HIGH COURT OF GUJARAT *(D.B.)*

MANIBHAI SADARAM PATEL
V/S
STATE OF GUJARAT

Date of Decision: 19 March 1971

Citation: 1971 LawSuit(Guj) 24

Hon'ble Judges: B J Divan, M U Shah

Eq. Citations: 1972 GLR 66

Case Type: Special Civil Application

Case No: 1490 of 1969

Subject: Labour and Industrial

Head Note:

MINIMUM WAGE explained - Criteria of a minimum wage - Not merely for the bare substance of life but for the preservation of the efficiency of the worker - Some measure must provide education medical requirements and amenities - Bare subsistence. Objective analysis not necessary - Different kind of work found in agricultural labour - In the absence of job analysis impugned notification was not vitiated - Wages for permanent workers of an annual basis on the salutary principle - Male workers are likely to be employed for heavier work - No discrimination or the ground of sex - Equal pay for equal work - committees approach justified. tendency to lead to exploitation of agricultural worker should be discouraged - Payment of wages should be in case - In the light of actual working revision of Zones - Different rates of minimum wages for different Zones - Depending upon the circumstances prevailing in each Zone, in some Zones characteristics might be predominant or some factors might be emphasized in

fixing the minimum wages.

A minimum wage must provide not merely for the bare subsistence of life but for the preservation of the efficiency of the worker and so it must also provide for some measure of education medical requirements and amenities. Sometimes the minimum wage is described as a bare wage structure which is subsistence plus or fair wage but too much emphasis on the adjective bare in relation to the minimum wage is apt to lead to the erroneous assumption that the minimum wage is a wage which enables the worker to cover his bare physical needs and keep himself just above starvation. That clearly is not intended by the concept of minimum wage. On the other band since the capacity of the employer to pay is treated as irrelevant it is but right that no addition should be made to the components of the minimum wage which would take the minimum wage near the lower level of the fair wage but the contents of this concept must ensure for the employee not only his sustenance and that of his family but must also preserve his efficiency as a worker. (Para 10). Minimum Wages Act (XI of 1948)-Secs. 3(3) 5 11 Committee appointed under sec. 5(1)-Whether objective analysis necessary-Principles fixing minimum wages-In agricultural labour same employee found doing Different kinds of work-No justification for insisting on job analysis- As men were likely to be employed for heavier work daily wages fixed on that basis-Wages of permanent worker fixed on natural basis that no discrimination regarding men and women should be made-Approach of committee justified-Recommendations to discourage payment of wages in kind-Meant to do away with exploitation of the weakest section of citizens-Payment of wages therefore to agricultural labourers in cash rightly recommended-Revision of zones in the light of actual working-Committee cannot be said to have taken into consideration irrelevant factors or ignored relevant factors. It is true that under sec. 3(3) of the Minimum Wages Act in fixing or revising minimum rates of wages the manner of calculating wages for different classes of work in the same scheduled employment may be fixed and this fixation under sec. 3(3)(a)(ii) would justify in an appropriate case a job analysis which would indicate different classes of work in the same scheduled employment. But in this inquiry regarding agricultural labour the Committee found that the same employee would be able to attend to different kinds of work as and when the necessity arises and mostly it is unskilled labour, which is required to attend to all these categories of work in the field. Under these circumstances it cannot be said that the Government was acting on the committees recommendations in the absence of job analysis and that the impugned notification was vitiated. (Para 13). The Committee appointed under

sec. 5(1)(a) of the Minimum Wages Act has proceeded in fixing the wages for permanent workers of an annual basis on the salutary principle that men and women should not be discriminated and there should be equal pay for equal work and the committee has rightly justified the difference between daily wages for men and women on the footing that male workers are likely to be employed for heavier work as compared to women. The Committee has thus struck a balance and that too only on the basis of practical approach between two equally important principles viz. that there should be no discrimination on the ground of sex and at the same time if members of a particular sex are likely to be employed on heavier duties at least as regards daily wages there should be a higher wage paid for such heavier work. (Para 14). The Committee came to the conclusion that payment of wages in kind as well as payment of perquisites tends to lead to exploitation of agricultural labourers and moreover tends to perpetuate the system of bondage underpayment and exploitation. This piece of legislation is meant to do away with sweated labour and exploitation of the weakest section of our citizens. Hence it is but proper that anything, which has a tendency to lead to exploitation of agricultural workers, should be discouraged and the payment of wages in kind should be over and above the cash components of the wage. (Para 18). The Legislature in sub-sec. (1) Of sec. 11 of the Minimum Wages Act has emphasized that payment of minimum wages in cash is the rule and if an appropriate Notification has been issued under sub-sec. (2) then only the payment of minimum wages partly in kind can be authorised by the State Government; and if such authorization is given then only the cash value of such wages being paid in kind has to be calculated in the prescribed manner and credit has to be given in payment of the annual wages by the payment in kind being converted into cash at such rates as may be prescribed by the Government. But before the minimum wages can be paid partly in kind certain requirements of sub-sec. (2) of sec. 11 must be met. These requirements are (1) there must be custom to pay the wages to agricultural labourers partly in kind; and (2) the appropriate Government must be of the opinion that it is necessary in the circumstances of the case to authorize payment of minimum wages partly in kind; and being of such opinion the Government must issue a notification authorising the payment of minimum wages partly in kind. The report of the Committee proceeds on the correct lines when it deals with this aspect of payment of wages in kind to agricultural labourers. Therefore the Committee has correctly approached the problem and has fixed the minimum rates of wages for payment being made in

