

CONSTITUTIONAL LAW**PROTECTION OF THE INTERESTS OF THE EMPLOYEES OF MEDIA INDUSTRY
AND FREEDOM OF SPEECH AND EXPRESSION***Anshuman Mishra****Abstract**

India has still been dwindling between capitalism and socialism. The capitalist approach favours concentration of economic power and suppresses individual liberty and in the socialist system, State becomes the repository of economic power, wielded by the bureaucracy, which in the name of protecting individual from suppression and serving the interest of all, ultimately leaves many jobless as the factories are closed due to its apathy or inefficiency. It is true that in the present state of affairs, when India is moving fast on the track of liberlisation, there are more advocates in favour of giving the industry a free hand than those who oppose the move. The trend also appears in the present composition of the 16th Lok Sabha where the socialists have reduced to the minimum. However, there seem no two standards as far as protection of the interests of the workers is concerned as both the government and the apex court have shown utmost interest in their well being. The court in 1958 laid down that the interest, of journalists and other employees of the press industry, in wages can be regulated by the government and this aspect has nothing to do with the right to freedom of speech and expression under article 19 (1) (a) of the Constitution of India and media in this regard is like any other industry. The court has not changed its opinion till date. The present paper is an effort to analyse the cases decided by the judiciary in this respect.

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I Introduction

EXPLOITATION OF labourers, skilled or unskilled, is not a new phenomenon. It has been a worldwide problem. After independence, India adopted a Constitution providing for the welfare of the people, through the provisions of which, balance between individual rights and social interest has been struck nicely. By the 42nd amendment of the Constitution the word 'Socialist' has been added to its preamble. India has also seen various movements initiated in favour of labourers. Government being a welfare government, leaves no stone unturned in this respect and positively does whatever it can for the welfare of the workers. Laws are made to ameliorate the conditions of workers and to save them from exploitation and the courts have also been very keen in interpreting such laws in their favour. However, unfortunately, the condition of the workers has not changed. Many have left their houses in search of work and many others have been forced to leave to their native places to generate employment. Despite having various laws made and serious efforts done on the parts of the government and the judiciary, condition of working class, including those who work with the newspaper industry, does not improve satisfactorily.

In the era of globalisation, it is demanded that keeping in view the competitive scenario, the market should be allowed to regulate its own functioning and the only job left for the government is to facilitate it with the minimum regulatory mechanism. It becomes very important in case of media specially because in the name of protecting interest of the workers in press industry, the government may interfere with the right to freedom of speech and expression guaranteed under article 19(1)(a) of the Constitution of India. The Supreme Court has declared many initiatives, affecting press or its working, whether directly¹ or indirectly,² taken by the

¹ See *Brij Bhushan v. Delhi*, AIR1950SC129 (imposition of pre-censorship was held unconstitutional). See also, *Sakal Papers v. Union of India*, AIR 1962 SC 305, where the court declared an Act and an order made there under unconstitutional, which sought to regulate the number of pages according to the price charged, prescribed the number of supplements to be published, and regulate the size and area of advertisements in relation to other matter contained in a newspaper. The court ruled that even the regulation of the commercial aspects of a newspaper, if affects dissemination of news and views by it, would amount to a direct interference with the freedom of speech and expression.

² *Bennett Coleman & Co. v. Union of India*, AIR 1973 SC 106 can be referred to as an example of an indirect interference on the part of the government. In the name of making a policy of fair and equitable distribution of the imported newsprint, the government imposed certain restrictions on the use and number of pages of the big newspapers having considerable circulation. The Supreme Court declared the policy unconstitutional because the circulation of a newspaper is inversely proportional to the price and directly proportional to the number of pages of that newspaper and the number of pages has everything to do with the growth of the newspaper because scope of

government as violative of the above mentioned Article, as the right to freedom of speech and expression also includes freedom of press.³ Regarding the freedom of press the court has been very cautious.⁴ However, a Constitution Bench of the Supreme Court⁵ upheld the validity of a legislation, named the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955⁶ (hereinafter as ‘the Act’) passed by the Parliament, the purpose of which was to ameliorate the conditions of the working journalists⁷ and other persons (non journalist)⁸ working in the newspaper establishments.⁹

publishing advertisements and thereby gaining monetary benefit depends on the number of pages. See, also, *Indian Express Newspapers (Bombay) P. Ltd. v. Union of India*, AIR1986 SC 515.

