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AVISHEK RAJA & ORS.

v.

SANJAY GUPTA

(Contempt Petition (Civil) No. 411 of 2014)

B

in

(Writ Petition (Civil) No. 246 of 2011)

JUNE 19, 2017

[RANJAN GOGOI AND NAVIN SINHA, JJ.]

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Contempt of Courts Act, 1971:

s.2(b) – Civil Contempt – When not – Employees in newspaper establishments – Majithia Wage Board constituted by Central Government in exercise of its powers u/s. 9 and 13C of the 1955 Act – Recommendations of said Wage Board accepted and notified by Central government – Writ petition before Supreme Court challenging said recommendations as well as notification by Central Government – Writ petitions dismissed vide judgment dated 07.02.2014, thereby approving award of Wage Board – Contempt petitions filed alleging non-payment of wages/allowances as per the award of wage board and thus non-implementation/partial implementation of award by newspaper establishments– Held: Part implementation/non-implementation of the Wage Board award by the concerned newspaper establishments is on account of what the said establishments perceived to be the scope and ambit of Wage Board award as approved and notified by the Central Government, the challenge to which was dismissed by Supreme Court by judgment dated 7.2.2014 – Thus, the default alleged took place on account of a wrong understanding of the award as upheld by Supreme Court and the same would not amount to wilful default so as to attract the liability of civil contempt as defined u/s. 2(b) – Further, though, the default alleged is evident, in absence of any willful or deliberate intention to commit the same, none of the newspaper establishments in the facts of the case are held guilty of commission of contempt – Further, complaints with regard to non-implementation of the Wage Board or otherwise be dealt with in terms of mechanism provided u/s. 17 – The Working Journalists and Other Newspaper Employees

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(*Conditions of Service*) and *Miscellaneous Provisions Act, 1955* – A ss. 2(c), 9, 12, 13, 13AA, 13C, 13DD, 16A and 17.

Contempt of Court – Standard of proof – Discussed.

The Working Journalists and Other Newspaper employees (Conditions of Service) and Miscellaneous Provisions Act, 1955: B

Purpose of enactment – Held: To provide the minimum, if not a fair wage, to newspaper employees.

s.12 – *Wages notified under, by Central Government – Nature of – The wages notified supersedes all existing contracts governing wages as may be in force – However, the Legislature has made it clear by way of s.16 that, notwithstanding the wages as may be fixed and notified, it will always be open to the concerned employee to agree to and accept any benefits which is more favourable to him than what has been notified u/s.12.* C

Doctrines/Principles – Doctrine of Waiver – Applicability of – Wage Board award (Clause 20(j)) gave an option to employees to retain their existing pay scale and not opt for wages as recommended by the Board and notified by Central Government – Undertakings given by the employees (although alleged to be involuntary/given under duress) agreeing to be governed by previous wage structure, the same being less favourable – Plea of contempt petitioners that such undertaking opting for less favourable benefits than what was recommended by Wage Board is non est in law – Held: The Act is silent on the availability of an option to receive less than what is due to an employee under the Act – Such an option lies in the domain of the doctrine of waiver, an issue that does not arise in the present case in view of specific stand of the employees with regard to the involuntary nature of undertakings allegedly furnished by them – Such dispute has to be resolved by the fact finding authority u/s.17 of the Act – The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 – s.17. D E F G

Constitution of India – Art. 32 – Writ petitions under, seeking interference with transfer/termination – Non-maintainability of – Held: Such writ petitions are relatable to service conditions of the concerned writ petitioners and adjudication of such questions in H

A *the exercise of high prerogative writ jurisdiction of this Court u/ Art. 32 of the Constitution, unjustified – Such questions should be left for determination before the appropriate authority either under the Act or under cognate provisions of law.*

Disposing of the matters, the Court

B **HELD:** 1.1 The standard of proof required to hold a person guilty of contempt would be the same as in a criminal proceeding and the breach alleged shall have to be established beyond all reasonable doubt. [Para 20] [1049-D-E]

C 1.2 From the stand adopted by the newspaper establishments in the various counter affidavits filed; from the statements made in the reports submitted by the Labour Commissioners of different States from time to time; and also from the written arguments filed and the oral submissions advanced, it is clear that part implementation/non-implementation

D of the Wage Board Award by the concerned newspaper establishments is on account of what the said establishments perceived to be the scope and ambit of the Wage Board Award as approved and notified by the Central Government, the challenge to which was dismissed by this Court by judgment dated 07.02.2014. The stand taken for what is alleged to be non-