cash only. It is possible that in a particular district or in a particular zone because of the prevailing customary payments the workers may be unwilling to work for any employer unless some wages are paid to them in kind but what the Act requires is minimum wages and not the actual wages or the payment being made in fact over and above the level of the minimum wages (Para 19). When wages are to be revised subsequently the zones might be readjusted or in the light of the actual working and in the light of the new facts emerging as a result of new irrigation facilities and new crop pattern zones might have to be readjusted in future; but the fact that such readjustment might be required later on is no ground for stating that the zones were not arranged on the basis of relevant considerations or that zones were fixed on the basis of irrelevant considerations. Bearing in mind the objects, which the Minimum Wages Act has to subserve, and the policy behind the Act it cannot be said that the Committee took into consideration irrelevant factors or ignored relevant factors. (Para 20). Bijay Cotton mills Ltd. v. State of Ajmer U. Unichoyi v. State of Kerala Edward Mills Co. Ltd. Beawar v. State of Ajmer Chandra Bhavan Boarding & Lodging Bangalore v. State of Mysore Digvijaysinhji Salt Works Pvt. Ltd. v. State of Gujarat Crown Aluminum works v. Their Workmen referred to.

Acts Referred:
Minimum Wages Act, 1948 Sec 5(1)(a), Sec 3(3), Sec 11(1), Sec 11(2)

Final Decision: Petition dismissed

Advocates: K S Nanavati, I M Nanavati, G M Vidyarthi, J S Patel, H Desai & Co

Reference Cases:
Cases Cited in (+): **1**
Cases Referred in (+): **7**

Judgement Text:-

Divan, J

[1] The petitioners herein who are residents of three villages, Shera, Mangrol and Malanpor of Hansot Mahal in Broach District, have challenged the validity of the provisions of the Minimum Wages Act, 1948, (hereinafter referred to as the Act) as also

the validity of the Gujarat Minimum Wages Rules, 1961 (hereinafter referred to as the Rules) and particularly rules 25, 26, 26A and 26B on the ground that they are ultra vires Articles 14, 19(1)(f) and (g) of the Constitution. They have also challenged the Notification issued by the State of Gujarat on August 19, 1964, appointing an Advisory Committee under sec. 5(1)(a) of the Act for investigating and advising the Government in the matter of fixation and revision of minimum rates of wages for those employed in agricultural occupations all over the State of Gujarat. They have challenged also the Notification, dated December 8, 1967, issued by the Government of Gujarat, fixing the minimum rates of wages as shown in columns 5 and 6 of the Schedule in respect of the zones shown in column 4 of the said Schedule. The petitioners have also prayed that the State of Gujarat and the Government Labour Officer and the Minimum Wages Inspector, Baroda, who are the respondents herein be restrained permanently from enforcing the provisions of the Minimum Wages Act and the rules made thereunder against the petitioners.

[2] In order to appreciate the contentions which have been urged in this petition before us, it is necessary to give a few dates, and refer to some of the provisions of the relevant statute. In 1948, the Dominion Legislature passed the Minimum Wages Act, 1948, which was an Act to provide for fixing the minimum rates of wages in certain employments; and the preamble of the Act stated that it was being enacted as it was expedient to provide minimum rates of wages in certain employments. Under sec. 3, the appropriate Government was empowered in the manner provided in the Act to fix the minimum rates of wages payable to employees employed in an employment specified in Part II of the Schedule at the commencement of the Act. The appropriate Government in this connection is the State Government. Part II of the Schedule to the Act mentions:

> "Employment in agriculture, that is to say, in any form of farming including the cultivation and ullage of the soil, dairy farming, the production, cultivation growing and harvesting of any agricultural or horticultural commodity, the raising of livestock, bees or poultry, and practice performed by a farmer or on a farm as incidental to in conjunction with farm operations (including any forestry or timbering operations and the preparation for market and delivery to storage or to market or to carriage for transportation to market or farm produce.)"

The procedure for fixing and revising the minimum wages has been laid

down and under sub-sec. (1) of sec. 5, in fixing minimum rates of wages in respect of any scheduled employment for the first time under this Act or in revising minimum rates of wages so fixed, the appropriate Government shall either (a) appoint a Committee to hold enquiries and advise it in respect of such fixation or revision, as the case may be; or (b) by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected thereby and specify a date, not less than two months from the date of the notification, on which the proposals will be taken into consideration. Acting under the powers conferred upon it by sec. 5(1)(a) of the Act, the Government of Gujarat appointed an Advisory Committee by a Notification, dated August 19, 1964. A copy of the Notification is annexed as part of Annexure B to the petition. The Notification shows that the Chairman of the Committee was Prof. M. B. Desai of the Department of Agricultural Economics, Faculty of Arts, M. S. University of Baroda, Baroda; two representatives of Landlords were members of the Committee and two representatives of Labourers were also members of the Committee. An Assistant Labour Commissioner was to perform the duties of the Secretary to this Committee in addition to his own duties. Subsequently the composition of the Committee had to be changed as one member of the Committee resigned and subsequently one R. L. Mehta, Lecturer in Economics in the M. S. University of Baroda, was appointed an independent member of the Advisory Committee. The Committee submitted its report on October 31, 1966; and thereafter the Government of Gujarat issued the impugned Notification on December 8, 1967,' under sec. 5(2) of the Act, after considering the report of the Committee and by this Notification it fixed the minimum rates of wages in respect of this particular scheduled employment regarding agriculture, in all areas if the State of Gujarat other than Umbergaon Taluka of Bulsar District and Kutch District. It may be pointed out that as regards Umbergaon Taluka and Kutch District the Notification revised the rates of minimum wages which were already in force in Umbergaon Taluka and Kutch District. It appears that the Government of Bombay had fixed the minimum rates of wages for agricultural labourers in Umbergaon Taluka by its Notification, dated December, 28, 1963, read with Notification, dated April 14, 1966; and for the Kutch District, the minimum wages for agricultural labourers had been fixed by the Notification of the Government of Saurashtra (Kutch) by Notification, dated February 26, 1951. Thereafter on-November 4, 1969, the present petition has been filed by the

