In view of the provisions of Sec. 53 of the Act, it becomes evident that the provisions of Sec. 152 of the Civil Procedure Code would be applicable to all the proceedings before the Court under the Land Acquisition Act, 1894, as there is nothing to indicate that the provisions of Sec. 152 of the Civil Procedure Code are in any manner inconsistent with the provisions of the Land Acquisition Act, 1894.

6. It may be mentioned that by an order dated May 1, 1991 passed below Exh. 12, the learned Judge had permitted the reference application to be amended and in view of the said amendment, the learned Judge was also duty bound to consider the question of compensation to be paid regarding Survey No. 467/1. It hardly requires to be emphasised that the amendment is required to be carried out by the Officers of the Court and not by the party. This is a ministerial function which the Court establishment is charged to perform. If it is not performed or neglected, the fault will not lie with the party concerned. The view taken by the learned Judge that the Court has become *functus-officio* and, therefore, the application seeking necessary amendment in the judgment and award could not be entertained, is not supported by any provision of the Code of Civil Procedure. On the contrary, as is noticed earlier, Sec. 152 of the Code empowers the Court to carry out amendment of judgments, decrees or orders when the Court finds that clerical or arithmetical mistakes in judgments, decrees or orders have crept in or errors arising therein from any accidental slip or omission have been made. In fact, a clerical error was made by the Court in the judgment and award passed by it arising from accidental slip or omission. Having regard to the facts and circumstances of the case, it was the duty of the learned Judge to supply the omission by granting amendment application. In my view, the learned Judge has failed to exercise the jurisdiction vested in him under Sec. 115 of the Civil Procedure Code necessitating interference of this Court while exercising powers under Sec. 115 of the Civil Procedure Code. The requirements of Sec. 115(1)(b) of the Code are clearly satisfied and over and above that, if the order is allowed to stand, it would certainly occasion a failure of justice and cause irreparable injury to the petitioner, as the petitioner would be deprived of compensation though the land in question is acquired by the opponent.

7. In the result, the revision application succeeds. The order dated July 13, 1993 passed by the learned Extra Assistant Judge, Nadiad below Exh. 16 in Land Acquisition Reference Case No. 241 of 1991 is hereby quashed and set aside and the application Exh. 16 stands allowed.

Rule is made absolute, with no order as to costs.

Application allowed.

* * *

SPECIAL CIVIL APPLICATION

Before the Hon'ble Mr. Justice Susanta Chatterji
and the Hon'ble Mr. Justice A. N. Divecha

GUJARAT STATE BAKERS' FEDERATION & ORS. v. STATE OF GUJARAT.*

Minimum Wages Act, 1948 (XI of 1948) — Sec. 5 — Power to issue notification fixing minimum wages — There is no power to exclude the costs

* Decided on 1-7-1994. Special Civil Appln. No. 2275 of 1986 for a writ declaring the notification issued under the Minimum Wages Act to be invalid.

of perquisites from the minimum wage fixed by the notification — Clause 7 alone of the notification is void.

The petitioners have challenged the clause 7 of the Notification by amending the petition. Clause 7 of the notification according to the petitioner is *ultra vires* Art. 14 of the Constitution inasmuch as it invariably would lead to discrimination. It is submitted that the system of giving perquisites is not uniform and the rate and the nature of the perquisites are also not uniform. In case of some bakery owners the perquisites given to the workman may be in the nature of residential accommodation and/or clothes and/or food and/or refreshment, medical facilities, snacks, etc. All these facilities would not be common to all the bakery owners. The amounts spent by the bakery owners on such perquisites would also vary according to the nature and the extent of the perquisites extended. There is also no provision made in the notification for evaluation of such perquisites and deductions to be made from the wages payable to the workmen. This would lead to inequality. (Para 2)

At the outset, while dealing with the instant case, we were a little hesitant to consider as to whether a piece of any beneficial step taken by the respondent-State should be disturbed or interfered with. For any good cause any bad law may be sustained and the discretionary writ jurisdiction of the Court may not be exercised for such interference. However, the minds of the Judges are like clean slate. After all the Courts are creatures of law. Wisdom has to prevail and the solution is sought for. (Para 13)

With great anxiety and patience Court have looked in depth and detail the reasonings and conclusions arrived at in the decisions of the Supreme Court in the *case of Manganese Ore (India) Ltd.* (1991 Lab. I.C. 524) and Calcutta High Court in *Bengal Motion Pictures Employees Union, Calcutta* (AIR 1964 Cal. 519). Having considered the facts and circumstances of the instant case, the ratio of the aforesaid decision is squarely applicable to the facts of the present case. Clause 7 of the impugned notification appears to be beyond the scope and scheme of the Minimum Wages Act. (Para 14)

Manganese Ore (India) Ltd. v. Chandilal Saha (1), Bengal Motion Pictures Employees Union v. Kohinoor Pictures Pvt. Ltd. (2), followed.