E implementation or partial implementation of the Award, having clearly stemmed from the understanding of the Award of the concerned newspaper establishments in a particular manner, the said establishments cannot be held to have wilfully disobeyed the judgment of this Court dated 07.02.2014. At best, the default

F alleged took place on account of a wrong understanding of the Award as upheld by this Court. This would not amount to wilful default so as to attract the liability of civil contempt as defined under Section 2(b) of the Contempt of Courts Act, 1971. The default alleged though is unmistakably evident, in the absence of any wilful or deliberate intention to commit the same cannot make

G any of the newspaper establishments liable for contempt. [Para 22] [1051-B-F]

H 1.3 None of the newspaper establishments in the facts of the cases is held guilty of commission of contempt. Further, all complaints with regard to non-implementation of the Wage Board

Award or otherwise be dealt with in terms of the mechanism provided under Section 17 of the The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955. It would be more appropriate to resolve such complaints and grievances by resort to the enforcement and remedial machinery provided under the Act rather than by any future approaches to the Courts in exercise of the contempt jurisdiction of the Courts or otherwise. [Para 27] [1054-C-D]

2. Clause 20(j) of the Award, gave an option to the employees to retain their existing pay scale and not opt for the wages as recommended by the Board and notified by the Central Government. Insofar as the highly contentious issue of Clause 20(j) of the Award read with the provisions of the 1955 Act is concerned, it is clear that what the Act guarantees to each "newspaper employee" as defined in Section 2(c) of the Act is the entitlement to receive wages as recommended by the Wage Board and approved and notified by the Central Government under Section 12 of the Act. The wages notified supersedes all existing contracts governing wages as may be in force. However, the Legislature has made it clear by incorporating the provisions of Section 16 that, notwithstanding the wages as may be fixed and notified, it will always be open to the concerned employee to agree to and accept any benefits which is more favourable to him than what has been notified under Section 12 of the Act. Clause 20(j) of the Wage Board Award will, therefore, have to be read and understood in the above light. The Act is silent on the availability of an option to receive less than what is due to an employee under the Act. Such an option really lies in the domain of the doctrine of waiver, an issue that does not arise in the present case in view of the specific stand of the concerned employees in the present case with regard to the involuntary nature of the undertakings allegedly furnished by them. The dispute that arises, therefore, has to be resolved by the fact finding authority under Section 17 of the Act. [Para 24] [1052-B-E]

3. The purpose sought to be achieved by the enactment of the 1955 Act is to provide the minimum, if not a fair wage, to newspaper employees. [Para 25] [1052-F-G]

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A 4. Writ petitions seeking interference with transfer/termination are relatable to service conditions of the concerned writ petitioners and adjudication of such question in the exercise of high prerogative writ jurisdiction of this Court under Article 32 of the Constitution would not only be unjustified but such questions should be left for determination before the appropriate authority either under the Act or under cognate provisions of law (Industrial Disputes Act, 1947 etc.). [Para 28] [1054-E]

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Bijay Cotton Mills Ltd. and Ors. v. State of Ajmer AIR 1955 SC 33 : [1955] SCR 752 – followed.

C *Kapildeo Prasad Sah v. State of Bihar (1999) 7 SCC 569 : [1999] 1 Suppl. SCR 725; Ashok Paper Kamgar Union v. Dharan Godha (2003) 11 SCC 1; Anil Kumar Shahi v. Professor Ram Sevak Yadav (2008) 14 SCC 115 : [2008] 11 SCR 211; Jhareswar Prasad Paul v. Tarak Nath Ganguly (2002) 5 SCC 352 : [2002] 3 SCR 913; Union of India v. Subedar Devassy PV (2006) 1 SCC 613 : [2006] 1 SCR 303; Bihar Finance Service House Construction Co-operative Society Ltd. v. Gautam Goswami (2008) 5 SCC 339 : [2008] 3 SCR 1137; Chhotu Ram v. Urvashi Gulati (2001) 7 SCC 530; Noor Saba v. Anoop Mishra (2013) 10 SCC 248 : [2013] 9 SCR 679; Sudhir Vasudeva v. George Ravishankaran (2014) 3 SCC 373 : [2014] 4 SCR 27 – relied on.*