petitioners. We will deal with the averments in the petition and with the replies thereto in the affidavit-in-reply when we coins to deal with the individual submissions made on behalf of the petitioners at the hearing before us.

[3] We may mention that so far as the challenge to the vires of the sections of the Act is concerned, the said challenge is now covered by various decisions of the Supreme Court. We will mention only a few of them at this stage.

[4] In Bijay Cotton Mill Ltd. v. State of Ajmer, A.I.R. 1955 S.C. 33, the Supreme Court held that the material provisions of the Minimum Wages Act are not illegal and ultra vires as the restrictions imposed are reasonable and being imposed in the interest of the general public are protected by the terms of clause (6) of Art. 19 of the Constitution.

[5] In U. Unichoyi v. State of Kerala, A.I.R. 1962 S.C. 12, the Supreme Court held that after the decisions of the Supreme Court in Edward Mills Co. Ltd., Beawar v. State of Ajmer, A.I.R. 1955 S.C. 25, and Bijay Cotton Mills (supra) the validity of the Act was firmly established and there can no longer be any doubt that in fixing the minimum wage rates as contemplated by the Act the hardship caused to individual employers or their inability to meet the burden has no relevance.

[6] In Chandra Bhavan Boarding and Lodging, Bangalore, v. The State of Mysore, 1969(3) S.C.C. 84, the Supreme Court examined the provisions of the Minimum Wages Act with reference to the challenge under Art. 14 of the Constitution, particularly as regards the power conferred upon the appropriate Government under sec. 5(1) of the Act and held that the provisions were valid.

[7] In view of these different decisions of the Supreme Court and also in view of other decisions, Mr. Nanavati, for the petitioners, did not press the challenge to the validity of the provisions of the Act and very fairly stated that the challenge to the validity of the different sections of the Act was covered by one or the other decisions on the Act. He also stated at the Bar that the petitioners were not pressing the challenge to the vires of the different Rules of the Gujarat Minimum Wages Rules, 1961, and particularly Rules 25, 26, 26A and 26B of the Rules. Those Rules have been framed by the Government of Gujarat under the rule-making power conferred by sec. 30 of the Act.

[8] We may point out that the question as to what is meant by "an independent person"

occurring in sec. 9 of the Act came up for consideration before a Division Bench of this Court, of which I was a member, in Digvijaysinhji Salt Works Pvt. Ltd. v. State of Gujarat, A.I.R. 1971 Guj. 14; and the Division Bench held that on interpretation of the section, it is clear that there should be equal number of members representing employers and employees and further independent persons not exceeding l/3rd of the total number of members of the Committee are also to be appointed and the Chairman of the Committee has to be one of such independent persons; and it was held that an independent person in this context means a person who is neither an employer nor an employee in the scheduled employment and it is in that sense that the words "independent person" have been used by the Legislature under sec. 9; and the Division Bench arrived at that conclusion on interpretation of the section as well as in the light of the different decisions which were considered in the course of that judgment. Under these circumstances, Mr. Nanavati, for the petitioners only pressed his challenge to the Notification, dated December 8, 1967, Ex. C to the petition. Mr. Nanavati's submissions in regard to this challenge to the Notification are as follows :-

(1) That the said Notification violates Art. 14 of the Constitution inasmuch as the State has grouped together in different zones lands which are dissimilar and which require separate treatment. That the State has failed to treat lands similarly situated in the same manner and thereby violated Art. 14.

(2) That the said Notification is bad because considerations which are relevant for the fixation of minimum wages are ignored and irrelevant consider ations are made the basis of the fixation of minimum wages.

(3) That no opportunity of being heard was given to the petitioners before the rates of minimum wages were fixed.

(4) That no job analysis has been made before the fixation of minimum rates of wages.

(5) That different yearly salaries have not been fixed for males and females though in fixing the daily rates of wages a distinction has been made for wage fixation for men and women; and

(6) That while fixing the minimum rates of wages, the Government has not taken into consideration the cash value of the wages in kind in the shape of grain, perquisites like tea etc. and other amenities being given to the agri cultural labourers in Hansot Mahal; and thereby the provisions of sec. 11 of the Act have been entirely overlooked by the Government.