Man. of all Tea Estates in Assam v. Indian National Trade Union Congress(3), Bidi, Bidi leaves and Tobacco Merchants Asso. v. State of Bombay (4), referred to.

K. S. Nanavati, for *Mrs. Siddhi D. Talati,* for the Petitioners.

A. R. Dave, Solicitor & Govt. Pleader, for the Respondent (absent)

S. CHATTERJI, J. Gujarat State Bakers' Federation and two other members of the said Federation have filed this petition challenging the Notification No. KH-R-226-MWA-5581-37864-M (2) dated 27th March, 1986 issued under the Minimum Wages Act, 1948 (Annexure A to the petition) and for appropriate writ declaring clause 7 thereof as *ultra vires* the Constitution of India.

2. It is stated in details that the petitioner Association is having 200 to 300 Members spread throughout the State of Gujarat. They are producing bread, biscuits, cookies, cakes, etc. There are very few bakeries where the production activity is carried on with the help of machines and most of the bakeries are having large number of workers. The respondent State has the power to fix minimum rates of wages for the workers employed by the petitioners and in fact, the respondent decided and followed the procedure prescribed by the Minimum Wages Act, 1948 (hereinafter referred to as the Act). In fact, the respondent was required to follow

(1) 1991 Lab I. C. 524 (2) AIR 1964 Calcutta 519 (3) AIR 1957 SC 206
(4) AIR 1962 SC 486.

the procedure prescribed by Sec. 5 of the Act and/or was required to either act under Sec. 5(a) and Sec. 5(b) of the Act. It is highlighted that the respondent decided to follow the procedure under Sec. 5(a) of the Act and appointed a Committee comprising of the representatives of Labour, Industry, etc. The said Committee formulated the proposals and advised the State Government. Pursuant to the report of the Committee under Sec. 5(2) of the Act, the State Government published a notification dated 27-3-1983, which is produced at Annexure A to this petition. Clause 7 of the Explanation to the Notification reads as under :

"EXPLANATION - For the purpose of the Notification -

(1) . . . . . .

(2) . . . . . .

(3) . . . . . .

(7) The perquisites of facilities given to an employee shall not be withdrawn and no deduction shall be made in respect of such perquisites or facilities given to an employee after fixation of minimum rates of wages in this employment."

The petitioners have challenged the aforesaid clause 7 of the Notification by amending the petition. Clause 7 of the notification according to the petitioner is *ultra vires* Art. 14 of the Constitution inasmuch as it invariably would lead to discrimination. It is submitted that the system of giving perquisites is not uniform and the rate and the nature of the perquisites is also not uniform. In case of some bakery owners the perquisites given to the workmen may be in the nature of residential accommodation and/or clothes and/or food and/or refreshment, medical facilities, snacks, etc. All these facilities would not be common to all the bakery owners. The amounts spent by the bakery owners on such perquisites would also vary according to the nature and the extent of the perquisites extended. There is also no provision made in the notification for evaluation of such perquisites and deductions to be made from the wages payable to the workmen. This would lead to inequality. In a given case, where a bakery owner is not giving any perquisites whatsoever, he would stand to gain as compared to others who are giving perquisites inasmuch as his total wage-bill would be less than the wage-bill of those who are giving perquisites to the workmen. The bakery owners who have been liberal so far in giving various kinds of perquisites would be hit hard as compared to those who have been only giving wages in cash and no perquisites whatsoever. Thus, according to the petitioners clause 7 of the notification in particular, creates an inequality and subjects the different bakery owners similarly situated to different and unequal treatment. The basic idea of the minimum wages notification is to ensure uniformity of the conditions of service whereas clause 7 of the notification distroys such concept in the instant case.

