

ALL INDIA LAW DIGEST

2022

(STATUTORY DIARY)

BOOK REVIEWS/JOURNAL

IGNITING NEW HOPES FOR WORKING CLASS UNDER THE CODE ON WAGES, 2019

By

—**S. RAJENDER**, M.A., LL.M.,
Research Scholar, Department of Law,
Osmania University, Hyderabad-500 007.
Email: rajendersamala@gmail.com

In a country like ours, with mixed economy traits blessed with 92 percent of the workforce in unorganized sector, experiencing explosion of unemployment in all categories, the workmen may be willing to offer to serve even on starvation wages. Wage policy of the nation conditions the living standards of the population of working class, influences their consumption patterns impacting the fiscal approaches of the country¹. Despite economic growth in the past two decades, low pay and wage disparities are still high². There exists abundant clarity that wage is the price of labour, as a factor of production and the same is not a commodity, as enunciated by the Philadelphia Declaration of the

International Labour Organization of May, 1944³. Hence there always existed the dire need to protect the labour by prescribing and enforcing the wage rates. This was previously attempted through enactment of the Minimum Wages Act, 1948, without much success, is now being endeavoured by igniting new hopes and aspirations, through the Code on Wages, 2019.

The Minimum Wages Act, 1948 was legislated in response to several of the historical and legislative developments of pre-independence origin. The fact compass reveals that the Royal Commission on Labour (1929), among other recommendations, had stressed the need for creation of a statutory machinery for fixation of minimum wages, as required by the Minimum Wages Fixing Machinery Convention, 1928 (No.26), adopted by the International Labour Organization, of which India happened to be the founding

1. See Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector prepared by the National Commission for Enterprises in the Unorganised Sector, GoI, New Delhi, 2007.
2. See Report of the Expert Committee on Determining the Methodology for Fixing the National Minimum Wages, Ministry of Labour and Employment, Government of India. January, 2019.

3. See Para-I of the declaration made on 10.5.1944 by the General Conference of ILO at Philadelphia.

Member. Accordingly, in 1933, a bill on the lines of the exhaustive recommendations of the Commission, including those on minimum wages was introduced. The resultant effect was the enactment of the Payment of Wages Act, 1936. Then, there was the Industrial Truce Resolution (1947) in response to the industrial unrest. This was followed by the Industrial Policy Resolution of 1948, which had emphasized the need for (i) fixing statutory minimum wages in sweated industries; and (ii) to promote fair wage agreements in the more organized industries. The aspect of creating a statutory wage fixing machinery was discussed at the third meeting of the Standing Labour Committee of the Tripartite Indian Labour Conference in 1943 and at the Labour Conferences, which had approved the proposal in 1945. This had consequenced into introduction of the Minimum Wages Bill in the Central Legislative Assembly 1946 and its subsequent passage as the Minimum Wages Act, 1948. The subject of Labour is in the Concurrent List of Schedule VII of the Constitution. Hence this Act is accompanied by its Central Rules of 1950 and the Rules of respective States, to operate in both the spheres.

The passage of the Minimum Wages Act was then hailed as the revolutionary step in the legislative history of India. The Statement of objects and reasons appended to the Bill asserted that the main objective was to secure statutory fixation of minimum wages, for the workers who were poorly organized or not organized at all, by which their capacity to bargain with the employers for payment of reasonable wage was conspicuously weak and they were exposed to the big chance of exploitation. The Supreme Court in *Edward Mills Co. Ltd., Beawar v. State of Ajmer*,⁴ followed by the case of *Y.A. Mamarde v. Authority under Minimum Wages Act*⁵ had declared that the

object of the statute was to provide for fixing the minimum rates of wages for workers in certain employments, who were ignorant, less organised and less privileged in the society, which the employers were bound to pay. It further held that this anxiety on the part of the society for improving the general economic condition of some of its less favoured members was in supersession of the old principle of absolute freedom of 'contract and the doctrine of laissez faire and in recognition of the new principles of social welfare and common good. In *Crown Aluminium Works v. Their Workmen*⁶ the Apex Court held that the policy of the Act was to prevent employment of low paid labour in the general interest of the society. Hence in prescribing the minimum wage rates, the capacity of the employer need not be considered as the State assumes that "every employer must pay the minimum wages for the employees' labour". These views were reiterated in *Haryana Unrecognized Schools v. State of Haryana*⁷.