³ The courts have derived it from the right to know which is an essential part of article 19(1)(a) of the Constitution of India, since without adequate information, a person cannot form an informed opinion. See *State of U.P. v Raj Narain*, AIR1975SC865; *Reliance Petrochemicals Ltd. v. Indian Express*, AIR1989SC190; *Secretary, Ministry of Information and Broadcasting, Govt. of India v. Cricket Association of Bengal*, AIR1995SC1236; *Dinesh Trivedi v. Union of India* (1997)4 SCC 306; and *Association for Democratic Reforms v. Union of India*, AIR2001Del126. On the question of the availability of the fundamental right under article 19(1) (a) of the Constitution of India, the court has decided various cases in which it has categorically been held that the relief under the article can be granted to the petitioner companies claiming fundamental rights as shareholders or editors of newspaper companies. See *Express Newspaper (Private) Ltd. v. The Union of India*, [1959] S.C.R. 12; *Sakal Papers (P) Ltd. v. The Union of India*, [1962] 3 S.C.R. 842; *R. C. Cooper v. Union of India*, [1970] 3 S.C.R. 530 and *Bennett Coleman & Co. v. Union of India*, AIR1973SC106. Minority opinion of Mukherjea J in *Chiranjit Lal Choudhuri v. The Union of India* [1950] S.C.R.869, can also be taken note of where he says that an incorporated company can come up to this court for enforcement of fundamental rights.

⁴ See Anshuman Mishra, “Freedom of Press-Emerging Challenges” (2) *Journal of the Media Studies* 1(2012).

⁵ *Express Newspaper (Private) Ltd. v. The Union of India*, AIR1958 SC 578: [1959] S.C.R.12.

⁶ After the amendment in 1974 the Act has been renamed as the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955.

⁷ S. 2(f) of the Act defines the term "working journalist" which means a person whose principal avocation is that of a journalist and who is employed as such, either whole-time or part-time, in, or in relation to, one or more newspaper establishments, and includes an editor, a leader-writer, news editor, sub-editor, feature-writer, copy- tester, reporter, correspondent, cartoonist, news photographer and proof-reader, but does not include any such person who-- (i) is employed mainly in a managerial or administrative capacity, or (ii) being employed in a supervisory capacity, performs, either by the nature of the duties attached to his office or by reason of the powers vested in him, functions mainly of a managerial nature; (g) all words and expressions used but not defined in this Act and defined in the Industrial Disputes Act, 1947 (14 of 1947) shall have the meanings respectively assigned to them in that Act.

⁸ S. 2 (dd) of the amended Act defines the term "non-journalist newspaper employee" which means a person employed to do any work in, or in relation to, any newspaper establishment, but does not include any such person who-- (i) is a working journalist, or (ii) is employed mainly in a managerial or administrative capacity, or (iii) being employed in a supervisory capacity, performs, either by the nature of the duties attached to his office or by reason of the powers vested in him, functions mainly of a managerial nature.

⁹ S. 2 (d) of the amended Act defines the term "newspaper establishment" which means an establishment under the control of any person or body or persons, whether incorporated or not, for the production or publication of one or more newspapers or for conducting any news agency or syndicate and includes newspaper establishments specified as one establishment under the Schedule.

Explanation.--For the purposes of this clause,--

(a) different departments, branches and centers of newspaper establishments shall be treated as parts thereof;

(b) a printing press shall be deemed to be a newspaper establishment if the principal business thereof is to print newspaper.

The Act does not apply to newspaper employees working with electronic media

The definition of the term ‘working journalists’ does not cover a television journalist or an employee working therein, therefore, the provisions of the Act do not apply to the journalists working with electronic media. Under the Act the words working journalist mean a person who is employed in a newspaper establishment. Recently, a writ petition has been filed before the Delhi High Court by a journalist working with a North-East based news channel.¹⁰ The court has been requested to direct the union government to amend and widen the scope of the Working Journalists and other Newspaper Employees (Condition of service) and Miscellaneous Provisions Act, 1955 in order to include the journalists working with the electronic media. It has been rightly argued that the non inclusion of the journalist working with electronic media within the definition of working Journalist in the aforesaid act is a clear violation of article 14 of the Constitution.