3. It appears that the Committee was informed that the bakery owners who are giving perquisites of different nature are making deductions on account of such perquisites from the wages payable to the workmen and the Committee had also recommended that if deductions in continuation of the perquisites are given simultaneously, directions for evaluation of such perquisites and deductions of their value from the wages payable to the workmen are also to be given. It is alleged that while issuing the notification, the Government has failed to make such provision.

Clause 7, therefore, apart from being violative of Art. 14 of the Constitution, also puts an unreasonable restriction on the fundamental right to trade. There may be a reasonable restriction to prescribe minimum rates of wages of workmen but directions to continue the perquisites or the facilities given to the employees, cannot be made a part of the minimum wages payable to the workmen. Such direction will have a force of law since the minimum wages notification has its impact and has to be complied with on the pain of prosecution and penalty.

4. Clause 7 of the Notification on scrutiny is found to lead to discrimination amongst the workmen. A bakery owner may be giving certain facilities to some of his workmen belonging to the same category like housing. A bakery owner may be employing five or ten persons as drivers, but may be giving the housing to two or three and not to the rest. If clause 7 is so interpreted as to require the bakery owners to give this facility even to those of his workmen belonging to the same category to whom he is not giving this facilities, it would create a situation where the bakery owners would be compelled to procure housing facility and extend it to all the employees and would thus put an unreasonable restriction on the fundamental right to trade. If clause 7 is so interpreted that the facilities which are being given should be continued *qua* those workmen to whom they are being extended, clause 7 would clearly result in an inequality amongst the workmen in the same category inasmuch as those workmen who are getting such perquisites or facilities would be at an advantage as against those to whom such facilities are not being extended. This would also hit at the root of the principle of equal pay for equal work and lead to industrial unrest. It is brought to the notice of this Court that clause 7 of the Notification thus is violative of both Arts. 14 and 19 of the Constitution of India. It transpires that in the case of minimum wages fixed for hotel industry, where according to the petitioners, similar system prevails, a provision has been made while fixing the minimum wages of workmen for deduction of the value of the perquisites or facilities extended to the workmen. The petitioners have also stated that clause 7 of the Notification is also vague and indefinite inasmuch as the meaning of the phrase 'perquisites or facilities' has not been defined. Whether permission to sleep in the bakery itself or snacks or tea or costs of journey to the native and back given by the bakery owners should be treated as perquisites or facilities or not would raise serious disputes and expose the bakery owners to penal consequances. Some of the bakery owners would be also giving interest-free loans. Since the non-compliance with the notification under the Minimum Wages Act leads to penal consequences it was incumbent on the part of the respondent to give precise meaning of the phrase 'perquisites or facilities.' Any failure to do so has rendered the notification *ultra vires* Arts. 14 and 19 of the Constitution. The petitioners have made detailed averments as to the scheme and scope of the Minimum Wages Act and the power and jurisdiction of the Government to fix the minimum wages of the employees of the bakery industry as a whole. It is strongly urged on behalf of the petitioners that by introducing clause 7 and by prohibiting the owners of the bakery concerned from withdrawing the perquisites or facilities given to the employees and from making any deduction in respect of such perquisites or facilities given to the employees after fixation of

minimum rates of wages, the respondent State has proceeded beyond the provinces of law as warranted under the Minimum Wages Act. Such existing perquisites or facilities cannot be termed as minimum wages. Such perquisites and/or facilities cannot be the subject-matter to be regulated by the provisions of the Minimum Wages Act and clause 7 thus itself should be found to be nugatory by looking at large the scope and scheme of the Act and the powers conferred upon the respondent-State.

5. Mr. Nanavati learned Advocate appearing for the petitioners has taken this Court to the detailed averments made in the petition in between the lines. He has tried to demonstrate the falacy of clause 7 of the notification, the history and background of the enactment of the Minimum Wages Act and the power of the Government to legislate on the score of the benefits to be given to the employees concerned. Mr. Nanavati has also taken us to the provisions of Sec. 3 of the Act, which reads:

"3. FIXING OF MINIMUM RATES OF WAGES : (1) The appropriate Government shall, in the manner hereinafter provided -

(a) fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either Part by notification under Sec. 27 :

Provided that the appropriate Government may, in respect of employees employed in an employment specified in Part II of the Schedule, instead of fixing minimum rates of wages under this clause for the whole State, fix such rates for a part of the State or for any specified class or classes of such employment in the whole State or part thereof;

(b) review at such intervals as it may think fit, such intervals not exceeding five years, the minimum rates of wages so fixed and revise the minimum rates, if necessary :

Provided that where for any reason, the appropriate Government has not reviewed the minimum rates of wages fixed by it in respect of any scheduled employment within any interval of five years, nothing contained in this clause shall be deemed to prevent it from reviewing the minimum rates after the expiry of the said period of five years and revising them, if necessary and until they are so revised the minimum rates in force immediately before the expiry of the said period of five years shall continue in force.