[9] In our opinion, before proceeding to deal with these different submissions of Mr. Nanavati, it will be proper to set out certain passages from the decisions of the Supreme Court on the main object in enacting the different provisions of this Act.

[10] In U. Unichoyi v. State of Kerala (supra), Gajendragadkar J. (as he then was) delivering the judgment of the Supreme Court observed in para 12 of the judgment at page 17 of the report :-

"what the Act purports to achieve is to prevent exploitation of labour and for that purpose authorises the appropriate Government to take steps to prescribe minimum rates of wages in the scheduled industries. In an under-developed country which faces the problem of unemployment on a very large scale it is not unlikely that labour may offer to work even on starvation wages. The policy of the Act is to prevent the employment of such sweated labour in the interest of general public and so in prescribing the minimum wage rates the capacity of the employer need not be considered." What is being prescribed is minimum wage rates which a welfare state assumes every employer must pay before he employs labour."

Gajendragadkar J. in the said judgment pointed out the distinction between "minimum wage" and "fair wage" and he also set out in para 13 at page 17 of the report the components of a minimum wage in the context of the Act. The Supreme Court approved of the criteria laid down by the Committee on Fair Wages. The criteria laid down by the Committee which were approved by the Supreme Court were that a minimum wage must provide not merely for the bare subsistence of life but for the preservation of the efficiency of the worker and so it must also provide for some measure of education, medical requirements and amenities. The concept about the components of the minimum wage thus enunciated by the Committee has been generally accepted by the industrial adjudication in the country"!, Sometimes the

minimum wage is described as a bare wage structure which is 'subsistence plus' or fair wage, but too much emphasis on the adjective "bare" in relation to the minimum wage is apt to lead to the erroneous assumption that the maintenance wage is a wage which enables the worker to cover his bare physical needs and keep himself just above starvation. That clearly is not intended by the concept of minimum wage. On the other hand since the capacity of the employer to pay is treated as irrelevant. It is but right that no addition should be made to the component of the minimum wage which would take the minimum wage near the lower level of the fair wage, but the contents of this concept must ensure for the employee not only his sustenance and that of his family but must also preserve his efficiency as a worker. The Act contemplates that minimum wage rates should be fixed in the scheduled industries with the dual object of providing sustenance and maintenance of the worker and his family and preserving his efficiency as a worker.

[11] In Crown Aluminium works v. Their Workmen, A. I. R. 1958 S.C. 30, the Supreme Court while dealing with the problem of industrial adjudication dealt also incidentally with the Minimum Wages Act, which it described as a piece of labour welfare legislation. The judgment of the Supreme Court was delivered by Gajendragadkar J. (as he then was) and in para 9 at page 33 of the report, the passage from a book of Sir Frank Tillyard about the provision in the English Common Law was cited and then it has been observed :-

"In India as well as in England and other democratic welfare states great inroad has been made on this view of the Common Law by labour welfare legislation such as the Minimum Wages Act and the Industrial Disputes Act. With the emergence of the concept of a welfare state, collective bargaining between trade unions and capital has come into its own and has received statutory recognition; the State is no longer content to play the part of a passive onlooker in an industrial dispute. The old principle of the absolute freedom of contract and the doctrine of lassies fair have yielded place to new principles of social welfare and common good. Labour naturally looks upon the constitution of wage structures as affording "a bulwark against the dangers of a depression, safeguard against unfair methods of competition between employers and a guaranty of wages necessary for the minimum

requirements of employees."

It was further pointed out :-

"There can be no doubt that in fixing wage structures in different industries, industrial adjudication attempts, gradually and by stages though it may be, to attain the principal objective of a welfare state, to secure "to all citizens justice social and economic". To the attainment of this ideal the Indian Constitution has given place of pride and that is the basis of the new guiding principles of social welfare and common good."

[12] To the same effect are the observations of the Supreme Court in Chandra Bhavan Boarding & Lodging case (supra); and in para 13 of the judgment, Hegde J. delivering the judgment of the Court pointed out :-"

"Freedom of trade does not mean freedom to exploit. The provisions of the Constitution are not reacted as the barriers to progress. They provide a plan for orderly progress towards the social order contemplated by the preamble to the Constitution. They do not permit any kind of slavery, social, economic or political. It is a fallacy to think that under our Constitution there are only rights and no duties. While rights conferred under Part III are fundamental, the directives given under Part IV are fundamental in the governance of the country. We see no conflict on the whole between the provisions contained in Part III and Part IV. They are complimentary and supplementary to each other. The provisions of Part IV enable the Legislatures and the Government to impose various duties on the citizens. The provisions therein are deliberately made elastic because the duties to be imposed on the citizens depend on the extent to which the directive principles are implemented. The mandate of the Constitution is to build a welfare society in which justice, social, economical and political, shall inform all institutions of our national life. The hopes and aspirations aroused by the Constitution will be belied if the minimum needs of the lowest of our citizens are not met."