II Making of the Act¹¹

Originally, in India the newspapers were founded by leaders in the national, political, social and economic fields and only in the first half of the 20th century big industrialists invested money in newspapers. Soon it took shape of industry and developed characteristics of a profit making industry. Several enterprises controlled several big newspapers spreading all over the country. The development also affected the working journalists also. There was a demand from all the quarters of that class of employees to make provisions regarding the welfare of working journalists viz. their wages and salaries, their dearness allowance and other allowances, their retirement benefits, their rules of leave and conditions of service, enquired into by some impartial agency or authority, who would be empowered to fix just and reasonable terms and conditions of service for working journalists as a whole.

¹⁰ Available at: <http://www.livelaw.in/exclusion-of-journalists-in-electronic-media-from-the-ambit-of-working-journalists-act-1955-delhi-hc-issues-notice-to-centre/>(last visited on May 20, 2016).

¹¹ The Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955) received the assent of the President on December 20, 1955. The Act has been amended at several times since its passing by The Working Journalists (Amendment) Act, 1962, Central Labour Laws (Extension to Jammu and Kashmir) Act, 1970, and The Working Journalists (Conditions of Service) and Miscellaneous Provisions (Amendment) Act, 1974 in 1974 to include other Newspaper Employees employed in newspaper establishments (The amended Act has been renamed as the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955). The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions (Amendment) Acts, 1981, 1989 and 1996 have also been passed to amend the original law.

In 1947, the Government of Uttar Pradesh in 1948, the Government of Central Provinces and Berar appointed committees to enquire into the conditions of work of the employees of the newspaper industry in the Uttar Pradesh and province respectively. The committees made certain recommendations; however, the problem remained to be resolved. During the debate in Parliament on the Constitution (First Amendment) Bill, 1951, the Prime Minister assured to appoint a committee or a commission, including representatives of the press, to examine the state of the press and its content. The issue came under the discussion during the debate in Parliament on the Press (Incitement to Crimes) Bill, later named the Press (Objectionable Matter) Act, 1952. The Indian Federation of Working Journalists, at its session held in April, 1952, at Calcutta, adopted a resolution for the appointment of a commission to enquire into the conditions of the press in India. Ultimately, the Government of India announced the appointment of the press commission on September 23, 1952 under the chairmanship of G. S. Rajadhyaksha J. The commission completed its enquiry and submitted its report on July 14, 1954.¹² It considered that there should be a certain minimum wage paid to a journalist.¹³ The commission considered the applicability of the Industrial Disputes Act, 1947 to the working journalists and answered in negative. After the report of the Press Commission, Parliament passed the Working Journalists (Industrial Disputes) Act, 1955 (I of 1955). Section 3 of that Act provided that the provisions of the Industrial Disputes Act, 1947 shall apply to, or in relation to, working journalists as they apply to or in relation to workmen within the meaning of that Act.¹⁴ However, it was not considered as sufficient and in view of the pressure for the implementation of the recommendations of the Press Commission, the union government introduced a Bill in the Rajya Sabha on November 30, 1955, being bill number 13 of 1955¹⁵ to regulate conditions of service of working journalists and other persons employed in newspaper establishments. Almost all the recommendations of the press commission in regard to minimum period of notice, bonus,

¹² For details, see *supra* note 5.

¹³ *Id.* at 585. The position of a journalist was thus characterised by the commission:

A journalist occupies a responsible position in life and has powers which he can wield for good or evil. It is he who reflects and moulds public opinion. He has to possess a certain amount of intellectual equipment and should have attained a certain educational standard without which it would be impossible for him to perform his duties efficiently. His wage and his conditions of service should therefore be such as to attract talent. He has to keep himself abreast of the development in different fields of human activity-even in such technical subjects as law, and medicine. This must involve constant study, contact with personalities and a general acquaintance with world's problems.

¹⁴ *Id.* at 589.