(1-A) Notwithstanding anything contained in sub-section (1) the appropriate Government may refrain from fixing minimum rates of wages in respect of any scheduled employment in which there are in the whole State less than one thousand employees engaged in such employment, but if at any time the appropriate Government comes to a finding after such inquiry as it may make or cause to be made in this behalf that the number of employees in any scheduled employment in respect of which it has refrained from fixing minimum rates of wages has risen to one thousand or more, it shall fix minimum rates of wages payable to employees in such employment as soon as may be after such finding.

(2) The appropriate Government may fix -

(a) a minimum rate of wages for time work (hereinafter referred to as 'a minimum time rate'),

(b) a minimum rate of wages for piece work (hereinafter referred to as 'a minimum piece rate'),

(c) a minimum rate of remuneration to apply in the case of employees employed on piece work for the purpose of securing to such employees a minimum rate of wages on a time basis (hereinafter referred to as 'a guaranteed time rate'),

(d) a minimum rate (whether a time rate or a piece rate) to apply in substitution for the minimum rate which would otherwise be applicable in respect of overtime work done by employees (hereinafter referred to as 'a overtime rate').

(2-A) Where in respect of an industrial dispute relating to the rates of wages payable to any of the employees in a scheduled employment, any proceeding is pending before a Tribunal or National Tribunal under the Industrial Disputes Act, 1947 (14 of 1947) or before any like authority under any other law for the time being in force, or an award made by any Tribunal, National Tribunal or such authority is in operation, and a notification fixing or revising the minimum rates of wages in respect of the scheduled employment is issued during the pendency of such proceedings or the operation of the award, then, notwithstanding anything contained in this Act, the minimum rates of wages so fixed or so revised shall not apply to those employees during the period in which the proceeding is pending and the award made therein is in operation or as the case may be, where the notification is issued during the period of operation of an award, during that period; and where such proceeding or award relates to the rates of wages payable to all the employees in the scheduled employment, no minimum rates of wages shall be fixed or revised in respect of that employment during the said period.

(3) In fixing or revising minimum rates of wages under this section -

(a) different minimum rates of wages may be fixed for-

(i) different scheduled employments;

(ii) different classes of work in the same schedule employment;

(iii) adults, adolescents, children and apprentices;

(iv) different localities;

(b) minimum rates of wages may be fixed by any one or more of the following wage-periods, namely :-

(i) by the hour,

(ii) by the day,

(iii) by the month, or

(iv) by such other larger wage-period as may be prescribed,

and where such rates are fixed by the day or by the month, the manner of calculating wages for month or for a day, as the case may be, may be indicated: Provided that where any wage-periods have been fixed under Sec. 4 of the Payment of Wages Act, 1936 (4 of 1936), minimum wages shall be fixed in accordance therewith."

6. Our attention has to been drawn to Sec. 4 of the Act, which provides that any minimum rate of wages fixed or revised by the appropriate Government in respect of scheduled employments under Sec. 3 may consist of -

(i) a basic rate of wages and a special allowance at a rate to be adjusted at such intervals and in such manner as the appropriate Government may direct, to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers (hereinafter referred to as 'cost of living allowance'), or

(ii) a basic rate of wages with or without the cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concession rates, where so authorised; or

(iii) an all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

Section 4(2) envisages that 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 intervals and in accordance with such directions as may be specified or given by the appropriate Government.

7. Our further attention is drawn to Sec. 11 of the Act, which provides that-

(1) Minimum wages payable under this Act shall be paid in cash.

(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, be notification in the Official Gazette, authorise the payment of minimum wages either wholly or partly in kind.

(3) If the appropriate Government is of the opinion that provision should be made for the supply of essential commodities at concession rates, the appropriate Government may, by notification in Official Gazette, authorise the provision of such supplies at concession rates.

