State of Andhra Pradesh vs. Narayana Velur Beedi Manufacturing Factory (1973) 4 SCC 178, and it is only necessary to set out the summary thereof given by A.N. Grover, J.:

> "9. In our judgment the view which has prevailed with the majority of the High Courts must be sustained. The committee or the advisory board can only tender advice which is not binding on the Government while fixing the minimum wages or revising the same as the case may be. Of course, the Government is expected, particularly in the present democratic set-up, to take that advice seriously into consideration and act on it but it is not bound to do so. The language of Section 9 does not contain any indication whatsoever that persons in the employment of the Government would be excluded from the category of independent persons. Those words have essentially been employed in contradistinction to representatives of employer and employees. In other words, apart from the representatives of employers and employees there should be persons who should be independent of them. It does not follow that persons in the service or employ of the Government were meant to be excluded and they cannot be regarded as independent persons vis-à-vis the representatives of the employers and employees.

Apart from this the presence of high government officials who may have actual working knowledge about the problems of employers and employees can afford a good deal of guidance and assistance in formulating the advice which is to be tendered under Section 9 to the appropriate Government. It may be that in certain circumstances such persons who are in the service of the Government may cease to have an independent character if the question arises of fixation of minimum wages in a scheduled employment in which the appropriate Government is directly interested. It would, therefore, depend upon the facts of each particular case whether the persons who have been appointed from out of the class of independent persons can be regarded as independent or not. But the mere fact that they happen to be government officials or government servants will not divest them of the character of independent persons. We are not impressed with the reasoning adopted that a government official will have a bias, or that he may favour the policy which the appropriate Government may be inclined to adopt because when he is a member of an advisory committee or board he is expected to give an impartial and independent advice and not merely carry out what the Government may be inclined to do. Government officials are responsible persons and it cannot be said that they are not capable of taking a detached and impartial view."

33) Consequently, merely because Shri K.M. Sahni was a part of the Government that took the decision to set up the Wage Boards, does not automatically follow that he ceased to be an "independent" member of the Wage Boards. We are satisfied that Shri K.M. Sahni is an independent member of the Board and cannot be considered to be "biased" in any manner.

34) The petitioners also allege that Mr. P.N. Prasanna Kumar, as an experienced journalist and having been associated with various journalistic institutions in his long journalistic career, cannot be considered to be an "independent" member and, therefore, was biased in favour of the employees. Learned Solicitor General has rightly pointed out that only vague and general allegations have been alleged against him and no specific allegations that he acted in a manner that was biased against the employers has been levied by the petitioners.

35) It is well-settled that mere apprehension of bias is not enough and there must be cogent evidence available on record to come to the conclusion. Reference may be made to Kumaon Mandal Vikas Nigam Ltd. vs. Girja Shankar Pant (2001) 1 SCC 182 in the following words:

> "10. The word "bias" in popular English parlance stands included within the attributes and broader purview of the word "malice", which in common acceptation means and implies "spite" or "ill-will" (Stroud's Judicial Dictionary, 5th Edn., Vol. 3) and it is now well settled that mere general statements will not be sufficient for the purposes of indication of ill-will. There must be cogent evidence available on record to come to the conclusion as to whether in fact there was existing a bias which resulted in the miscarriage of justice."
>
> 36) This Court, in State of Punjab vs. V.K. Khanna (2001) 2 SCC 330, has held as follows:
>
> "8. The test, therefore, is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In the event, however, the conclusion is otherwise that there is existing a real danger of bias administrative action cannot be sustained. If on the other hand allegations pertain to rather fanciful apprehension in administrative action, question of declaring them to be unsustainable on the basis therefor, would not arise."
>
> 37) The contention of the petitioners alleging bias against independent members of the Wage Boards, being based merely on their past status, is entirely baseless in law and amounts to imputing motives. Further, the petitioners have nowhere established or even averred that the independent members are guilty of legal bias as expressed in Perspective Publications vs. State of Maharashtra (1969) 2 SCR 779, that is, making their recommendations on the basis of wholly extraneous considerations or personal or pecuniary benefit.
>
> 38) On perusal of the materials available, we are satisfied that the Wage Boards have functioned in a fully balanced manner. Besides, it is a fact that the petitioners had challenged the constitution of the Wage Board before the High Court of Delhi, admittedly, the High Court had declined to grant interim relief. The said order declining/refusing to grant interim relief attained finality as the petitioners did not choose to challenge it before this Court. Thereafter, the petitioners have participated

in the proceedings and acquiesced themselves with the proceedings of the Board.