To give effect to the above objects, the Minimum Wages Act⁸ was shaped. Its salient features for the present purpose are thus: Under Section 3, the Appropriate Government is bound to fix and revise the minimum rates of wages in the Schedules Employments (a) minimum time rate of wages; (b) a minimum piece rate; (c) a guaranteed time rate; (d) an overtime rate, for different occupations, localities or classes of work and for adults, adolescents, children and apprentices. The Section 4 stipulates that the minimum rates of wages may consist of (i) a basic rate of wages and a cost of living allowance; or (ii) basic wages without cost of living allowance; a (iii) an all inclusive rate. As per the procedure for fixing the

4. AIR 1955 SC 25.

5. AIR 1972 SC 1721.

6. AIR 1958 SC 30.

7. (1996) 4 SCC 225.

8. See the text of the Minimum Wages Act, 1948 r/w the Minimum Wages (Central) Rules, 1950.

revising minimum wages under Section 5 of the Act, the appropriate Government is empowered to appoint committees to determine and advise the rates of wages or to directly notify the draft of the rates of wages followed by the final notification.

The Minimum Wages Act did not define the term “minimum wage”. The Supreme Court, in *Hindustan Times Ltd. v. Their Workmen*⁹ while holding the process of wage fixation as a delicate one, has observed that both the demands of social justice and the claims of the national economy of constant progress, call for attempts to secure to workmen a fair share of the national income which they help to produce. It also cautioned to see that the attempt at a fair distribution does not tend to dry up the source of the national income itself. As such the point of wage determination had always been contentious since 1930's. According to the First National Commission on Labour¹⁰, wage determination involves arriving at a wage structure that (i) permits a fair remuneration to labour; (ii) permits a fair return to capital; and (iii) strengthens efficiency. The Fair Wages Committee (1949) has evolved the concepts of (a) The Statutory Minimum Wage; (b) The Fair Wage; and (c) The Living Wage. Considering these, the Indian Labour Conference at its 15th session in July, 1957, adopted a “Need-based” formula, to meet the needs of a lowest paid worker. It comprised of five items: (i) the workers family taken as three consumption units; (ii) Minimum food requirement at 2700 calories per day per unit; (iii) Clothing of 72 yards per annum; (iv) House rent at the rate adopted for Industrial House Scheme; and (v) Fuel, lighting @ 20% of total minimum wage. This was adopted by all the wage fixing authorities in the country.

9. AIR 1963 SC 1332.

10. See Report of the First National Commission on Labour, Ministry of Labour and Employment and Rehabilitation, GoI, New Delhi, 1969.

Later, the Supreme Court in *Workmen v. Reptakos Brett & Co. Ltd.*¹¹, has added the sixth dimension: “(vi). Children education, medical requirement, minimum recreation including festivals/ceremonies and provision for old age, marriages etc., should further constitute 25% of the total minimum wage.” The Court had further laid that all these six components constitute nothing more than a minimum wage at subsistence level. It was noticed by the Second National Commission on Labour (2002) that the wage determination in the Central and State spheres did not strictly adopt all the six components. Hence there is a dire need to give legislative backing to the same. It is pertinent to notice that Article 43 directs the Government to strive to obtain a Living Wage for the toiling masses.

Once the minimum wages are finally notified, the employers are legally bound to pay the same to the employees engaged. In *Ministry of Labour and Rehabilitation and another v. Tiffin's Barytes Asbestos & Paints Ltd.*¹², it was held that the notification fixing minimum wages cannot be lightly interfered by the High Courts. In *Crown Aluminium*¹³ case the Court held that the wages of a workman can never be allowed to fall below the subsistence level; and that “no industry can have the right to exist if it cannot be maintained except by bringing the wages below that level.” This principle was also reiterated in *Kamani Metals & Alloys Ltd. v. Their Workmen*¹⁴ and other cases. While the denial of payment of minimum wages attracts penal action, such an act is also declared by the Supreme Court to be the violation of Fundamental Rights under Articles 23 and 21¹⁵. This being the law

11. (1992) 1 SCC 290.

12. (1985) II LJ 412 (SC).