(4) The cash value of wages in kind and of concessions in respect of supplies of essential commodities at concession rates authorised under sub-secs. (2) and (3) shall be estimated in the prescribed manner.

In view of the aforesaid provisions of Secs. 3, 4 and 11 of the Act, it is argued at length that the Minimum Wages Act does not provide any room for doubt that the Government retains no power to prohibit and/or regularise the facilities if any, given by the employer which are not deemed to be wages under any statutory provision.

8. Mr. Nanavati, learned Advocate appearing for the petitioners, has drawn our attention to a recent decision of the Supreme Court in the case of *Manganese Ore (India) Limited v. Chandilal Saha & Ors.*, 1991 Lab.I.C. 524. On interpretation of Secs. 2(h), 3(1)(a), 4 and 11 of the Minimum Wages Act, 1948, the Apex Court found that the supply of grain at a concessional rate to the workman is an amenity and cannot be included in the rates of wages prescribed by the notification fixing the rates of wages for different categories of workmen. There cannot be a wage in kind under the scheme of the Act unless there is a notification by the appropriate Government under Sec. 11(3) of the Act. Sec. 4(1) (iii) mentions only such 'cash value of the concession' as has been authorised 'wage in kind' under sub-section (3) of Sec. 11 of the Act. It is only the appropriate Government which can authorise the payment of minimum wages partly in kind. In the absence of any notification by the appropriate Government for the supply of essential commodities at concessional rates the cash value of such concessions cannot be treated as wage in kind and cannot be decided from the minimum wages which have to be paid in cash under Sec. 11(1) of the Act. When there is no notification by the appropriate Government under Sec. 11(3) of the Act the management cannot take any advantage from para 2 of the notification or from the provisions of Sec. 4(1) (iii) of the Act. It cannot be said

that the supply of grains at a concessional rate are the concession which are capable of being expressed in terms of money and as such are remunerations within the definition of 'wages' under S. 2(h) of the Act. The scheme of the Act recognises 'wages' as defined under Sec. 2(h) and also 'wages in kind' under Sec. 11 of the Act. Reading both the provisions together 'wages in kind' can only become part of the 'wages' if the conditions provided under sub-secs. (2), (3) and (4) of Sec. 11 of the Act are complied with. Again, the supply of grain at concessional rate to the workers is in the nature of an amenity or an additional facility/service. The managements specifically of public undertakings are bound by the Directive Principles of the State Policy enshrined under Part IV of the Constitution of India. The workers must be ensured a living wage, just and human conditions of work and a decent standard of life. The management must endeavour to secure for the workmen apart from wages other amenities, like supply of essential commodities at concessional rates, medical aid, housing facility, education for children, old age benefits, sports activities. All these amenities may be capable of being expressed in terms of money but it is clear from the scheme of the Act that these concessions do not come within the definition of 'wages' as given under Sec. 2(h) of the Act.

9. Mr. Nanavati has tried to draw inspiration from the judgment of the Apex Court inasmuch as according to him, the respondent-State may have other powers under any other statute to give such facilities to the workmen, but by and large, within the scope of the provisions of Minimum Wages Act, such incorporation of clause 7 is contrary to and inconsistent with the spirit, scheme and scope of the Minimum Wages Act and same is vis-a-vis *ultra vires* the provisions of the Constitution of India. Mr. Nanavati drew our attention to a decision in the case of *Bengal Motion Pictures Employees Union, Calcutta v. Kohinoor Pictures Private Ltd. and Ors.*, AIR 1964 Calcutta 519. In the aforesaid case the Division Bench considered the scope of Sec. 9 of the Minimum Wages Act, 1948 and also Sec. 5 of the said Act. In the said case the Notification dated 16-5-1960 issued by West Bengal Govt. fixing minimum wages for workers in different areas and for different categories was challenged as being invalid. The Division Bench after considering the matter in depth held clauses 6, 7 and 8 of the Schedule to the notification as invalid and rest of the notification was held valid. For better appreciation and for ready reference, if we look to clauses 6, 7 and 8 of the said notification under challenge before the Division Bench of the Calcutta High Court, clause 6 related to the apprenticeship and probation and it was provided that the "Apprentice shall receive 2/3rd of the basic pay and dearness allowance applicable to the category in which he is appointed and the period of his apprenticeship shall not exceed one year." The maximum period of probation of an employee shall be one year during which he shall be entitled to receive full pay and dearness allowance applicable to the occupation in which he is appointed.