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Case Law Reference

[1999] 1 Suppl. SCR 725	relied on	Para 19
F (2003) 11 SCC 1	relied on	Para 20
[2008] 11 SCR 211	relied on	Para 20
[2002] 3 SCR 913	relied on	Para 20
[2006] 1 SCR 303	relied on	Para 20
G [2008] 3 SCR 1137	relied on	Para 20
(2001) 7 SCC 530	relied on	Para 20
[2013] 9 SCR 679	relied on	Para 20
[2014] 4 SCR 27	relied on	Para 21
H [1955] SCR 752	followed	Para 25

CIVIL ORIGINAL JURISDICTION: Contempt Petition (Civil) A
No. 411 of 2014 in Writ Petition (Civil) No. 246 of 2011

Under Article 32 of the Constitution of India

WITH

Contempt Petition (Civil) No. 33 OF 2015 in WP (C) No. 246 of B
2011,

Contempt Petition (Civil) No. 572 OF 2014 in WP (C) No. 246 of
2011,

Contempt Petition (Civil) No. 34 OF 2015 in WP (C) No. 246 of
2011,

Contempt Petition (Civil) No. 571 OF 2014 in WP (C) No. 246 of C
2011,

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OF 2011,

Contempt Petition (Civil) No. 46 of 2015 in WP (C) No. 246 of D
2011,

Contempt Petition (Civil) No. 50 of 2015 in WP (C) No. 264 of
2012,

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2011,

Contempt Petition (Civil) No. 174 OF 2015 IN WP (C) No. 510 E
of 2011,

Contempt Petition (Civil) No. 101 of 2015 IN WP (C) No. 246 of
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- B 2011,
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- C Contempt Petition (Civil) No. 121 of 2015 in WP (C) No. 246 of 2011,
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- E Contempt Petition (Civil) No. 132 of 2015 in WP (C) No. 246 of 2011,
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Contempt Petition (Civil) No. 134 of 2015 in WP (C) No. 246 of 2011,
- F 2011,
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- G Contempt Petition (Civil) No. 151 of 2015 in WP (C) No. 246 of 2011,
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 - Contempt Petition (Civil) D. No. 21713 of 2015 in WP (C) No. 246 of 2011,
- B Contempt Petition (Civil) D. No. 25577 of 2015 in WP (C) No. 246 of 2011,
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- C Contempt Petition (Civil) D. No. 25581 of 2015 in WP (C) No. 246 of 2011,
 - Contempt Petition (Civil) D. No. 23904 of 2015 in WP (C) No. 246 of 2011,
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- D Contempt Petition (Civil) D. No. 25579 of 2015 in WP (C) No. 246 of 2011,
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- E Contempt Petition (Civil) D. No. 25432 of 2015 in WP (C) No. 246 of 2011,
 - Contempt Petition (Civil) D. No. 26077 of 2015 in WP (C) No. 246 of 2011,
 - Contempt Petition (Civil) D. No. 26256 of 2015 in WP (C) No. 246 of 2011,
- F Contempt Petition (Civil) D. No. 26078 of 2015 in WP (C) No. 246 of 2011,
 - Contempt Petition (Civil) D. No. 25430 of 2015 in WP (C) No. 246 of 2011,
- G Contempt Petition (Civil) D. No. 8429 of 2016 in WP (C) No. 246 of 2011,
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- H Contempt Petition (Civil) D. No. 23037 of 2016 in WP (C) No. 246 of 2011,

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246 of 2011,

WP (C) No. 998 of 2016,

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WP (C) No. 148 of 2017 &

WP (C) No. 299 of 2017.

A. Mariarputham, Adv. Gen., Purushaindra Kaurav, C. D. Singh, Anil Grover, S.S. Shamshery, AAGs., Colin Gonsalves, Mohan Parasaran, P.P. Rao, Vijay Hansaria, K. Dutta, Rana Mukherjee, Gopal Jain, Salman Khurshid, N.K. Mody, Ms. Vibha Dutta Makhija, Mahabir Singh, N. Rai, Sr. Advs. Parmanand Pandey, Utkarsh Pandey, Ajay Majithia, Shekhar Kumar, Dinesh Kumar Garg, Prashant Bhushan, Vinod Pandey, Govind Jee, O. Kuttan, Nitin Kumar Thakur, Ashwin Vaish, Govind, Nitin Kumar Thakur, Kunal Verma, Yugandhara P. Jha, Ms. Priyanka Ashok,