In view of the fact that they have participated in the proceedings without seriously having challenged the constitution as well as the composition, the petitioners cannot now be allowed to challenge the same at this stage. More so, it is also pertinent to take note of the fact that the petitioners herein opted for challenging the independence of the nominated independent members only after the recommendations by the Wage Boards were notified by the Central Government.

39) Hence, the attack of the petitioners on the independence of the appointed independent members by saying that they were not sufficiently neutral, impartial or unbiased towards the petitioners herein, is incorrect in the light of factual matrix and cannot be raised at this point of time when they willfully conceded to the proceedings. Consequently, we are not inclined to accept this ground of challenge.

40) Apart from the challenge to the independence of the members, the petitioners also contended that two separate Wage Boards ought to have been constituted instead of a common wage board. It is relevant to point out that ever since the 1974 amendment only a common wage board was being constituted. The Financial Memorandum accompanying the Working Journalists (Conditions of Service) and Miscellaneous Provisions (Amendment) Bill, 1974 specifically states that "the intention is to constitute Wage Boards under the said Section 9 and proposed Section 13C as far as possible at the same time and to have a common Chairman and a common Secretariat for both the Boards". Further, it is brought to our notice that the Palekar Tribunal (1980), Bachawat Wage Board (1989) and Manisana Wage Board (2000) constituted after 1974 amendment were all common Boards/Tribunal for both working journalists and non-journalists. Though the members representing employers were common, they were not incapacitated in any manner as is being contended by the petitioners. They were having two votes as they were representing the employers in both the Boards.

41) In addition, the representatives from the employers' side are common in both the Wage Boards as all types of newspaper employees, either working journalists or non-journalists found to be working under common employers. Having common representatives of the employers on the two Wage Boards are expected to be favorable to the employers as they can make a fair assessment of the requirements of the working journalists and non- journalist newspaper employees of the newspaper industry as a whole. However, as the two Wage Boards have separate entities meant for working journalists and non-journalist newspaper employees, there cannot be common representatives who can protect the interest and represent working journalists as well as non-journalist newspaper employees. Therefore, members representing working journalists were nominated to the Wage Board for the working journalists. Similarly, members representing non- journalist newspaper employees were nominated to the Wage Boards for non- journalist newspaper employees. As aforesaid, for administrative convenience, four independent members, including the Chairman were common for both the Wage Boards. In our cogent view, this arrangement in no way affects the interest of the employers and the challenge of the petitioners in this regard is unfounded.

Irregularity in the procedure followed by Majithia Wage Boards

42) Learned counsel for the petitioners pointed out to a series of factual aspects to demonstrate that there existed irregularity in the decision making process by the Majithia Wage Board which was attacked as ultra vires the Act and contrary to procedure adopted by the predecessor Wage Boards. In succinct, the stand of the petitioners is that Majithia Wage Board Report was prepared in a hasty manner and subsequently, the recommendations have been accepted by the Central Government without proper hearing or affording opportunity to all the stakeholders. Whereas the respondent – Union of India clearly contended otherwise and submitted that the impugned Wage Boards throughout adopted a fair procedure, which stands the test of natural justice. Besides, it is the stand of the respondents that the representatives of the management were not cooperating but were merely attending the Wage Board proceedings, therefore, the Chairman was not getting adequate aid and help from the representatives of the newspaper owners.

43) Broadly, the petitioners' foremost contention is that the Wage Boards have not functioned in accordance with the law inasmuch as no questionnaire was issued to elicit information to determine the capacity to pay and that principles of natural justice were not followed in conducting the proceedings and for arriving at the recommendations, which was the accustomed procedure of previous Wage Boards. At the outset, it is relevant to point out that under Section 11(1) of the Act, Wage Board has special powers to regulate its own procedure. It is not obligatory for the Wage Boards to follow the exact procedure of the earlier Wage Boards and as such there is no requirement in law to follow a strictly laid down procedure in its functioning. Besides, as long as it follows the principles of natural justice and fairness, its functioning cannot be called into question on the ground of irregularity in the procedure. Now, let us examine the submissions of the petitioners in this light.

