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HINDUSTAN LEVER AND ORS.

v.

HINDUSTAN LEVER MAZDOOR SABHA AND ORS.

SEPTEMBER 28, 1993

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[K. JAYACHANDRA REDDY AND G.N. RAY, JJ.]

Labour Law :

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The Maharashtra Workmen's Minimum House-Rent Allowance Act, 1983 Ss. 4,13. Notification No. BRA 3191/992/LAB dated 9.10.1992—Workmen—House rent allowance—Entitlement to—Employer's liability to pay house rent allowance to each workman at a specific rate—Exemption—Notification exempting industries areawise in relation to their workmen on income basis—Held, classification of Workmen on basis of income and classification of industries areawise not permissible under the Act.

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The Government of Maharashtra purporting to exercise powers under s.13 of the Maharashtra Workmen's Minimum House Rent Allowance Act, 1983 issued a Notification dated 9.10.1992 directing that with effect from 1.1.1991 the provisions of the Act would not apply to the factories/establishments situated in certain Zones/areas in respect of their workmen drawing wages as mentioned in the Notification. Consequently house rent allowance of same categories of workmen of the companies situated in the Zones/Areas concerned was reduced below the minimum payable under the Act. The respondent-employees Unions filed writ petitions before the High Court challenging validity of the Notification.

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The High Court quashed the Notification holding the same as invalid and unenforceable and directed the companies concerned to refund the amount recovered from the workmen on the basis of the notification. The companies filed the special leave petitions before this Court.

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The petitioners-companies before this Court contended that the Notification was issued in accordance with s.13(1) of the Act which empowered the Government to exempt any specific factory or establishment from application of the Act, for the reasons mentioned therein; that in the Notification the classification made on the basis of wages of the workmen was reasonable and permissible under s.13 and in deciding the validity of

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the Notification the substance of the Notification as a whole should be considered. A

Dismissing the special leave petitions, this Court

HELD : 1. The classification of workers on the basis of the income and the classification of the industries area-wise are not permissible under s.13 of the Maharashtra Workmen's Minimum House Rent Allowance Act, 1983. The Notification under challenge is ultra vires of the Act, void and unenforceable and the High Court was right in quashing the same. B

[549-H, 549-A, 549-G]

Security Guards Board for Greater Bombay and Thane Distt. v. Security & Personnel Service Pvt. Ltd. and others, [1987] 3 SCC 413, distinguished. C

2. The basic object underlying the Act is that every workman should be paid house-rent allowance as provided in s.4. Section 4 which is the soul of the Act, lays down the fundamental structure, namely, that workers should be paid house-rent allowance and the establishments, factories or the units which under certain circumstances would be eligible for exemption under Section 13. Section 4 is the measure of the liability which operates on the factories or establishments which are units and the benefit should go to all workmen in the unit, and makes every employer responsible to pay monthly house-rent allowance to every workman which shall not be less than 5% of the wages payable subject to a minimum of Rs. 20 whichever is higher. The Section does not lay down any upper limit regarding the entitlement of the house-rent allowance. However high the wages may be, an employer has to pay it @ 5%. Likewise, after requirements of Section 13 being satisfied, the individual unit or units, as a whole can be exempted. [546-G-H] D E F

3.1. The exemption contemplated under s.13 can be granted to any specified factory or establishment or to any class of factories or establishments in any industry, and not to one class of employees thereby differently treating another class of employees in the same factory. The section does not speak of the class of workers or employees. The emphasis is on the factories or establishments in an industry and not on the workmen or employees. [547-B] G

3.2. Before granting the exemption, the Government must be satisfied that it is just and proper to do so in public interest or for any special H

A reasons having regard to the favourable conditions of employment in such factories or establishments or to the financial position and other relevant circumstances of such factories or establishments. The economic viability of a particular factory or establishment may be a relevant consideration but the wages and ceiling thereof cannot form the basis nor can they be relevant for the purpose of s.13. [547-C]

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3.3. The expression "conditions and restrictions" occurring in s.13 cannot be interpreted to mean differently and the same does not in any manner give scope to classify the workers in the manner in the Notification and grant an exemption on that basis. [547-G]

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3.4. The expression "such period or periods" in s.13 should be read in the context of the other expression, namely, that the Government should be satisfied that it is just and proper to do so in the public interest or for any special reasons having regard to the more favourable conditions of employment. If so read, it becomes clear that the exemption cannot be for eternity. [548-B]

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3.5. The Public interest contemplated under s.13 is of different nature and it will not be served and cannot be served by applying the provisions of the Act to some workmen and none to the other or with certain restrictions and conditions to yet another class of workmen. [548-C]

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3.6. The Notification does not indicate any special reasons with reference to the financial position and other relevant circumstances of any factory or establishment or class of factories or establishment except mentioning that it is just and proper to do so in the public interest. [548-E]

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3.7. The substance of the notification is clear, namely, that some of the workers are deprived of house-rent allowance being paid at the rate laid down under Section 4. The Notification does not conform to the requirements of s.13 of the Act which is a welfare legislation in conformity with the directive principles. [548-H]

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CIVIL APPELLATE JURISDICTION : Special Leave Petition (Civil) No. 7847 of 1993.