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- A Prasanna Mohan, Fidel S., Satya Mitra, N. Eswara Rao, V. Srinivas Rao, M/s. M. Rambabu & Co., Mullapudi Rambabu, Kedar Nath Tripathy, Abhinav Mukerji, H. K. Chaturvedi, Pijush K. Roy, Mrs. Kakali Roy, Rajan K. Chourasia, Praveen Swarup, Umesh Sharma, Ms. Sunita Bhardwaj, Ms. Farha Faiz, Megh Pal Singh, Satish Kumar, Sunil Vijay, C.S. Dadhich, Manender Singh Solanki, Raj Singh Rana, V. M. Srivastava, Mahesh Srivastava, P. N. Puri, Rakesh Mishra, Milind Kumar, Balraj Dewan, P. George Giri, Narendra Kumar Verma, Barun Kumar Sinha, Mrs. Pratibha Sinha, Santosh Kumar, Rameshwar Prasad Goyal, A. Raghunath, Rajhans Rajeev Pandey, Ms. V.E. Gayathri, Yogamaya M.G., Arjun Garg, Ms. Anuradha Mishra, Sapam Biswajit Maitei, Naresh Kumar Gaur, Ms. B. Khushbansi, Ashok Kumar Singh, K. Dutta, Birendra Kumar Mishra, Aashish Verma, Ms. Poonam Attrey, Rahul Malhotra, Ashish Verma, Shantanu Parashar, (For Tatini Basu), Ms. Sakshi Kakkar, Abhiuday Pratap Singh, Chandra Prakash, Vivek Singh, Chirag M. Shroff, C. K. Sasi, D. S. Mahra, Guntur Prabhakar, Ms. Prerna Singh, K. V. Vijayakumar, R.K. Sinha, Nitin Kumar Thakur, Parijat Sinha, Ranjan Mukherjee, Ashutosh Kumar Sharma, Ravi Prakash Mehrotra, Samir Ali Khan, Sibo Sankar Mishra, V. G. Pragasam, Prabu Ramasubramanian, V. N. Raghupathy, Ms. Aruna Mathur, Avneesh Arputham, Ms. Anuradha Arputham, Amit Arora, (for M/s Arputham, Aruna & Co.), M/s Corporate Law Group, Bhupesh Narula, K.V. Jagdishvaran, Ms. G. Indira, Ms. Hemantika Wahi, Ms. Puja Singh, Ms. Mamta Singh, Ms. K. Enatoli Sema, Edward Belho, Amit Kumar Singh, K. Luikang Michael, Ms. Elix Gangmei, Z.H. Isaac Haiding, Ms. Rachana Srivastava, Ms. Monika, Sukrit R. Kapoor, Nitya Madhusoodhanan, Arjun Vinod Bonde, Rajat Joseph, Debmalya Banerjee, A.S. Aman, Manish Sharma, Aviral Kapoor, Mohammed Rain, (for M/s. Karanjawala & Co.), Ajay Choudhary, Mahesh Kumar Vijayvergiya, Jayant Kumar Mehta, Abhijeet Srivastava, Ankur Mody, Sachin Gupta, Ms. Pragya Baghel, Anil Shrivastav, Dinesh Kumar Tiwary, Mrs. Rajmala Dohare, Raghwendra Tiwary, Chandan Kumar, Sanjay Chakrabarty, Mohan Lal Sharma, Keshav Chauhan, Ramesh Thakur, Santosh Kumar Tripathi, P. Gautam, Ajay Kumar Singh, Ms. Sheenu Chauhan, Vijay K. Jain, Anil Karnwal, Sanjeev K. Bhardwaj, Shyam D. Nandan, Shuvodeep Roy, Sayooj Mohandas M., Ms. Anuradha Mutatkar, S. Udaya Kumar Sagar, Mrityunjai Singh, Ms. Anisha Mathur, S. Wasim A. Quadri, D.L. Chidanand, Raj Bahadur Yadav, Ms. Meenakshi Grover, Ms. Rashmi Malhotra, B.K. Prasad, Devashish Bharuka, Sanjiv Goel, Ms. Arpita Bishnoi, Vaibhav Niti, Ms. Himanjali Gautam, Ravi H

Bharuka, Gautam Awasthi, Nikhil Jain, Ayush Choudhary, Rahul Tripathi, Ram Sajan Yadav, Ashutosh Mishra, Satya Prakash, Manu Beri, Mrs. V.D. Khanna, Ms. Vanshaja Shukla, K. Krishna Kumar, Tarun Gupta, Tapesh K. Singh, Kumar Anurag Singh, Mohd. Waqas, Aditya Pratap, Tapesh Kumar, Aditya Pratap Singh, Ms. Noopur Singhal, Sanjay Kr. Visen, Arpit Rai, Nishant Katneshwarkar, Amit Sharma, Ankit Raj, Shantanu Sagar, Advs. for the appearing parties.