44) It is brought to our notice that detailed questionnaire was issued on 24.07.2007. The petitioners in their opening arguments contended that no questionnaire was issued. However, the Union of India placed voluminous documents to demonstrate that a detailed questionnaire was in fact issued on 24.07.2007 and that this questionnaire was commented upon and it was corrected also and further respondents also received replies pursuant to the same. The petitioners in their rejoinder have attempted to make a feeble argument that the said questionnaire was issued by the secretariat and not by the Wage Boards, which is fit to be rejected.

45) It is also brought to our notice that several attempts were made by the Wage Boards to get the relevant information from the employers but many of the petitioners had not given financial data and abstained from attending the Board's proceedings. Records produced show that the questionnaire was sent to all the subscribers listed in the directory of newspaper establishments published by INS for the year 2008-09 and the list supplied by the PTI for sending financial information from 2000-01 to 2009-

10. Regular follow up with the employers was made and series of letters were issued to collect financial information. Apart from the questionnaire, notices inviting representation as per Section 10(1) of the Act were published in 125 newspapers. Further, on 05.07.2010, summons were issued to around one hundred and forty stake holders and they were given final chance to submit the information within fifteen days of the summons. In addition to this, a two page simplified

questionnaire was also issued on 02.03.2010.

46) Consequently, the allegation that only 40 establishments have been used as parameters which is under-representative of the industry is incorrect. In fact, as has been detailed in the Report, the data from newspaper establishments was not forthcoming (vide pages 100-101 of Majithia Wage Board Report). With all these efforts, financial information could be collected from only sixty-six establishments and after scrutiny, it was found that financial information received from only forty establishments was useful in developing an overall view of the financial status of the newspaper industry. Therefore, it was only upon much effort and repeated requests that the data in respect of 40 establishments could be collected by the Wage Board. Besides, these 40 establishments are representatives of the different class of newspaper establishments that are carrying on business in the country and in addition detailed submissions by representative groups such as the Indian Newspaper Society (INS) were also considered. Thus, it can certainly be construed that these representative bodies presented an overview of the whole newspaper industry, apart from the information being collected from the individual establishments.

47) From the records, we furnish the following chronology of events:

| |"Letter dated 28.12.2007 by Mr. Naresh Mohan containing| | |"Comments on Draft Questionnaire" | | |Letters dated 14.01.2008 and 18.01.2008 requesting for | | |extension of time for submission of response to | | |questionnaire | | |Letter dated 14.02.2008 extending time limit for | | |submission of response to questionnaire till 30.06.2008| | |Response of Hitavada Shramik Sangh, Nagpur dated | | |23.06.2008 to the questionnaire | | |Response of the Times of India and Allied Publications'| | |Employees' Union to the questionnaire | | |Letters by various Employees' Union requesting for | | |extension of time for submission of response to | | |questionnaire | | |Letter dated 14.11.2008 addressed to all the members of| | |the Wage Boards seeking their views on extending the | | |last date for submission of completed questionnaire up | | |to 28.02.2009 | | |Letter dated 04.12.2008 by Mr. Naresh Mohan expressing | | |no objection for extending the last date for submission| | |of completed questionnaire up to 28.02.2009 | | |Letters dated 17.12.2008, 18.12.2008, 19.12.2008 | | |addressed to the members of the Wage Board, | | |stakeholders informing extension of last date for | | |submission of completed questionnaire up to 28.02.2009 | | |Letters dated 19.03.2009, 08.06.2009, 09.06.2009 | | |addressed to the members of the Wage Board, | | |stakeholders informing extension of last date for | | |submission of completed questionnaire up to 30.06.2009 | | |Letter dated 03.07.2009 addressed to the Wage Board | | |members to prevail upon their constituents to submit | | |their response to the questionnaire | | |Response of Lokmat Shramik Sanghatana, Nagpur dated | | |04.02.2009 to the questionnaire | | |Response of the Tribune Employees Union, Chandigarh | | |dated 25.07.2009 to the questionnaire | | |Response of National Union of Journalists (India) dated| | |31.08.2009 to the questionnaire | | |Letter dated 01.09.2009 by Chairman, Wage Boards | | |requesting the members of the Wage Boards to prevail | | |upon their constituents to submit their response to the| | |questionnaire | | |Response of the Press Trust of India Ltd. dated | | |29.09.2009 to the submissions dated 30.06.2009 made by | | |Federation of PTI Employees' Union and to the | | |questionnaire | | |Letter dated 12.05.2010 forwarding copies of responses | | |to the questionnaire received by the Wage Boards to all| | |the members. | | |The notice dated 16.11.2007 issued under Sections 10(1)| |