From the Judgment and Order dated 24/25-2-1993 of the Bombay High Court in W.P. No. 50 of 1993.

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WITH

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S.L.P. (C) No. 6893/93.

WITH

I.A. Nos. 3-4 & 5-6.

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Shanti Bushan, K.K. Singhvi, Ms. Manik Karanjawala, P.K. Rele, R. Karanjawala, Rajesh Kumar, A.S. Bhasme, Ms. Suruchi Aggarwal, P.K. Mullick, Brij Bhushan, Sanjay Singhvi, B.N. Singhvi, M. George Jose, J.P. Pathak and A.C. Mahimkar for the appearing parties.

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The Judgment of the Court was delivered by

K. JAYACHANDRA REDDY, J. Some of the employees unions, who figure a respondents herein, filed a batch of writ petitions challenging the validity of a Notification dated 9.10.92 issued by the Industries, Energy and Labour Department of the State Government of Maharashtra exercising the powers conferred by Section 13 of The Maharashtra Workmen's Minimum House-Rent Allowance Act, 1983 ('Act' for short). A Division Bench of the High Court declared the impugned Notification as invalid, unenforceable and accordingly quashed the same and also directed the employers, who figured as respondents before the High Court, to refund the amount recovered from the workmen on the basis of the impugned Notification. M/s Hindustan Lever Ltd., Batloiboi & Co. and others ('Companies' for short) have filed these two S.L.Ps. questioning the judgment of the High Court. These S.L.Ps. are being disposed of at the admission stage itself. Some other Employees' Unions have filed I.A. Nos. 3-4-5-6 for being impleaded as interveners.

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With a view to provide for payment of minimum house-rent allowance to workmen employed in industries in Maharashtra and to provide for matters connected therewith, the Act was enacted in the year 1983 which received the assent of the President on 5.10.88, and was published in the Official Gazette on 17.10.88. The Act extends to the State of Maharashtra and as notified by the State Government, it was brought into force with effect from 1st January, 1991. This Act is made applicable under Section 1 to every factory or establishment in an industry. For the purpose

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A of the questions to be resolved, it may not be necessary to refer to all the Sections. Section 2(i) defines workmen as under:

"2. In this Act, unless the context otherwise requires -

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(i) "workman" means a workman as defined in the Industrial Disputes Act, 1947 (XIV of 1947) or an employee as defined in the Bombay Industrial Relations Act, 1946 (Bom. XI of 1947) as the case may require.

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Section 2(i) gives the same meaning to the expression workman as defined in the Industrial Disputes Act or an employee as defined in the Bombay Industrial Relations Act. Section 4(1) reads thus :

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"4. Responsibility for payment of house-rent allowance: (1) Every employer shall pay to every workman employed by him a house-rent allowance which shall not be less than five per cent of the wages payable to the workman for his services during a month, or twenty rupees, whichever is higher."

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Section 13 empowers the State Government to grant exemption in certain special cases from the application of the Act. Section 13 read as follows:

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"13. Power to exempt in special cases-(1) Notwithstanding anything contained in this Act, the State Government may, by order published in the official Gazette, and subject to such conditions and restrictions, if any, and for such period or periods, as may be specified in the order, direct that the provision of this Act shall not apply to any specified factory or establishment or to any specified class of factories or establishments in any industry, if it is satisfied that it is just and proper so to do in the public interest or for any special reasons having regard to the more favourable conditions of employment in such factory or factories or establishment or establishments or to the financial position and other relevant circumstances of such factory or factories or establishments, as the case may be.

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(2) Any order made under this section may be made so as to be retrospective to any date not earlier than the date on which the Act became applicable to that factory or factories or establishment or establishments, as the case may be."