¹⁵ *Ibid.*

Sunday rest, leave, and provident fund and gratuity, *etc.*, were incorporated in the Bill except the fixation of the minimum rates of wages which was left to a minimum wage board to be constituted for the purpose by the Central Government. The provisions of certain other laws such as, the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946) and the Employees' Provident Funds Act, 1952 (19 of 1952) were also sought to be applied in respect of establishments exceeding certain minimum size as recommended by the commission. During the course of discussion in the Rajya Sabha, the word 'minimum' was dropped from the Bill wherever it occurred, the Minister for Labour having been responsible for the suggested amendment. The reason for dropping the same was stated by him as under:¹⁶

Let the word "minimum" be dropped and let it be a proper wage board which will look into this question in all its aspects. Now, if that is done, I believe, from my own experience of the industrial disputes with regard to wages, in a way it will solve the question of wages to the working journalists for all time to come.

Thus, the Act came into being.

Rights of the working journalists

The rights and benefits provided to the working journalists under the Act are in addition to the provisions of general labour welfare legislations. The Act mainly provides for certain special safeguards and payment of fixed wages. The Act also requires the management to pay to the workers irrespective of its financial capacity to pay. By virtue of the provisions of sections 3 and 2 (g)¹⁷ apart from the definitions given in the Act, the definitions provided under the Industrial Disputes Act, 1947 also apply to the Act, so far as they relate with the interpretation of the labour problems of the working journalists. Following are the interests protected by the Act:

i) Notice period in case of retrenchment

Section 3 of the Act makes it clear that notice period applicable in case of retrenchment of working journalists shall be six months, in the case of an editor, and three months, in the case of any other working journalist.¹⁸

¹⁶ *Ibid.*

¹⁷ S. 2 (g) says that all words and expressions used but not defined in this Act and defined in the Industrial Disputes Act, 1947 (14 of 1947) shall have the meanings respectively assigned to them in that Act.

¹⁸ According to the provisions of s. 3 of the Act, though the provisions of the Industrial Disputes Act, 1947 do apply in relation to, working journalists as they apply to, or in relation to, workmen within the meaning of Industrial

ii) Payment of gratuity

A working journalist, who has been terminated otherwise than as a punishment inflicted by way of disciplinary action, or he retires from service on reaching the age of superannuation, or he voluntarily resigns from service, or he dies while in service, shall be paid, on such termination, retirement, resignation or death, by the employer, gratuity which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months. Section 5A empowers the working journalist to nominate a nominee to receive the gratuity and where such a nominee is nominated, the nominee alone shall be entitled to receive the gratuity unless he himself dies before the death of the journalist.

iii) Hours of work

As per the provisions of the Act, a working journalist shall be required or allowed to work for not more than 144 hours during any period of four consecutive weeks. The period of 144 hours of work does not include the time for meals and every such journalist shall be allowed at least 24 hours of rest during any period of seven consecutive days of work.

iv) Leave

Section 7 of the Act provides that without prejudice to such holidays, casual leave or other kinds of leave as may be prescribed, every working journalist shall be entitled to earned leave on full wages for not less than one-eleventh of the period spent on duty and also leave on medical certificate on one-half of the wages for not less than one-eighteenth of the period of service.

v) Fixation and revision of rates of wages of working journalists

The working journalists are entitled to receive wages at a fixed rate and the wages shall be revised also. The function to fix and revise the wages is that of the Central Government under section 8 of the Act which shall be performed through a wage board¹⁹ constituted under section 9 of the Act. The Central Government²⁰ has been empowered under section 12 of the Act to

Disputes Act, 1947, however, the period of notice given to workmen under the Industrial Disputes Act, 1947 is not applicable to the working journalists.

¹⁹ The wage board consists of (a) two persons representing employers in relation to newspaper establishments; (b) two persons representing working journalists; (c) three independent persons, one of whom should be a person who is, or has been, a judge of a high court or the Supreme Court (who has to act as the chairman of the wage board). Under section 11 of the wage board has powers of an industrial tribunal constituted under the Industrial Disputes Act, 1947 (14 of 1947).

²⁰ S. 13A of the Act also empowers the Central Government to fix interim rates of wages in respect of working journalists and any interim rates of wages so fixed shall be binding on all employers in relation to newspaper establishments and every working journalist shall be entitled to be paid wages at a rate which shall, in no case, be

enforce the recommendations of the wage board. It is the provisions of section 13 which make the working journalists entitled to fixed wages at rates not less than those specified in the order. The section says that on the coming into operation of an order of the Central Government under section 12, every working journalist shall be entitled to be paid by his employer wages at the rate which shall in no case be less than the rate of wages specified in the order.