|and 13D of the Act was published in 125 newspapers | | |Considering the requests and representations received | | |from various stakeholders, the time period for making | | |representation in terms of Sections 10(1) and 13D of | | |the Act was extended till 30.06.2008 | | |The time period for making representation in terms of | | |Sections 10(1) and 13D of the Act was further extended | | |till 31.10.2008 | | |The time period for making representation in terms of | | |Sections 10(1) and 13D of the Act extended till | | |28.02.2009 | | |The time period for making representation in terms of | | |Sections 10(1) and 13D of the Act was extended till | | |30.06.2009 | | |The time period for making representation in terms of | | |Sections 10(1) and 13D of the Act was extended till | | |06.08.2009 | | |Notice dated 09.07.2010 was given to all the | | |stakeholders for final hearing before the Wage Boards | | |on 26.07.2010 to 01.08.2010" |

48) In addition to the aforesaid chronology of events, a perusal of Chapter 3 of the Majithia Wage Board recommendations will clearly indicate that the procedure adopted by the Wage Boards did, in fact, give ample opportunities to the stakeholders to give representations and financial data, etc. so that the same may be considered by the Wage Boards for making their recommendations. However, many of the petitioners have never bothered to attend the proceedings of the Wage Board and submitted financial data.

49) The details of the meetings and oral hearings conducted by the Wage Boards (culled out from the Wage Board proceedings) are as follows:

|"30.06.2007 |First meeting of the wage boards was held. | |02-04.08.2007 |Second meeting of the wage boards was held. | |16.11.2007 |Notice under Sections 10(1) and 13D of the Act | | |was issued to all newspaper establishments, | | |working journalists, non-journalists newspaper | | |and news agency employees to make representation| | |in writing within eight weeks from the date of | | |notice stating the rates of wages which, in the | | |opinion of the capacity of the employer to pay | | |the same or to any other circumstance, whichever| | |may seem relevant to them. | |08.01.2008 |Government made a reference to Wage Board for | | |fixing interim rate of wages in terms of Section| | |13A of the 1955 Act. | |12 & 13.06.2008|Third meeting of the Wage Boards held to discuss| | |interim rates of wages | |28.06.2008 |Fourth meeting of the Wage Boards was held to | | |consider the issue of interim rates of wages to | | |the employees of the newspaper industry and gave| | |its recommendation fixing the interim rate of | | |wages @30% of the basic pay w.e.f. 08.01.2008 | |03.10.2008 |Cabinet approved the proposal to grant interim | | |rates of wages at the rate of 30% of the basic | | |wage to newspaper employees w.e.f. 8th January, | | |2008. | |24.10.2008 |S.O. 2524(E) and S.O. 2525(E) notification on | | |interim rates of wages published in the Gazette | | |of India extraordinary. | |5-6.05.2009 |Fifth meeting of Wage Boards | |31.07.2009 |Sixth meeting of Wage Boards | |07.09.2009 |Seventh meeting of Wage Boards | | |Oral hearings | | |6-10.10.2009 – Oral hearing in Jammu & Kashmir | | |26-27.10.2009 – Oral hearing at Chandigarh | | |8-9.11.2009 – Oral hearing at Patna | |14.11.2009 |Eighth meeting of Wage Boards | | |Oral hearings | | |11-12.11.2009 – Oral hearing at Lucknow | | |23-24.11.2009 – Oral hearing at Ahmedabad | | |8-9.12.2009 – Oral hearing at Hyderabad | | |11-13.12.2009 – Oral hearing at Chennai | |18.12.2009 |Ninth meeting of Wage Boards | | |Oral hearings | | |29-30.12.2009 – Oral hearing at Bangalore | |23.02.2010 |Tenth meeting of Wage Boards | |02.03.2010 |In view of the fact that very few responses were| | |received to the detailed questionnaire | | |circulated by the