It is in the light of the above observations that we will consider the different submissions made on behalf of the petitioners. Before taking up the other

submissions, we will deal with those submissions of Mr. Nanavati, which can be disposed of very shortly. His submission that no opportunity of being heard was given to the petitioners before the rates of minimum wages were fixed is supported by the necessary averment in the petition. But in para 8 of the affidavit-in-reply of M. B. Bakshi, Section Officer, Education & Labour Department, being the affidavit, dated July 14, 1970, it has been pointed out :-

"I say that the Advisory Committee had given paid advertisements in the newspapers inviting the individuals and the representatives of the institutions interested in the problem of minimum wages of agricultural labour. I further say that in the said advertisement, date and time and the place where the interested persons and the representatives of the institutions could make representations to the Advisory Committee were also indicated. I say that by the said advertisements the interested individuals and representatives of the various institutions from Broach District were invited to make representations to the Advisory Committee on 3rd June 1966 between 2-30 P.M. and 6 P.M. at Baroda in the common room of the Baroda Arts College.

I further say that in response to the said advertisement, representatives of the following institutions had appeared before the Advisory Committee :

1. Broach District Kisansabha, Ankleshwar.

2. District Panchayat, Broach.

Besides, the following individuals had also appeared before the Committee:-

1. Shri Ratansinhjibhai Mahida, Broach.

2. Shri Harisinhjibhai Mahida, Broach.

3. Shri Muljibhai Sainia, Valia.

4. Shri Mahiman Desai, Ankleshwar.

I further say that in Appendix XI of its report, the Advisory Committee has given the names of the representatives who appeared before it."

In view of these statements appearing in the affidavit-in-reply, it cannot be stated that no opportunity of being heard before the Committee was given to the petitioners before the rates of minimum wages were fixed. This submission, being submission No. 3, of Mr. Nanavati must, therefore, be rejected.

[13] As against his submission No. 4 that no job analysis had been made before fixing the rates, it may be pointed out that in the affidavit-in-reply reliance has been placed on the report of the Minimum Wages Advisory Committee for employment in agriculture. We find while going through the report at page 52 the following observations :-

The regularity in employment and output as well as the detailed records of costs, output and wages that are features of industry do not obtain in agriculture. The nature of production cycle in agriculture is much less stable than in industry. In addition to demand and prices which commonly condition activities in both, the situation can be completely upset without relation to them in agriculture by weather alone. The categories of jobs and skills necessary for them and the fixation of employees in different categories according to needs and equipments are also clear and precise in industry. Unskilled work predominates in agriculture. Labour in farming again inter-changes as between jobs and operations. The farm labour thus has omnibus farm functions without necessarily fixed hours of work and timings for it. On account of these and several other features regulation of wage which is easy and feasible in industry can only broadly and strategically be attempted in agriculture."

In paragraphs, 3, 24 and 25 of the petition, the petitioners have emphasised that in some agricultural operations some employees are employed exclusively for one type of work or another where some skill is required in a

particular type of work in agriculture. As against this aspect, it should be borne in mind as pointed out by the Committee that by and, large in agricultural labour it is mostly unskilled work which predominates and there are no job specialists as are to be found in industry or industrial establishments. It is true that under sec. 3(3), in fixing or revising minimum rates of wages, the manner of calculating wages for different classes of work in the same scheduled employment may be fixed and this fixation under sec. 3(3)(a)(ii) would justify in an appropriate case a job analysis as it would indicate different classes of work in the same scheduled employment. It is true that in agricultural work, the following types of work, viz., ploughing the field, preparing kyaras, looking after the crops, harvesting etc. are required to be attended to but the Committee has found that one and the same employee would be able to attend to different kinds of work as and when necessity arises and mostly it is unskilled labour which is required to attend to all these categories of work in the field. Under these circumstances, it cannot be said that the Government was acting on the Committee's recommendations in the absence of job analysis and that the impugned notification was vitiated, as contended by the petitioners before us.

[14] As regards the 5th submission of Mr. Nanavati that different annual salaries had not been fixed for permanent workers on the basis of male and female employees though the Notification provides for a difference of 50 Paisa per day between males and females so far as agricultural labourers in Hansot Mahal are concerned, daily rate of wages for male workers is Rs. 2.25 P. and for females Rs. 1.75 P. but for all permant workers irrespective of sex annual wage is Rs. 550/-. In this connection we may point out that at page 65 of the report, the Committee has dealt with differential wage payments to men, women and children; and the Committee has pointed out :-

"The employment of children appears to be limited and related to only certain jobs. There is no regularity and continuity about it. Sometimes children alternate between study, home work and such ad hoc jobs with the cultivators. It is difficult to think of a detailed arrangement and wage payment for them. Regarding men and women we feel there should be equal payment for equal work. There should be no discrimination where the nature of duties performed by men and women are identical. The distinction between men and women in payment in agricultural work is undesirable and should be

eliminated at the earliest. We have, however, retained it to avoid misinterpretation and exploitation and only because the arrangement under the circumstances appears to be more practical. But there are certain heavy agricultural operations such as digging, harvesting certain crops like roots and sugarcane etc., tending the plough, driving a loaded or empty bullock cart etc. a differential wage for men is recommended. This wage may be higher by about 20 to 25 per cent than the minima recommended for different wage zones. Like the other details it should be possible for the wage machinery that we are contemplating to handle the fixation on this count also. Where men and women work together on same or similar work the wage of the male should prevail."

Thus the Committee has proceeded in fixing the wages for permanent workers on an annual basis on the salutary principle that men and women should not be discriminated and there should be equal pay for equal work and the Committee has rightly justified the difference between daily wages for men and women on the footing that male workers are likely to be employed for heavier work as compared to women. The Committee has thus struck a balance and that too only on the basis of practical approach between two equally important principles viz., that there should be no discrimination on the ground of sex and at the same time if members of a particular sex are likely to be employed on heavier duties, at least as regards daily wages, there should be a higher wage paid for such heavier work. Under these circumstances, this particular submission of Mr. Nanavati must be rejected.