Purporting to exercise powers under this Section, the impugned Notification was issued by the State Government which reads thus:

"No. BRA 3191/992/LAB/-A - In exercise of the powers conferred by sub-section (1) of Section 13 of the Maharashtra Workmen's Minimum House-Rent Allowance Act, 1983 (Mah. XXIII of 1988), the Government of Maharashtra, being satisfied that it is just and proper to do so in the public interest, hereby directs that, with effect from 1st January, 1991, the provisions of said Act, shall not apply to the factories and establishments in relation to their workmen drawing wages as on 1st January, 1991 or thereafter at the rates exceeding the limits mentioned in column (4) with reference to the Zones and Areas mentioned in column (2) and (3), respectively, of the Schedule below, subject to the condition that where the wages of the workmen exceed the limits of wages in the respective Zones, the House-Rent allowances payable to such workmen shall be calculated as if their wages were as per the limits in column (4) of the Schedule below:

S.No. 1.	Zone 2.	Areas 3.	Limited of wages 4.
1.	I	Comprised within the limits of Greater Bombay, Thane and Kalyan Municipal Corporation Ulhasnagar and Ambernath Municipal Councils; New Bombay Thane-Belapur, Taloja-Banvel Industrial Areas.	Rs. 3500 per month
2.	II	Comprised within the limits of Pune, Pimpri-Chinchwad and Nashik Municipal Corporations (including Awbad-Satpur NIDC of Nashik)	Rs. 3000 per month
3.	III	All areas within the jurisdiction of the State of Maharastra excluding the areas covered under Zone I and II above."	Rs. 2500 per month

A The employees unions challenged this Notification on the ground that i) it is an excess of power under Section 13 (2), ii) it is against the basic provisions of the Act, iii) it is arbitrary and (iv) it is vitiated by non-application of mind. An additional challenge is to the retrospectivity from 1.1.1991 on the ground of unreasonableness.

B The High Court held that the Act contemplates payment of house-rent allowance to all workmen and there is no scope to reduce the minimum rate of house rent in respect of any class of workmen or to differentiate between classes or categories of workmen of a unit and in the Notification, rates of house-rent allowance have been reduced even below
C statutory minimum by putting a ceiling depending upon the geographical areas in which the factories or establishments are situated and it is beyond the power expressly contained in Section 13 and that in other respects also, the impugned Notification is not in accordance with the conditions laid down in Section 13.

D Shri Shanti Bhushan, learned counsel appearing for the petitioners submitted that Section 13(1) of the Act empowers the Government to exempt any specific factory or establishment, subject to such conditions and restrictions, if any, and for such period or periods, as may be specified, if
E the Government is satisfied that it is just and proper to do so in public interest or for any special reasons mentioned therein and in deciding the question whether the Notification is in accordance with Section 13, the substance of the Notification as a whole should be considered.

F Learned counsel for the respondent, on the other hand submitted that the Notification virtually amounts to amendment of the Act particularly Section 4 and is also in total contravention of provisions of Section 13.

Section 4, which is the soul of the Act, makes every employer responsible to pay monthly house-rent allowance to every workman which
G shall not less than 5% of the wages payable subject to a minimum of Rs. 20, whichever is higher. This section does not lay down any upper limit regarding the entitlement of the house-rent allowance. However, higher the wages may be, an employer has to pay it @ 5%. A reading of the impugned Notification shows that the rates of house-rent allowance have been
H reduced even below the statutory minimum by putting a ceiling in the case

of workmen drawing salary more than Rs. 3,300, Rs. 3,000 or Rs. 2,500 depending upon the geographical area in which the factories or establishments are situated. Section 13 no doubt empowers the Government to grant exemption in special cases in respect of applicability of the provisions subject to certain conditions and restrictions and for some period. This Section makes it clear that such an exemption can be granted to any specified factory or establishment or to any specified class of factories or establishments in any industry. Before granting such exemption, the Government must be satisfied that it is just and proper to do so in public interest or for any special reasons having regard to the favourable conditions of employment in such factories or establishments or to the financial position and other relevant circumstances of such factories or establishments. It may be noticed that section 13 does not speak of class of workers or employees. The emphasis is on the factories or establishments in an industry and not on the workmen or employees.

Learned counsel for the petitioners however, submitted that in the Notification, a classification is made on the basis of ceiling fixed in respect of salaries as shown in column (4) which is reasonable and the workmen who are drawing the wages within the ceiling in column (4) are not affected and the limit of payment of house-rent allowance on these basis is uniformly applied to all the factories in the entire State of Maharashtra without any discrimination and that such exemption in such terms is permissible within the meaning of Section 13. We see no force in this submission. The object of the Act is that every workman should get house-rent allowance @ 5% of the wages paid. The exemption contemplated under Section 13 can be made applicable to specified factories and establishments and not to one class of employees thereby differently treating another class of employees in the same factory. The intention of the legislature is clear that Section 13 applies to factories or establishments or class of factories or establishments. Therefore the exemption can not be with reference to a class or classes of employees. The expression "conditions and restrictions" can not be interpreted to mean differently and the same does not in any manner give scope to classify the workers in the manner done in the Notification and grant and exemption on that basis.