Wage Board, it was decided | | |that a simplified questionnaire requiring | | |information about annual turnover, cost, etc. | | |will be circulated to various newspaper | | |establishments registered with PTI and INS. | | |Accordingly, the simplified questionnaire was | | |sent to various news establishments. | | |Oral hearings | | |13-14.03.2010 – Oral hearing at Jaipur | | |27-28.03.2010 – Oral hearing at Bhopal | | |8-10.04.2010 – Oral hearing at Mumbai and Pune | | |27-28.04.2010 – Oral hearing at Bhubaneshwar | |07.05.2010 |Eleventh meeting of Wage Boards | |30.06.2010 |Twelfth meeting of Wage Boards | | |Oral hearings | | |12-13.07.2010 – Oral hearing at Kolkata | | |20-21.07.2010 – Oral hearing at Guwahati | | |26.07.2010 to 01.08.2010 – Oral hearing at Delhi| | |17-19.08.2010 – Oral hearing at Delhi | | |06.09.2010 – Oral hearing at Delhi | |05.07.2010 |Summons dated 05.07.2010 issued under Section | | |11(3)(b) and Section 11(8) of the Industrial | | |Disputes Act, 1947 read with Section 3 of the | | |1955 Act. | |21.09.2010 |Thirteenth meeting of Wage Boards | |22.09.2010 |Fourteenth meeting of Wage Boards | |07.12.2010 |Draft report was circulated to all the members | | |of the Wage Board for their comments and views | |20-24.12.2010 |Meeting of the Wage Board to discuss the draft | | |report | |30.12.2010 |Notes of dissent were submitted by | | |Shri K.M. Sahni | | |Shri N.K. Trikha, Shri Vikram Rao, Shri Suresh | | |Akhouri (Representatives of working journalists)| | |Shri Uma Shankar Mishra, Shri M.S. Yadav, Shri | | |M.C. Narasimhan (Representatives of | | |non-journalists) | | |Shri Prasanna Kumar | |31.12.2010 |Final Report submitted to Government." |

50) The petitioners' main ground of challenge vis-à-vis the procedure adopted by the impugned Wage Boards is that they were not given reasonable time to reflect on the issues. However, we have carefully examined all the proceedings of the Wage Boards and we are satisfied that the Wage Boards conducted a series of meetings and gave ample opportunities to the employers. The employers were given opportunity of both written and oral representations to make their point of view known to the Board and consequently the decision making process stands valid. In this respect, we are of the view that the petitioners cannot be allowed to take advantage of their own wrong and impugn the recommendations of the Wage Boards as not being based on their data when they eluded to submit the said data in the first place.

51) In respect of the petitioners' argument that the 'Classification' of newspaper establishments and newspaper agencies adopted by the Wage Boards is arbitrary and not supported by the majority, it is brought to our notice that a perusal of the resolution adopted on 21.12.2010 shows that representatives of employees agreed for 11 classifications and representatives of employers opposed the said pattern of classification. Later, the classification of the newspaper establishments was made into eight classes on the basis of Gross Turnover:

Class	Gross Revenue
I	Rs. 1000 crore and above
II	Rs. 500 crore and above but less than Rs. 1000 crore
III	Rs. 100 crore and above but less than Rs. 500 crore
IV	Rs. 50 crore and above but less than Rs. 100 crore
V	Rs. 10 crore and above but less than Rs. 50 crore
VI	Rs. 5 crore and above but less than Rs. 10 crore

VII	Rs. 1 crore and above but less than Rs. 5 crore	
VIII	Less than Rs. 1 crore	

Therefore, if at all anybody is aggrieved by the recommendation of the Wage Board to adopt eight classifications, it is the employees and not the employers. Further, no prejudice is caused to the employers and they cannot make this as a ground to challenge the report.