[15] As regards the submissions of Mr. Nanavati about the relevant considerations being ignored while fixing the wages and irrelevant considerations being taken into consideration at the time of fixing the wages and zones, these two submissions can be taken up together because the approach of the Committee and consequently the approach of the Government at the time of issuing the Notification concerned is co-related on these two points.

[16] Mr. Nanavati has contended in this connection that under sub-sec. (1) of sec. 11 of the Act, the minimum wages payable under the Act shall be paid in cash and under sub-sec. (2), where it has been the custom to pay wages wholly or partly in kind, the

appropriate Government being of the opinion that it is necessary in the circumstances of the case may, by notification in the Official Gazette, authorise the payment of minimum wages either wholly or partly in kind. Sub-sec. (3) is not relevant for the purposes of this judgment; and under sub-sec. (4), the cash value of wages in kind and of concessions in respect of supplies of essential commodities at concessional rates authorised under sub-Secs. (2) and (3) shall be estimated in the prescribed manner. Mr. Nanavati's strongest attack has been based on the averments in paras 3, 4 and 27 of the petition. He has rightly pointed out that there are no specific denials to the averments made in these paragraphs. In para 3, it has been averred that in Hansot Mahal the permanent labourer is paid Rs. 150/- to Rs. 300/- looking to the nature of work performed by him. In addition thereto the labourer is either given food twice a day or about 18 to 20 mounds of Jowar per year. The value of food for twice a day for the whole year would come to about Rs. 250/- and the value of 20 mounds of Juwar at the rate of Rs. 15/- per maund would come to about Rs. 300/-. Besides this, the agricultural labourer is also given two pairs of clothes, one pair of shoes, one Chaddar and snacks, tea, Bidi and tobacco daily. The cash value of these amenities given to the labourer would come to about Rs. 400/ - to Rs. 450/ per year. Thus the total annual wage bill of a labourer paid both in cash and kind would come to Rs. 600/- to 700/-. According to the petitioner, this method of payment to the labourer is very old and the labourers are so accustomed to it that they would not agree to any change their in. The labourers generally being illiterate are not accustomed to any type of saving and are also not accustomed to arrange their budget in any scientific manner. The system of payment partly in cash and partly in kind helps them in the sense that they get their daily necessities of food and clothes from their employer and besides that they also get the cash wages from which they maintain the family. In the family of the agricultural labourer, normally both the husband and wife work and in some cases the children also work part-time. The agriculturists also on various occasions advance small loans to the agricultural labourers and deduct this amount from their salary. Thus, the relations between the agriculturists and the labourers are not strictly contractual, but are, to some extent, family relations. In para 27 of the petition, it is submitted by the petitioners that Secs. 4 and 11 of the Act provide that while fixing the minimum rates of wages, the appropriate Government shall give due regard to the wages being paid in kind. The petitioners say that while fixing the minimum rates of wages, the Respondent Government should have taken into consideration the cash value of the amenities given by the petitioners to their employees and should have fixed the wages accordingly; otherwise a serious prejudice would be caused to the petitioners in the sense that they would be required to pay more than 11 times the minimum wages fixed by the State because the agricultural labourers insist on

the payment of the wages in kind as that system is more suitable to their mode of life. The petitioners submit that the impugned notification, in so far as it fixes the minimum rates of wages without having any regard to the cash value of the amenities given by the petitioners to their employees, is illegal and contrary to the provisions of Secs. 4 and 11 of the said Act.

[17] We have already referred to the provisions of sec. 11 of the Act. Sec. 4 of the Act provides :-

> "4. (1) Any minimum rate of wages fixed or revised by the appropriate Government in respect of scheduled employments under sec. 3 may consist of-
>
> (iii) an all inclusive rate allowing for the basic rate the cost of living allowance and the cash value of the concessions, if any.
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> (2) The cost of living allowance and the cash value of the concessions in "respect of supplies of essential commodities at concession rates shall be computed by the competent authority at such interval and in accordance with such directions as may be specified or given by the appropriate Governments."

[18] We find that the Committee in its report in Chapter V has dealt with wages and wage zones; and it has been pointed out that the payment in kind, whether wholly or partly, is liable to lead to abuses and at page 63 of the report, the Committee has expressed its opposition to formalisation of payment of wages in kind; and the Committee has observed :-

> "Sometimes the wage is low because it is paid in kind or perequisites form part of the wage of the labour. Quite often payment of wages is made in kind alone. This practice tends to stick these days when foodgrains are in scarce supply and are not available freely in the market at reasonable prices. Their prices have also skyrocketed and would not be within the capacity of the labourer to secure the required quantities, whatever be the minimum wage. It would even be argued that the enforcement of the minimum wages would be defeated by payment in foodgrains when they are scarce and their prices are

unconscionably high. Actually the labourers themselves would insist on payment of wages" in kind and would probably be inclined to work with those farmers who pay them in foodgrains instead of money. This is going to be an extremely ticklish problem and might defeat any attempt at minimum wage fixation.