10. Clause 7 of the said notification provided that the "employees who are in receipt of higher wages shall continue to enjoy the same." Clause 8 of the said notification provides that "existing privileges such as free uniform, snacks and meals, free housing, shall continue in addition to the minimum wages notified herein".

11. While recording the arguments with regard to clauses 7 and 8 of the aforesaid notification that the Government had no right to lay down that the

employees who are in receipt of higher wages shall continue to enjoy the same or to provide that the existing privileges such as free uniform, snacks and meals, free housing, etc., shall continue in addition to the minimum wages notified. This objection was found to be a substantial one. It was found not necessary for the Government to provide that the privileges and higher wages would not be affected by the notification. It was held that clause 7 was beyond the jurisdiction or authority of the Government and there was no provision in the Minimum Wages Act empowering the Government to make provisions for compelling the employers to provide for amenities as was referred to in clause 8 in the said notification. Clause 8 was, therefore, beyond the powers of the Government.

12. The Division Bench in the aforesaid case considered the judgment of the Supreme Court in the case of *Management of all Tea Estates in Assam v. Indian National Trade Union Congress, Dibrugarh,* AIR 1957 SC 206. There the management of the Tea Estates in Assam represented by the Indian Tea Association, Calcutta used to supply certain quantities of rice and other articles of food at concessional rates to their adult male workers at 5 seers per week. From February, 1950 the rice quota was reduced by half a seer per week and the employers agreed to pay cash compensation at the rate of 6 pies per working day. On account of a notification of the Government of India on November 18, 1950 there was a further cut of another seer of rice per week in the supply of the commodity at concessional rates. The workmen claimed compensation in cash for this cut also. This led to a difference which was referred for adjudication by a notification of the Government of Assam. The Tribunal gave its award in December, 1951 holding that the system of rice benefit at concessional rates was a part of the workers' wages and the employers were under a legal obligation to pay cash compensation to the workmen for the said cut in supply of rice. The Tribunal further fixed the rates of compensation. On appeal to the Labour Appellate Tribunal, the rate was reduced. In the meanwhile, however, the Government of Assam had issued a notification in exercise of the powers conferred by the Minimum Wages Act and fixed the minimum wages of workmen employed in the Tea Gardens at certain cash rates which were to come into effect from March 30, 1952 consisting of basic wages and dearness allowance at the rates specified. Para 2 of the notification provided that the rates were to be exclusive of concessions enjoyed by the workers in respect of supplies of foodstuff and other essential commodities and other amenities which would continue unaffected and that the existing tasks and hours of work might continue until further orders. The result was that the minimum wages so fixed exceeded the total of the cash wages which the employers were paying to their workmen and the value of the concession at which rice was being supplied as also the amount of compensation for the cut which they were directed to pay by the award made in the reference of 1950. The employers contended that the minimum wage notification had the effect of absorbing their cash compensation in the cash minimum wage that had been determined absolving them from liability to pay compensation for the rice cut over and above the minimum wage fixed. This dispute was again referred to an Industrial Tribunal for adjudication. The Tribunal upheld the contention of the employers that the compensation for the rice cut had merged in the minimum wage fixed by Government. The Labour Appellate Tribunal held that the concession for the rice