13. Ibid n.vi.

14. AIR 1967 SC 1175.

15. See *People's Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473.

declared by the Supreme Court, it is binding on all the civil and judicial authorities in the country, under Articles 141 and 144 of the Constitution.

While the matters stood as above, the Second National Commission on Labour¹⁶ has addressed various issues on “Wages” and for effective labour administration and recommended to provide legislative backup for the simplification of laws and procedures through uniform definitions of “appropriate Government”, ‘workmen’, ‘employer, *etc.*, enabling provisions to cover all employments in the unorganised sector under the Minimum Wages Act, speedy recovery of the dues payable to workers, empowerment of the appropriate Government to exempt from the provisions of the laws in deserving cases, ensuring that the employment of contract labour is restricted for areas beyond these of core competence, deterrent punishment to make the cost of violation dearer than the cost of implementation clubbing of the existing set of labour laws into five or more groups, *etc.* Though there was no action on this for about 18 years, the present Central Government has brought out four labour codes: (i) The Code on Wages, 2019; (ii) The Occupational Safety, Health and Working Conditions Code, 2020; (iii) The Industrial Relations Code, 2020; and (iv) The Code on Social Security, 2020. These codes subsume 29 Central labour laws.

The Code on Wages, 2019 was assented by the President on 8.8.2019¹⁷. It repealed the Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Payment of Bonus Act, 1965 and the Equal Remuneration Act, 1976. The Chapter-II

exclusively deals with Minimum Wages. The Central Advisory Board of Code on Wages, 2019 was finally notified on 1st March, 2021¹⁸. The Draft Code on Wages (Central) Rules, 2020 was published on 7.7.2020¹⁹ (The Final Notification is still awaited). The Central Government has not yet notified the Appointed Day, as required by Section 1(3) of the Code. Hence the Code is not operational as on date.

While counting on the merits of the Code, it is to be pointed that it evokes common application of the provisions of payment of minimum wages regardless of the sector and wage ceiling they were previously covered. This would ensure “Right to Sustenance” for every worker and intends to increase the legislative protection of minimum wage from existing about 40% to 100% workforce. Introduction of statutory Floor Wage to be computed based on minimum living conditions, will extend qualitative living conditions across the country to about 50 crore workers. It is envisaged that the states to notify payment of wages to the workers through digital mode.

A close scrutiny of the Code on Wages, reveals that it has simplified and replaced the definition of ‘wage’ found in 12 central labour enactment. At present, different States have multiple minimum wages. Through this Code, this methodology to fix the minimum wages has been simplified and rationalised by doing away with type of employment as one of the criteria for fixation of minimum wage. The minimum wage fixation would be based on region-cum-skill criteria. Many changes have been introduced in the inspection regimes including web

16. See the Report of the Second National Commission on Labour, Ministry of Labour and Employment, GoI, New Delhi, 2002.

17. See Gazette of India, Extraordinary No.48 dated 8.8.2019 of the Ministry of Law and Justice, GoI, New Delhi.

18. See Gazette of India, Extraordinary, No.143(E) dated 1.3.2021 of the Ministry of Labour & Employment, GoI, New Delhi.

19. See Gazette of India, Extraordinary No.329 dated 7.7.2020 of the Ministry of Labour & Employment, GoI, New Delhi.

based randomised computerised inspection scheme, jurisdiction-free inspections, calling of information electronically for inspection, composition of fines *etc.* All these changes will be conducive for enforcement of labour laws with transparency and accountability. There were instances that due to smaller limitation period, the claims of the workers could not be raised. To protect the interest of the workers, the limitation period has been raised to 3 years and made uniform for filing claims for minimum wages, bonus, equal remuneration *etc.*, as against existing varying period between 6 months to 2 years²⁰.