Fixation or revision of rates of wages of non-journalists newspaper employees

The Central Government may also fix and revise rates of wages in respect of non-journalist newspaper employees under section 13 B of the Act after 1974 amendment to the Act. This is to be done through separate wage board to be constituted by the Central Government under section 13 C of the Act. The provisions of sections 10 to 13A shall apply to, and in relation to, the board constituted under section 13C, by virtue of the provisions of section 13D. Further, where the Central Government is of opinion that the Board constituted under section 13C has not been able to function effectively, it may constitute a tribunal under section 13DD for the purpose of fixing or revising rates of wages, in respect of non-journalist newspaper employees under the Act.

Application of certain acts to newspaper employees

Chapter III of the Act makes certain enactments applicable to the newspaper employees for the purpose of giving protection to them. Industrial Employment (Standing Orders) Act, 1946²¹ and The Employees' Provident Funds Act, 1952²² shall apply to every newspaper establishment wherein twenty or more newspaper employees or persons are employed respectively.

Additional safeguards provided in the Act

Chapter IV of the Act provides for certain important safeguards to the newspaper employees. Section 16 nullifies the effect of an agreement made, in disregard of the provisions of the Act, by

less than the interim rates of wages. Any interim rates of wages so fixed under sub- shall remain in force until the order of the Central Government under s.12 comes into operation. Where the Central Government is of opinion that the board constituted under section 9 for the purpose of fixing or revising rates of wages in respect of working journalists under this Act has not been able to function effectively, it may constitute a Tribunal, which shall consist of a person who is, or has been, a judge of a high court or the Supreme Court, for the purpose of fixing or revising rates of wages in respect of working journalists under this Act. And in relation to the tribunal so constituted provisions of ss. 10 to 13A of the Act shall apply.

²¹ See s. 14 of the Act.

²² See s. 15 of the Act. A newspaper establishment in such a case shall be deemed to be a factory.

a newspaper employee. It says that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the commencement of the Act. However, if such an agreement *etc.*, is more favourable to the newspaper employee in respect of a matter, he can receive such benefits in respect of that matter. Section 16 A makes it sure that no employer, by reason of his liability for payment of wages to newspaper employees at the rates specified in an order of the Central Government under section 12, or under section 12 read with section 13AA or section 13DD, dismisses, discharges or retrenches any newspaper employee. Following the provisions of section 17 an amount due to a newspaper employee from an employer may be recovered by him through the government. The amount shall be recovered in the same manner as the arrears of land revenue are recovered. In case there is any dispute regarding the amount, the state government may, on its own motion or upon application made to it, refer the matter to a labour court constituted by it under the Industrial Disputes Act, 1947. Section 17 B of the Act obligates every employer to prepare and maintain such registers, records and muster-rolls and in such manner as may be prescribed.

III Challenging the law

Those, who were running the newspaper industries, felt that by passing such an enactment their interests in freely working have been interfered with. Therefore, the Act was challenged on the ground of interference, by the government, with the freedom of press. The main provisions of the Act challenged were from section 8 to section 11 which provide for the manner of fixation of the rates of wages and procedure thereof in respect of working journalists. As it has discussed above, section 8 empowers the Central Government for fixation or revision of rates of wages, and under the provisions of section 9 of the Act, the Central Government has to constitute a wage board for the purpose of fixing or revising rates of wages in respect of working journalists.

By a notification dated May 2, 1956, the Central Government constituted a wage board under section 9 of the Act for fixing rates of wages in respect of working journalists in accordance with the provisions of the Act, consisting of equal representatives of employers in relation to newspaper establishments and working journalists.²³ The wage board after considering various factors fixed the wages. Various petitions under article 32 of the Constitution were filed raising

²³*Supra* note 5 at 590.