52) The petitioners also contended by relying upon two resolutions passed by the Wage Board that the Wage Board was not allowed to function independently and was treated with contempt by the Secretariat of the Wage Board and the officials of the Wage Board. One of the resolutions relied upon by the petitioners dealt with an issue pertaining to raising of exorbitant travel bill. It is brought to our notice that it was in this context that the Chairman and Members of the Wage Board expressed their concern that issues pertaining to the Wage Board should not be directly dealt with by the Ministry and it has to be referred to the Ministry by the Secretariat after obtaining the permission of the Chairman. The other resolution/minutes record the proceedings of the meeting with the Minister for Labour and Employment. These two resolutions cannot be relied upon to contend that the Board was not allowed to function independently and was treated with contempt. These two resolutions have no bearing on the ultimate recommendations made by the Board and, thus, cannot be relied upon by the petitioners to impugn the recommendations themselves.

53) Numerous such incidental contentions vis-à-vis procedure adopted by the Wage Boards were alleged which, in our considered view, is not of such grave nature that it calls for withdrawing the recommendations of Wage Boards. In this light, after having exhaustively gone through the record of proceedings and various written communications, we are fully satisfied that the Wage Boards proceedings had been conducted and carried out in a legitimate approach and no decision of the Wage Board is perceived to having been taken unilaterally or arbitrarily. Rather all decisions were reached in a coherent manner in the presence of all the Wage Board members after having processed various statistics and we find no irregularity in the procedure adopted by the impugned Wage Boards.

Majithia Wage Boards overlooked the relevant aspects and considered extraneous factors while drafting the recommendations

54) It is the view of the petitioners that the recommendation of Justice Majithia Wage Boards is defective and faulty and deserves to be rejected at the outset as it overlooked the relevant aspects and considered extraneous factors while drafting the impugned report. The first ground on which the report is alleged to be defective is that the members of the Wage Board failed to consider the crucial element of capacity to pay of the individual newspaper establishments as it wrongly premised its analysis of the capacity to pay of 'gross revenue' while approving the impugned report.

55) In Express Newspaper (P) Ltd case (Supra), this Court held that the capacity of the newspaper industry to pay is one of the essential circumstances to be taken into consideration while fixing rates of wages under the Act. In that case, the decision of the Wage Board was set aside on the ground that

it failed to consider the capacity of the industry to pay the revised rates of wages. Consequently, Section 10(2) of the Act was inserted which gives the statutory recognition to the requirement of taking into consideration the capacity of the employer to pay.

56) Chapter XIV, titled Capacity to pay of the Newspaper industry (A Financial Assessment) of the Justice Majithia Report, elaborately discusses on the aspect of capacity to pay. However, it is the stand of the petitioners that although the Report purportedly examines the capacity to pay, such evaluation is directly contrary to the principles and accepted material factors which the Report itself identifies as governing a legally sound consideration of the capacity to pay. The relevant portion of the report in pages 101 to 102 is as under:-

> "The gross revenue of newspaper establishments comprises revenue through advertisements, circulation and other sources relating to newspaper activities and miscellaneous income accrued from investments, interests, rent etc. The gross revenue can be taken as one of the indicators to judge the health of the newspaper establishments. Strictly speaking several discounted factors are required to be taken in to consideration from the gross revenues to make actual assessments of the capacity of the newspaper establishments. But in absence of such parameters, it was decided to rely broadly on gross revenue."

> 57) The petitioners major point of reliance is surfaced on the observation in the report which acknowledges that there are other factors along with gross revenue which need to be considered for determining the capacity to pay of the establishments which the report did not ultimately consider thus it will be appropriate to reject the report.

58) On the other hand, it is the stand of the Union of India that in the absence of availability of such parameters for the assessment of capacity to pay of the newspaper establishments, it is judicially accepted methodology to determine the same on the basis of gross revenue and relied on the observations in Indian Express Newspapers (Pvt.) Ltd. (supra):-

> "16...In view of the amended definition of the "newspaper establishment" under Section 2(d) which came into operation retrospectively from the inception of the Act and the Explanation added to Section 10(4), and in view further of the fact that in clubbing the units of the establishment together, the Board cannot be said to have acted contrary to the law laid down by this Court in Express Newspapers case, the classification of the newspaper establishments on all-India basis for the purpose of fixation of wages is not bad in law. Hence it is not violative of the petitioners' rights under Articles 19(1)(a) and 19(1)(g) of the Constitution.