As per the aforesaid Draft Rules under the Code on Wages, 2019, the Rule 3 provides, the manner of calculating the minimum rates of wages. In this, the formula as fixed by the Supreme Court in the *Workmen v. Reptakos Brett & Co. Ltd.*, with all the six components have been specifically. With this, the said formula got the force of the legislation. Now the National Floor Level Wage will be decided by the Central Government based on this bench mark. It follows that no State can fix the rate of minimum wage below the National Floor Level. This is a great progressive and effective step to protect the Fundamental Right of livelihood. The Rule 4 sets the norms for fixation of minimum wages, wherein the Central Government will the concerned geographical area into three categories, *i.e.*, metropolitan area, non-metropolitan area and the rural area. There shall be a Technical Committee to advise the Central Government on the skill categorization. The Rule 5 prescribes notification of the points of cost of living index on every 1st April and 1st October. Further, the Rules have extensively protected the existing rights of the workers in regard to hours that constitute a normal working

day; weekly day of rest; employment of women in night shifts; engagement of workers on emergency services or preparatory works; and the wage period. The Chapter-III of the Code specially deals with the manner of fixing the floor wage and the modality for the Central Government to have consultation with the States, while fixing the floor rates of wages.

The other remarkable aspect of the Code is that it covers all the employees in all employments, without it being a Scheduled Employment, as was the restrictive aspect of the Minimum Wages Act, 1948. The above referred Press Release describes the Code on Wages as a historical step for ensuring statutory protection for minimum wage and timely payment of wage to 50 crores workers in the country, besides promoting ease of living and ease of doing business. Though this appears to the worker class as a reassuring and promising, there are certain aspects of this law which go to dilute the very machinery of Inspectorate. In the place of Inspector under the Minimum Wages Act with sweeping powers to secure compliance with the provisions of the Act, now there will be “Facilitator-cum-Inspector”, who lacks all the independence of working and discretionary powers, by which he will do the tasks of a “Facilitator” for the employers than enforce the law resolutely. This is contrary to the very concept of labour Inspection and is in violation of the ILO Labour Inspection Convention, 1947 (No.81), ratified by India, decades back. As at this initial times, it remains to be seen as to how the rule of law will work out to protect the above Fundamental Rights of Livelihood and Equality of those in the lowest rung of the society, kept their fingers crossed. It is opportune to be reminded of the anxiety of the Constitution Bench of the Supreme Court expressed in *People's Union for Democratic Rights v. Union of India*²¹

20. See the Press Release dated 30.7.2019 of the Press Information Bureau, New Delhi.

21. AIR 1982 SC 1473.

in realize to the lowest of the workers are treated get treated:

“... The poor too have civil and political rights and the Rule of law is meant for them also, though today it exists only on paper and not in reality. If the sugar barons and the alcohol kings have the

Fundamental Rights to carry on their business and to fatten their purses by exploiting the consuming public, certainly the “chamaras” to belonging to the lowest strata of society have Fundamental Right to earn on honest living through their sweat and toil...”

THE CONCEPT OF FAIR TRIAL

By

—M. BABU

Senior Civil Judge,
Rajam, Srikakulam District, A.P.

*“Not only must justice be done but it must also be seen to be done” — Lord Hewart CJ,
R v. Sussex Justices.*

Introduction

The accused has a right to fair trial under Article 21 of the Constitution of India. This right includes a right to be considered as innocent until proven guilty. The right to a fair trial is a norm of international humans rights which designed to protect individuals from the unlawful and arbitrary curtailment or deprivation of other basic rights and freedom. Fair trial is an open trial by impartial Judge in which all parties are treated equally. It is guaranteed under Article 14 of the Constitution of India, which provides every one equal before law. The right to fair trial is applicable to both the determination of an individuals rights and duties in a suit at law and either in respect to the determination of any criminal charge against him or her. Fair trial is an integral part of Article 21 of the Constitution of India and it rests on the basic principle of presumption of innocence. An accused has got several pre-trial and post-trial rights to have knowledge regarding what accusation in the Code of Criminal Procedure, 1908. Pre-trial rights include the right to have knowledge regarding what one has been accusation of, right to engage

a Lawyer and to have an opportunity to defend himself. The right of fair trial has been defined in numerous international instruments. The major features of fair criminal trial are preserved in universal Declaration of Human Rights, 1948.

Fair trial

There can be no analytical, all-comprehensive or exhaustive definition of the concept of a fair trial and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object of mind, whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. Fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and an atmosphere of judicial calm.

The concept of fair trial is based on the basic ideology that State and its agencies have a duty to bring the offenders before law. In their battle against crime and delinquency, State and its officers cannot on any account forsake the decency of state behaviour and have recourse to extra-legal methods for the sake of detection of crime