the question as to the *vires* of the Act and the decision of the wage board constituted there under. The constitutionality of the Act was challenged on the ground that it violated the fundamental rights of the petitioners under article 14, Clauses (a) & (g) of article 19 (1) and article 32 of the Constitution. The Supreme Court while observing that the freedom of the press is of paramount importance held the provisions of the Act not violative of the fundamental rights enshrined in articles 19(1)(a), 19(1)(g), 14 and/or 32 except the provision contained in section 5(1)(a)(iii)²⁴ of the Act which was held violative of the fundamental right guaranteed under article 19(1)(g) of the Constitution, therefore, unconstitutional and the same was struck down by the court.²⁵

Article 19(1)(a) of the Constitution

Reasons given by the court in respect of upholding the provisions of the Act under Article 19(1)(a) are as follows:²⁶

The regulation of the conditions of service is thus the main object which is sought to be achieved by the impugned Act..... If this is the true nature of the Act, it is impossible to say that the Act was designed to affect the freedom of speech and expression enjoyed by the petitioners or that was its necessary effect and operation. It is obvious that the enactment of this measure is for the amelioration of the conditions of the workmen in the newspaper industry. ... It could not also be said that there was any ulterior motive behind the enactment of such a measure because the employers may have to share a greater financial burden than before or that the working of the industry may be rendered more difficult than before. These are all incidental disadvantages which may manifest themselves in the future working of the industry, but it could not be said that the Legislature in enacting that measure was aiming at these disadvantages when it was trying to ameliorate the conditions of the workmen.....The real difficulty, however, in the way of the petitioners is that whatever be the measures enacted for the benefit of the working journalists neither the intention nor the effect and operation of the impugned Act

²⁴ The section provided that if an employee voluntarily leaves the service after a period of 3 years in service, he shall be entitled for gratuity. The section imposed an unreasonable restriction.

²⁵ *Id* at 634.

²⁶ *Id* at 619-620.

is to take away or abridge the right of freedom of speech and expression enjoyed by the petitioners.

Article 19(1) (g) of the Constitution

Testing the constitutionality of the Act on the ground of provisions of article 19(1)(g) of the Constitution read with article 19(6), the court expressed the view that the Act did not impose unreasonable restrictions by appointing a wage board for fixation of wages except section 5 (1)(a)(iii) of the Act. The court expressed its views as follows: ²⁷

Where however an employee voluntarily resigns from service of the employer after a period of only three years, there will be no justification whatever for awarding him a gratuity and any such provision of the type which has been made in s. 5(1)(a)(iii) of the Act would certainly be unreasonable. We hold therefore that this provision imposes an unreasonable restriction on the petitioners' right to carry on business and is liable to be struck down as unconstitutional.

The Supreme Court upheld the provisions of the Act in regard to the hours of work and reasonable having regard to the nature and quality of the work to be done by working journalists.²⁸ In regard to the considerations of fixation of rates of wages by the Wage Board, the court reiterated its observation in following manner: ²⁹

....the Wage Board is constituted of equal numbers of representatives of the newspaper establishments and the working journalists with an independent chairman at its head and principles for the guidance of the Wage Board in the fixation of such rates of wages directing the Wage Board to take into consideration amongst other circumstances the capacity of the industry to pay have also been laid down and it is impossible to say that the provisions in that behalf are in any manner unreasonable. It may be that the decision of the Wage Board may be arrived at ignoring some of these essential criteria which have been laid down in s. 9(1) of the Act or that the procedure followed by the Wage Board may be contrary to the principles of natural justice. But that would affect the

²⁷ *Id.* at 629.

²⁸ *Ibid.*

²⁹ *Ibid.*

validity of the decision itself and not the constitution of the Wage Board which as we have seen cannot be objected to on this ground.

Article 14 of the Constitution

It was contended that the Act selected the working journalists for favoured treatment by giving them a statutory guarantee of gratuity, hours of work and leave which other persons in similar or comparable employment had not got and in providing for the fixation of their salaries without following the normal procedure envisaged in the Industrial Disputes Act, 1947. Negating the contention the court observed thus:³⁰

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

³⁰ *Express Newspaper (Private) Ltd. v. The Union of India*, AIR1958SC578, at 631.