We as committee are opposed to formalisation of the payment of wages in kind: The system tends to perpetuate bondage, under-payment and exploitation. Malpractices are common in such payments and the workers have to will nilly reel under the weight of the obnoxious system.

Regarding perequisites the Committee is of the opinion that they should have no place in the system of payment of wages to the agricultural labourers. The practices appear to be degrading and tend to undermine human dignity and self-respect of the recipients. They are highly arbitrary, uncertain and difficult to compute in terms of cash. Most of the perquisites might not involve any outlay to the cultivators. They might just be left covers in terms of food, tea and clothing. Besides they hinder the straightening out of the wage structure in agriculture and perpetuate lack of precision in labour contract and formalise exploitation of the economically weaker sections."

Thus, on an examination of the materials before it, the Committee came to the conclusion that payment of wages in kind as well as payment of perequisites tends to lead to exploitation of agricultural labourers and moreover tends to perpetuate the system of bondage, underpayment and exploitation. This piece of legislation is meant to do away with sweated labour and exploitation of the weakest section of our citizens. Hence it is but proper that anything which has a tendency to lead to exploitation of agricultural workers should be discouraged and the payment of wages in kind should be over and above the cash components of the wage.

[19] Mr. Nanavati is not right when he contends that the payment of wages in kind in Hansot Mahal where the system of wages being paid partly in kind prevails, should be taken into consideration while fixing the minimum wages. The Legislature in sub-sec. (1) of sec. 11 of the Act has emphasized that payment of minimum wages in cash is the

rule and if an appropriate Notification has been issued under sub-sec. (2), then only the payment of minimum wages partly in kind can be authorised by the State Government; and if such authorization is given, then only the cash value of such wages being paid in kind has to be calculated in the prescribed manner and credit has to be given in payment of the annual wages by the payment in kind being converted into cash at such rates, as may be prescribed by the Government. But before the minimum wages can be paid partly in kind certain requirements of sub-sec. (2) of sec. 11 must be met. These requirements are (1) there must be custom to pay the wages to agricultural labourers partly in kind; and (2) the appropriate Government must be of the opinion that it is necessary in the circumstances of the case to authorize payment of minimum wages partly in kind; and being of such opinion, the Government must issue a notification authorising the payment of minimum wages partly in kind. It is true that on the averments set out in paras 3, 4 and 27 of the petition, to which there is no denial on facts in the affidavit-in-reply, it can be said that there is a custom in Hansot Mahal to pay the agricultural labourers partly in cash and partly in kind." But there is no averment that it is necessary that the payment of minimum wages partly in kind should be authorised by the Government and it is the question of opinion of the appropriate Government that it is necessary in the circumstances of the case to authorise such payment in kind. As the Committee has rightly pointed put in its report, the agricultural labourers are unskilled workers and they are most likely to be exploited and it is in the interest of the labourers that the system of payment of wages in kind in any manner either in the form of foodgrains or amenities or perquisites should be discouraged so far as the concept of minimum wages is concerned. In the concept of minimum wages, as has been pointed out by the Supreme Court, the components that have to be considered are the subsistence of the worker and his family, provision for some measure of education, medical requirements and amenities; and the concept of minimum wages must ensure not only the bare subsistence of the worker but also preservation of his efficiency as a worker. In our opinion, the report of the Committee proceeds on the correct lines when it deals with this aspect of payment of wages in kind to agricultural labourers. In our opinion, therefore, the Committee has correctly approached the problem and has fixed the minimum rates of wages for payment being made in cash only. In our opinion, it is possible that in a particular district or in a particular zone because of the prevailing customary payments, the workers may be unwilling to work for any employer unless some wages are paid to them in kind; but we must also bear io mind that what the Act requires is minimum wages and not the actual wages or the payment being made in fact over and above the level of the minimum wages. Under these circumstances, the contention that irrelevant factors have been taken into consideration or that relevant

factors have been ignored while fixing the rates of minimum wages cannot be accepted.

[20] As regards the grouping of the wage zones, the Committee and the Government in the impugned Notification have grouped together Ankleshwar, Broach and Hansot Talukas as one zone and prescribed the same rate of wages for male and female labourers and permanent workers in these three Talukas. According to the petitioners, Hansot Taluka of Broach District is to the immediate north of Olpad Taluka of Surat District and considerations of work, climate etc. prevailing in Hansot Taluka are very similar to those prevailing in Olpad Taluka of Surat District. The petitioners contend that because of the grouping together of Hansot Taluka with Ankleshwar and Broach Talukas, where conditions of work, climate, soil etc. are different from those prevailing in Hansot and Olpad Talukas, the petitioners have to pay daily wages at the rate of Rs. 2.25 for males and Rs. 1.75 for female workers and 550/ per annum to a permanent worker; whereas in Olpad Taluka, which is constituted a separate zone, the daily rate of wages that a male worker would get is Rs. 1.50, a female worker would get Rs. 1.25 and Rs. 400/- per annum is fixed for a permanent worker. We find at page 50 of the report of the Committee that according to the Committee the ideal unit to be taken is the village for the purposes of examination and sorting out of zones but that would involve tremendous work, presuppose detailed local knowledge and exacting statistical and analytical work. For that the Committee had neither the resources nor knowledge or competence. Some of the data which go into the formulation of zones would not be available at the village level. The village as a unit of zone demarcation again may not be contiguous. But there is every likelihood of contiguity being undermined in the process. Operationally, therefore, the Committee felt that the latter would be much more valuable then the former to build up Zones. The Committee adopted the taluka as the minimum unit to draw zones, as to break it down into groups of villages of clubbing into zones would not be administratively convenient. Further at page 50 of the report it has been pointed out by the Committee : -