cut has become an amenity and that Government had not only fixed basic wages and dearness allowance but by paragraph 2 of the notification preserved all the amenities which the workmen were enjoying or to which they were entitled. It was from this adjudication that an appeal was preferred to the Supreme Court by the employers. The Supreme Court held that before March 11, 1952 when the minimum wages were fixed by the Government of Assam the employers were under a legal obligation to pay cash compensation to the workmen for the reduction in rice quota and that the cash compensation had not merged in the minimum wage fixed by Government. The Supreme Court also said that Government was not bound to adopt the report of the Minimum Wages Committee and that it could modify the same as it thought best. According to the Supreme Court paragraph 2 of the notification made it abundantly clear that whatever might have been at the back of the Committee's mind in fixing the minimum wage, Government thought it proper that the employers should make available to the workmen, in addition to the wage fixed, all concessions enjoyed by them in respect of the supply of foodstuffs and other essential commodities and the other amenities which they used to enjoy. The situation before the Supreme Court was different. The Division Bench of Calcutta High Court also considered the decision of the Supreme Court in the case of *Bidi, Bidi Leaves and Tobacco Merchants' Association, Gondia v. State of Bombay,* AIR 1962 SC 486, wherein the Supreme Court laid stress on the definition of the term 'wages' as given in the Act and pointed out that the definition of the term 'wages' postulates the binding character of the other terms of the contract and brings within the purview of the Act only one term and that relates to wages and no other and that being the position it was difficult to hold that by implication the very basic concept of the term 'wages' could be ignored and the other term of the contract could be dealt with by the notification issued under the relevant provisions of the Act. Sections 20 and 21 of the Act have made a specific provision for the enforcement and implementation of the minimum rates of wages prescribed by notifications. In the case before the Supreme Court the notification purported to ignore the said provisions and set up a machinery to settle the said disputes. Clauses 1 and 2 prescribed the revised minimum rates of wages. If in the matter of payment of the said wages, any disputes arise they must be left for adjudication by the authority prescribed by Sec. 20. That is another reason why the doctrine of implied powers cannot be invoked in support of the validity of the impugned clauses in the notification. The Division Bench of the Calcutta High Court ultimately struck down clauses 7 and 8 of the said notification and found that within the scope of the Minimum Wages Act such a provision was unwarranted and uncalled for.

13. At the outset, while dealing with the instant case, we were a little hesitant to consider as to whether a piece of any beneficial step taken by the respondent-State should be disturbed or interfered with. For any good cause any bad law may be sustained and the discretionary writ jurisdiction of the Court may not be exercised for such interference. However, the minds of the Judges are like clean slate. After all the Courts are creatures of law. Wisdom has to prevail and the solution is sought for.

14. With great anxiety and patience we have looked in depth and detail the reasonings and conclusions arrived at in the decisions of the Supreme Court in the

case of Manganese Ore (supra) and Calcutta High Court in *Bengal Motion Pictures Employees, Union, Calcutta* (supra). Having considered the facts and circumstances of the instant case, we find that the ratio of the aforesaid decision is squarely applicable to the facts of the present case. It is, however, noted that inspite of the opportunity being made available to the learned Solicitor for the respondent-State, none thought it fit to appear before this Court. Neither any affidavit has been filed nor any attempt has been made to meet the points raised by the petitioners and to answer the questions raised before this Court. Inspite of this fact, we have with much caution considered the facts of the present case, the principles of law as discussed above, and having considered the same our judicial conscience is satisfied that there is much merit in the contentions raised by the petitioners. Clause 7 of the impugned notification appears to be beyond the scope and scheme of the Minimum Wages Act.

15. Considering all aspects of the matter, we find that there is no bar or impediment for the petitioners to obtain the reliefs as prayed for by them. This petition is accordingly accepted. Clause 7 of the Notification No. KH-R-226-MWA-5581-37864-M(2), dated 27th March, 1986, at Annexure A to this petition, is struck down. It is clarified that by striking down clause 7 of the aforesaid notification, rest of the notification is not disturbed nor the petitioners have made any grievance with regard to any other part of the said Notification. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

(ATP) *Petition allowed.*

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CRIMINAL APPLICATION

Before the Hon'ble Mr. Justice S. D. Dave

STATE OF GUJARAT v. AHMED ADAM MUGAL & ORS.*

(A) Criminal Procedure Code, 1973 (II of 1974) — Secs. 204, 482 — Private complaints filed in different Courts against religious head of Dawoodi Bohra Community alleging that in a speech he had made utterances which would promote enmity between religious groups — Application to High Court by State acting *pro bono publico* to quash the criminal proceedings pending before Magistrates — On facts found that allowing the proceedings to continue would open up healed wounds between two sects of Muslims and generate animosity — Proceedings quashed.

The four private complaints which came to be instituted against the respondent No. 3, definitely are consequential to what had happened at Bombay during the relevant period. The respective complainant in each of these four complaints make a specific reference to the utterances made by the respondent No. 3 and the consequences which had followed. The case taken up by four different complainants may vary in few particulars or in pointing out of the section of the Penal Code under which, according to them, the offences would be punishable. Despite this, the reference unmistakably appears to be to the offence punishable is under Sec. 153A of I. P. Code. The act of promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony have been embraced under Sec. 153A of Indian

* Decided on 12-8-1994. Misc. Criminal Application No. 676 of 1989.