Article 32 of the Constitution

In respect of the violation of article 32, the only contention was that the Act did not provide for the giving of reasons for its decision by the wage board because of which it became difficult for the petitioners to approach the Supreme Court. Further it was contended that the absence of such a provision in the legislation amounts to an attempt to impose a restriction or defeat the right to approach the Supreme Court when under article 32 right to approach the Supreme Court by a writ of certiorari itself a fundamental right. Without a speaking order (an order disclosing reasons) it was impossible to apply to the court for the direction of a writ of *certiorari*. However, on scrutiny the court did not find any provision in the Act restricting the wage board to give reasons for its decision. Negating the contention the court observed thus: ³¹

It is no doubt true that if there was any provision to be found in the impugned Act which prevented the Wage Board from giving reasons for its decision, it might be construed to mean that the order which was thus made by the Wage Board could not be a speaking order and no writ of certiorari could ever be available to the petitioners in that behalf. It is also true that in that event this Court would be powerless to redress the grievances of the petitioners by issuing a writ in the nature of certiorari and the fundamental right which a citizen has of approaching this Court under Art. 32 of the Constitution would be rendered nugatory. The position, however, as it obtains in the present case is that there is no such provision to be found in the impugned Act. The impugned Act does not say that the Wage Board shall not give any reason for its decision. It is left to the discretion of the Wage Board whether it should give the reasons for its decision or not. In the absence of any such prohibition it is impossible for us to hold that the fundamental right conferred upon the petitioners under Article 32 was in any manner whatever sought to be infringed.

IV Challenging the decision of the wage board

Apart from challenging the *vires* of the Act, the -petitioners contended that the decision of the wage board itself is illegal and void. The court, in the circumstances of the matter, found that the decision of the wage board could not be challenged on the grounds that the impugned Act under

³¹ *Id.* at 633.

which the decision is made is *ultra vires* or that the decision itself infringes the fundamental rights of the petitioners, therefore, the court took the view that in the circumstances, the challenge must be confined only to the third ground, viz., that the decision is *ultra vires* the Act itself.

In this regard it was contended that the decision of the wage board fixing the rates of wages, was arrived at without any consideration whatsoever as to the capacity of the newspaper industry to pay the same, thereby imposing a very heavy financial burden on the industry. The argument in favour of the contention was that the decision of the board was wrong in application of the proper criteria and violated the principles of natural justice and was, therefore, illegal and void. The Supreme Court found the decision of the wage board *ultra vires* and held thus:³²

In adopting this course, all the members of the Board seem to have lost sight of the fact that the essential prerequisite of deciding the wage structure was to consider the capacity of the industry to pay and this, in our opinion, introduces a fatal infirmity in the decision of the Board. If we had been satisfied that the Board had considered this aspect of the matter, we would naturally have been reluctant to accept any challenge to the validity of the decision on the ground that the capacity to pay had not been properly considered. After all, in cases of this kind where special Boards are set up to frame wage structures, this Court would normally refuse to constitute itself into a court of appeal on questions of fact; but, in the present case, an essential condition for the fixation of wage structure has been completely ignored and so there is no escape from the conclusion that the Board has contravened the mandatory requirement of section 9 and in consequence its decision is *ultra vires* the Act itself.

Thus, from the above discussion, it can be concluded that in the year 1958 the Supreme Court of India was fully convinced that the Act *i.e.*, The Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 was constitutional and not violative of any of the fundamental rights the provisions of which were relied on by the petitioners. Constitution of the wage board appointed (date of appointment May 2, 1956) under the chairmanship of H.V. Divatia was also held constitutional. However, the decision of Divatia Wage Board was held

³² *Supra* note 5 at 642.

ultra vires the Act as it did not take into account the capacity of the industry to pay. After the constitution of the Divatia Wage Board five more wage boards have been constituted till date to fix and revise the wages of newspaper employees. These are: Shinde Wage Board (1963-64), Palekar Wage Board (1975-76), Bachawat Wage Board (1985), Manisana Wage Board (1994), and the latest are the Majithia Wage Boards³³ (2007). Constitution and/or recommendations of all the wage boards have been challenged before the courts. In most of the cases the courts have struck down the recommendations/award of the wage board except in case of the Majithia Wage Boards, which gave its recommendations in 2010, and the same were subsequently accepted and notified by the Central Government on November 11, 2011. The Supreme Court in *ABP (P) Ltd. v. Union of India*³⁴ decided the recommendations so notified and later challenged.³⁵