> "The socio-economic conditions and the administrative divisions hardly converge. The divisions or zones into which it h proposed to break-up the State to consider and determine common minimum wages has to be based on other criteria. The major one among them would be the agricultural conditions as reflected into crops, topography, climate, irrigation, double cropping, and nature of agricultural work, employment and resources. The conditions of land rights including tenancy would be another factor that might help locate homogeneous regional characteristics. The social condition of

castes and classes of cultivators which significantly contribute to build employer-employee relations can constitute a material criterion to demarcate regions or zones. Population density as indicating labour supply might also help in this search. Lastly, the existing employment and wage patterns might provide guide lines to uniformity to delimit zones. Not all these factors would go into the making of the regional uniformity or homogeneity everywhere. Some factors would predominate in some situations and would be useful in the demarcation of some zones, while others would serve as main criteria in delimitation in other cases.

Most of these criteria were closely scrutinized on the basis of available data and the information provided by the respondents on the basis of the Committee's schedules. Specific questions were put to the respondents in the schedule to confirm or deny the validity of the zone to which he/she belonged. At the time of evidence before us the issue was again broached so that the knowledge and experience of the respondents about local conditions would be brought to confirm or reject some of the premises of our work and the delination of the State into homogeneous zones for the purpose of wage determination and fixation. Most of the respondents did not react either way. Quite a few agreed with our approach. A third set of them offered suggestions which were utilised in checking up our results and decisions. The statement attached is the outcome of our efforts to formulate homogeneous wage zones to proceed to work on their basis."

At page 157 of the report of the Committee, in Appendix IX are the district-wise homogenous and the heading mentions "On the basis of the homogeneity of various characteristics attributable to main crops, population and geographical proximity the talukas of various districts of the State can be grouped together in the following respective zones." We find that common characteristics for Ankleshwar, Broach and Hansot talukas were the fact that they produced common crops viz., cotton and juwar; and as regards Olpad Taluka, we find that according to the Committee, there was a higher percentage of agricultural labourers with cotton and juwar as principal crops. The Committee was, therefore, justified on the basis of these findings regarding characteristics in grouping together Ankleshwar, Broach and Hansot Talukas in one zone and in putting Olpad Taluka in another zone and

in fixing the minimum wages on the basis of the peculiar characteristics of Olpad Taluka as a separate zone. It must also be borne in mind that the Committee was attempting fixation of zones and minimum wages for different zones for the entire State of Gujarat for the first time. In the light of the experience gained as a result of the work of this Committee, when wages rare to be revised subsequently, the zones might be readjusted or in the light of the actual working and in the light of the new facts Demerging as a result of new irrigation facilities and new crop patterns, zones might have to be readjusted in future; but the fact that such readjustment might be required later on is no ground for stating that zones were not arranged on the basis of relevant considerations that zones were fixed on basis of irrelevant considerations. We may point out that under sec. 3(3), in fixing minimum rates of wages, different minimum rates of wages may be fixed for different localities and it is on the basis of this power given to the appropriate machinery in fixing different rates of minimum wages for different localities that the zones were provided by the Committee in its report fixing different rates of minimum wages for different zones and the Government also has acted under this power under sec. 3(3) for fixation of such different minimum wages for different zones. In our opinion, bearing in mind the objects which the Act has to subserve and the policy behind the Act, it cannot be said that the Committee took into consideration irrelevant factors or ignored relevant factors.

[21] While making his submissions regarding determination of zones, Mr. Nanavati, has contended that it has been found in July 1968 by a Committee appointed by the Guj arat Government that Hansot Taluka and Vaghra Taluka of Broach District were considered backward areas. He has also contended that Hansot, Jambusar and Vaghra Talukas of Broach District abut on the sea and they are what is known as "Bara Vibhag" i.e. sea-side areas. He has contended that because of this proximity to sea there is salinity in the soil and the crop patterns are bound to be affected. Yet the rates for Hansot Taluka are different from the rates prescribed for Vaghra and Jambusar Talukas on the one hand so far as the Broach District is concerned and from those prescribed in Olpad Taluka of Surat District on the other. He has also contended that the cost of living has not been taken into account while determining the zones. In our opinion, this criticism is unjustified. The Committee has set out the different characteristics and considerations which weighed with it in fixing the zones and, in our opinion, it has rightly pointed out

that depending upon the circumstances prevailing in each zone, in some zones some charactristics might \ be predominant or some factors might be emphasized in fixing the minimum wages. But we find after going through the report of the Committee that proper approach has been taken by the Committee in fixing the zones and also in fixing minimum rates of wages in each zone and the considerations which have weighed with the Committee are proper considerations in the light of the provisions of the Act and also in the light of the object which the Act has to subserve.

[22] In the result, all the contentions urged by Mr. Nanavati, on behalf of the petitioners, fail. This Special Civil Application, therefore, fails and is dismissed. Rule is discharged. The petitioners will pay the costs of this petition to the respondents.

Petition dismissed.