Financial capacity of an all-India newspaper establishment has to be considered on the basis of the gross revenue and the financial capacity of all the units taken together. Hence, it cannot be said that the petitioner-companies as all-India newspaper establishments are not viable whatever the financial incapacity of their individual units. After amendment of Section 2(d) retrospectively read

with the addition of the Explanation to Section 10(4), the old provisions can no longer be pressed into service to contend against the grouping of the units of the all-India establishments, into one class."

59) After perusing the relevant documents, we are satisfied that comprehensive and detailed study has been carried out by the Wage Board by collecting all the relevant material information for the purpose of the Wage Revision. The recommendations are arrived at after weighing the pros and cons of various methods in the process and principles of the Wage Revision in the modern era. It cannot be held that the wage structure recommended by the Majithia Wage Board is unreasonable.

60) The other issue in regard to which there was elaborate submission is the issue pertaining to recommendations of the Wage Board in regard to news agencies. It is the stand of the petitioners that even though this Court had expressly held that news agencies, including PTI, stood on a separate footing from newspapers inter alia because they did not have any advertisement revenue and, hence, the wages will have to be fixed separately and independently for the news agencies, the impugned Wage Boards failed to take note of the said relevant aspect.

61) Learned counsel for the respondent contended by stating that capacity to pay of news agencies was determined on the basis of the capacity to earn of the news agencies in every Wage Board. It was further submitted that the burden of revised wages was met by the news agencies on every occasion by revising the subscription rate. Thereby submitting that the recommendation vis-à-vis the news agencies was a reasoned one.

62) This Court has a limited jurisdiction to look into this aspect. The interference is allowed to a limited extent to examine the question as to whether the Wage Board has considered the capacity to pay of the News Agencies. It would be inapposite for this Court to question the decision of the specialized board on merits especially when the Board was constituted for this sole purpose.

63) The second point of contention of petitioners is of introducing new concepts such as 'variable pay' in an arbitrary manner. Regarding variable pay recommended by the Majithia Wage Board, learned counsel for the petitioners submitted that there is no basis for providing payment of variable pay and equally there is no basis for providing variable pay as a percentage of basic pay which makes the payment of variable pay open-ended. According to them, the recommendation in this regard is totally unreasonable, irrational and places an extra and unnecessary burden on the newspaper establishments. Consequently, it was asserted that there is complete non-application of mind to insert the so-called variable pay concept (similar to Grade Pay of Sixth Pay Commission) in the Majithia Wage Board's recommendation, even though the basic conditions, objectives and anomalies are absent.

64) However, the stand of the respondents is that there is gradation of variable pay and allowances according to the size of the establishments wherein smaller establishments are required to pay at a lower rate compared to larger establishments. It may be pointed out that in the Manisana Wage Board, which is the predecessor to the Majithia Board, did recommend a similar dispensation though it did not specifically call it variable pay. Manisana Wage Board recommended a certain

percentage of basic pay for the newspaper employees, which is similar to variable pay in the Majithia Wage Board recommendations. While such dispensation was included in the basic pay in the Manisana Wage Board instead of being shown separately, the Majithia Wage Board categorized "basic pay" and "variable pay" separately. Accordingly, the concept of "variable pay" is not newly introduced, though the terminology may have differed in Manisana and Majithia Wage Boards. The Wage Boards have followed well-settled norms while making recommendations about variable pay. Further, the explanation to Section 2(eee) which defines "wages" specifically includes within the term "wages" "new allowances", if any, of any description fixed from time to time. Therefore, the Wage Board was well within its jurisdiction to recommend payment of 'variable pay'.

65) There was also a submission on behalf of the petitioners that Majithia Wage Board has simply copied the recommendations of the Sixth Central Pay Commission, which is not correct. We have carefully scrutinized all the details. It is clear that the recommendations of the Sixth Central Pay Commission have not been blindly imported/relied upon by the Majithia Wage Board. The concept of 'variable pay' contained in the recommendations of the Sixth Central Pay Commission has been incorporated into the Wage Board recommendations only to ensure that the wages of the newspaper employees are at par with those employees working in other Government sectors. Such incorporation was made by the Majithia Wage Board after careful consideration, in order to ensure equitable treatment to employees of newspaper establishments, and it was well within its rights to do so.

66) It is further seen that the Wage Board has recommended grant of 100% neutralization of dearness allowance. Fifth Pay Commission granted the same in 1996. Since then, public sector undertakings, banks and even the private sector are all granting 100% neutralization of dearness allowance. The reference to decisions prior to 1995 is irrelevant.