Section 13 also contemplates that the exemption can be for such period or periods as may be specified. In the impugned Notification no

- A such period is fixed. Shri Shanti Bhushan, learned counsel, however, submitted that unlimited period also comes within the meaning of such period. We do not agree. The expression "such period or periods" should be read in the context of the other expression namely that the Government should be satisfied that it is just and proper to do so in the public interest or for any special reasons having regard to the more favourable conditions of employment. If so read, it becomes clear that the exemption cannot be for eternity.

- C We are also unable to see as to how public interest is sub-served by depriving some of the workmen in the same establishment, of the house-rent allowance @ 5% of the wages as provided under Section 4. Public interest will not be served and cannot be served by applying the provisions of the Act to some workmen and none to the other or with certain restrictions and condition to yet another class of workmen. There is yet another requirement namely that such exemption can be given if it is just and proper for any special reasons having regard to the more favourable conditions of employment and the same can be satisfied only on the exemption of an individual factory or establishment or class of factories or establishments and not on the basis of wages paid even in the case of a flourishing industry. The Notification also does not indicate any special reason with reference to the financial position and other relevant circumstances of any factory or establishment or class of factories or establishments except mentioning that it is just and proper to do so in the public interest. We are not able to cull out any other valid reason which conforms with the requirement of Section 13.

- F Learned counsel for the petitioners vehemently submitted that the substance of the Notification has to be examined and not the mere form. We have noted above that the Act is a welfare legislation in conformity with the directive principles. The basic object underlying the Act is that the workers should be paid house-rent allowance at the rate mentioned in Section 4. The substance of the notification is clear namely that some of the worker are deprived of house-rent allowance being paid at the rate laid down under Section 4. Assuming that such modification as per the Notification is justifiable on some other grounds but that does not mean that the substance of the Notification conforms to the requirements of Section 13.
- H The classification of the workers on the basis of the income and the

classification of the industries area-wise are not permissible under Section 13 as the exemption can be given to a factory or establishment or a class or factories or establishments in an industry subject to the conditions and restrictions enumerated in the Section. The economic viability of a particular factory or establishment may be a relevant consideration but the wages and ceiling thereof can not form the basis nor can they be relevant or the purpose of Section 13. The public interest contemplated under Section 13 is of different nature and the same can not be advanced by depriving a certain class of workmen of the benefits under the Act. Section 4 lays down the fundamental structure namely that workers should be paid house-rent allowance and the establishment, factories or the units which under certain circumstances would be eligible for exemption under Section 13. In other words, Section 4 is the measure of the liability which operates on the factories or establishments which are units and the benefit should go to all workmen in the unit. Likewise after requirements of Section 13 being satisfied, the individual unit or units, as a whole, can be exempted. But such exemption can not be on the basis of the workers and their wages differentiating between different classes of workmen of the same unit. Learned counsel for the petitioners relying on the judgment of this Court in *Security Guards Board for Greater Bombay and Thane Distt. v. Security & Personnel Service Pvt. Ltd. and Others*, [1987] 3 SCC 413, submitted that the exemption can be on the basis of class or classes of workmen employed. That was case arising under the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981 and Section 23 empowers the Government to grant exemption from the operation of the provisions of the Act or any scheme thereunder in regard to all or any class of security guards employed in any factory. It is clear that the provision of exemption can be made applicable to class or classes of security guards. But, in the instant case, the language of Section 13 is different.

For all the above reasons, we agree with the High Court that the notification is ultra vires of the Act, void and unenforceable and therefore the same has been rightly quashed.

Learned counsel for the respondents submitted that giving retrospective effect to the Notification is arbitrary and the workers can not be made to refund the house-rent allowance which has already been paid to them.

- A We need not go into this question since we are holding that the Notification itself has rightly been quashed.

- B In S.L.P (Civil) No. 6893/93, learned counsel appearing for the petitioner namely Batliboi & Co., submitted that by virtue of order passed by this Court in Civil Appeal No. 5139/92, the present S.L.P. is not maintainable. But that was at an interlocutory stage when the validity of the Notification was not in issue., Therefore the said order does not come in the way of respondents challenging the Notification.

- C Accordingly, both the S.L.Ps. are dismissed. Since we are confirming the judgment of the High Court, no further orders are necessary in I.A. Nos. 3, 4, 5, and 6.

R.P.

Appeals dismissed.