Relying on its judgment in *Express Newspaper*,³⁶ the Supreme Court upheld the constitutionality of the Act. However, the petitioners raised an interesting issue of parity between employees working in print media and employees working in electronic media. They argued that while the Act regulates the newspaper industry, there is no such regulation applicable to the employers in electronic media, thereby providing for discrimination among persons similarly situated. The court declined to interfere for two reasons *viz.*, (i) the employees working in electronic media were not present before the court, and (ii) similar benefits have not been extended to the employees of other similar industries will not result in invalidation of benefits given to the

³³ Two separate wage boards were constituted. One for the working journalists and the other for the non-journalist news paper employees under ss. 9 and 13-C of the Act respectively, under the chairmanship of Gurbax Rai Majithia J.

³⁴ (2014) 3 SCC 327.

³⁵ The grounds of challenge were: Constitutional validity of the Act and the Amendment Act, 1974 (under articles 14, 19(1)(a), and 19(1)(g) of the Constitution); Improper Constitution of the Wage Boards; and Irregularity in the procedure adopted by Majithia Wage Boards; Majithia Wage Boards overlooked the relevant aspects and considered extraneous factors while drafting the recommendations. See *ABP (P) Ltd. v. Union of India* (2014) 3 SCC 327 at 339.

³⁶ AIR1958SC578, the judgement was delivered by a constitution bench. The court reiterated its earlier view that the Act was a beneficent legislation intended to regulate the conditions of service of the working journalists and it did not have the effect of taking away or abridging the freedom of speech and expression of the petitioners (employers) and did not, therefore, infringe art.19(1)(a) of the Constitution. The court also held the Act not in violation of the provisions of art. 19(1)(g) of the Constitution in view of the test of reasonableness laid down by it. On the alternative challenge to the constitutionality of the Act, that selecting working journalists for giving favoured treatment is violative of art. 14 as it is not a reasonable classification as permissible in the aforesaid art., the court held that the newspaper industry can be treated as a separate class. So far as the challenge to the constitutionality of the Amendment Act, 1974 is concerned, the court held thus:

All that the 1974 Amendment did was to only bring the other employees of the newspaper industry (i.e. non-working journalists) into the ambit of the Act and extend the benefits of the Act to them. Thus, the same is also covered as per the reasoning of the Constitution Bench decision of this Court. Therefore, the challenge as to the Amendment Act, 1974 stands disallowed.

See *supra* note 35, *ABP (P) Ltd* at 349.

employees of the press industry. Rejecting this ground of challenge, the court observed regarding the position of the employees working in electronic media, thus: ³⁷

Recalling that media industry is still an upcoming sector unlike the press industry, which is as ancient as our independence itself, the scope for potential policies in future cannot be overruled....

It is submitted (as the experience shows) that the decisions of the Supreme Court are not taken lightly in this country and, therefore, very soon a similar law like that of the Act may be enacted in future on the lines of the expectations expressed by our Supreme Court. Though, it is very unfortunate that the employees working in newspaper industry have not shown that standard of independence in reporting news items which is specifically expected from them in view of protection given by the Act. Newspapers, especially local dailies are indulged in reporting negative news items rather than news which might have a positive impact on the society. Electronic media, especially news channels are following the same route, the reason for this among the others may be that the employees working in electronic media are not given the protection which is made available to the employees working in newspaper industry.

V Conclusion

Employers and employees of any industry can never be on an equal footing. There is a very wide gap. The employers cannot be given a free hand as far as their rights and interests are concerned. It is clear from the fact, that when it was argued before the court that electronic media is growing at a rapid pace because they are not bound by an archaic law like the Act, and they are free to take decisions in respect of employees working with them, the court observed thus: ³⁸

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

³⁷ See *supra* note 35, *ABP (P) Ltd.* at 350.

³⁸*Ibid.*

The Act was enacted in the year 1955. The same has been amended a number of times till date. The Act and the wage boards constituted under its provisions have also been challenged from the very time of its inception but the court has always upheld the validity of the provisions of the Act barring a few, which are negligible. It shows that how the Supreme Court and the government both have taken appropriate steps to protect the interests of the employees working in the newspaper industry and hopefully a similar kind of protection shall be made available to the employees of electronic media.