67) Lastly, the contention of the petitioners that the Wage Boards have not taken into account regional variations in submitting their recommendations is also not correct. It is clear from the report that the Wage Boards have categorized the HRA and Transport Allowance into X, Y and Z category regions, which reflects that the cost on accommodation and transport in different regions in the country was considered. Furthermore, there is gradation of variable pay and allowances according to the size of the establishments wherein smaller establishments are required to pay those at a lower rate compared to larger establishments. Hence, we are satisfied that the Wage Boards followed certain well laid down principles and norms while making recommendations.

68) It is true that the Wage Boards have made some general suggestions for effective implementation of Wage Awards which is given separately in Chapter 21 of the Report of the Majithia Wage Boards of Working Journalists and Non-Journalists Newspaper and News Agency Employees. It is brought to our notice that the Government has not accepted all these suggestions including those pertaining to retirement age, pension, paternity leave, etc. as these are beyond the main objective for which the Wage Boards were constituted. Regarding fixation of pay, assured career development, there have been proposals in the recommendations which are in the manner of providing higher pay scale after completion of certain number of years which cannot be treated as time bound promotion. Similarly, the establishments have also been categorized on the basis of their

turnover, thus, taking into consideration the capacity of various establishments to pay.

69) It is useful to refer Section 12 of the Act which deals with the powers of Central Government to enforce recommendations of the Wage Board. It reads as under:

> "12 - Powers of Central Government to enforce recommendations of the Wage Board (1) As soon as may be, after the receipt of the recommendations of the Board, the Central Government shall make an order in terms of the recommendations or subject to such modifications, if any, as it thinks fit, being modifications which, in the opinion of the Central Government, do not effect important alterations in the character of the recommendations.
>
> (2) Notwithstanding anything contained in sub-section (1), the Central Government may, if it thinks fit,--
>
> (a) make such modifications in the recommendations, not being modifications of the nature referred to in sub-section (1), as it thinks fit:
>
> Provided that before making any such modifications, the Central Government shall cause notice to be given to all persons likely to be affected thereby in such manner as may be prescribed, and shall take into account any representations which they may make in this behalf in writing; or
>
> (b) refer the recommendations or any part thereof to the Board, in which case, the Central Government shall consider its further recommendations and make an order either in terms of the recommendations or with such modifications of the nature referred to in sub-section (1) as it thinks fit.

(3) Every order made by the Central Government under this section shall be published in the Official Gazette together with the recommendations of the Board relating to the order and the order shall come into operation on the date of publication or on such date, whether prospectively or retrospectively, as may be specified in the order."

70) Thus, it is the prerogative of the Central Government to accept or reject the recommendations of the Wage Boards. There is no scope for hearing the parties once again by the Central Government while accepting or modifying the recommendations, except that the modifications are of such nature which alter the character of the recommendations and such modification is likely to affect the parties. The mere fact that in the present case, the Government has not accepted a few recommendations will not automatically affect the validity of the entire report. Further, the Government has not accepted all those suggestions including those pertaining to retirement age, etc. as these are beyond the mandate for which the Wage Boards were constituted. Regarding fixation of pay, assured career development, there have been proposals in the recommendations which are in the manner of providing higher pay scale after completion of certain number of years which cannot be treated as time bound promotion.

71) Accordingly, we hold that the recommendations of the Wage Boards are valid in law, based on genuine and acceptable considerations and there is no valid ground for interference under Article 32 of the Constitution of India.

72) Consequently, all the writ petitions are dismissed with no order as to costs.

73) In view of our conclusion and dismissal of all the writ petitions, the wages as revised/determined shall be payable from 11.11.2011 when the Government of India notified the recommendations of the Majithia Wage Boards. All the arrears up to March, 2014 shall be paid to all eligible persons in four equal instalments within a period of one year from today and continue to pay the revised wages from April, 2014 onwards.

74) In view of the disposal of the writ petitions, the contempt petition is closed.

.....CJI.

(P. SATHASIVAM) .....J.

(RANJAN GOGOI) .....J.

(SHIVA KIRTI SINGH) NEW DELHI;

FEBRUARY 07, 2014.