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The Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (hereinafter for short 'the Act') was enacted to regulate the conditions of service of working journalists and other persons employed in newspaper establishments throughout the country. The Act is a comprehensive piece of legislation dealing with, *inter alia*, entitlement to gratuity, hours of work, leave as well as fixation of wages payable both to the working journalists and non-journalist newspaper employees, as may be. So far as fixation and revision of wages is concerned, Section 9 of the Act has left such fixation or revision of wages in respect of working journalists to be dealt with by a Wage Board constituted thereunder. The recommendations of the Wage Board, if accepted, are to be notified by the Central Government under Section 12 of the Act. Section 13 of the Act provides that upon coming into operation of the Order of the Central Government under Section 12 every working journalist will be entitled to be paid wages at the rate not less than what is specified in the Order. Chapter II A of the Act contains *pari materia* provisions with regard to non-journalist employees of newspaper establishments.

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2. Section 16 of the Act provides that the provisions thereof "*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 this Act.*" The proviso to Sub-section (1) of Section 16 and Sub-section (2) would require a specific notice and are, therefore, being extracted below.

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Proviso to Sub-Section (1) Section 16

"*Provided that where under any such award, agreement,*

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- A *contract of service or otherwise, a newspaper employee is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the newspaper employee shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act.*
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Sub-Section 2 of Section 16

- C *(2) Nothing contained in this Act shall be construed to preclude any newspaper employee from entering into an agreement with an employer for granting him rights or privileges in respect of any matter which are more favourable to him than those to which he would be entitled under this Act."*
- D 3. Section 16A imposes an embargo on the employer for discharging or dismissing any employee "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".
- E 4. Section 17 of the Act deals with recovery of money due from an employer. As a core issue on the maintainability of the present contempt cases centers around the remedy provided for by the aforesaid provision of the Act, Section 17 of the Act may be set out hereunder.
 - F *"17.(1) Where any amount is due under this Act to a newspaper employee from an employer, the newspaper employee himself, or any person authorised by him in writing in this behalf, or in the case of the death of the employee, any member of his family may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to him, and if the State Government, or such authority, as the State Government may specify in this behalf, is satisfied that any amount is so due, it shall issue a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue.*
 - G *(2) If any question arises as to the amount due under this Act to a newspaper employee from his employer, the State*
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Government may, on its own motion or upon application made to it, refer the question to any Labour Court constituted by it under the Industrial Disputes Act, 1947 (14 of 1947), or under any corresponding law relating to investigation and settlement of industrial disputes in force in the State and the said Act or law shall have effect in relation to the Labour Court as if the question so referred were a matter referred to the Labour Court for adjudication under that Act or law,

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(3) The decision of the Labour Court shall be forwarded by it to the State Government which made the reference and any amount found due by the Labour Court may be recovered in the manner provided in sub-section (1).

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5. Section 17B of the Act provides for appointment of Inspectors to ensure compliance with the various provisions of the Act.

6. The Central Government in exercise of its powers under Sections 9 and 13C had constituted two Wage Boards on 24.05.2007 under the Chairmanship of one Dr. Justice Narayana Kurup (retired Acting Chief Justice of the High Court of Madras) to determine the wages to be paid to working journalists and non-journalist employees. As Justice Kurup resigned from the post of Chairman on 31.7.2008, Justice G.R. Majithia (retired Judge of the Bombay High Court) was appointed as Chairman of the two Wage Boards on 04.03.2009. The Wage Boards headed by Justice Majithia (hereinafter referred to as the "Majithia Wage Board") submitted its recommendations to the Central Government on 31.12.2010. The same were accepted by the Central Government on 25.10.2011 and a Notification to the said effect, under Section 12 of the Act, was published on 11.11.2011.

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7. Even before the Government Notification under Section 12 of the Act was published on 11.11.2011 various newspaper establishments affected by the Majithia Wage Board Award had challenged the recommendations of the Wage Board by filing writ petitions before this Court under Article 32 of the Constitution of India, the lead case being Writ Petition (C) No. 246 of 2011. During the pendency of the writ petitions the Notification dated 11.11.2011 under Section 12 of the Act came to be issued which was brought under challenge by amendments to the writ petitions.

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8. The challenge in the aforesaid writ petitions, *inter alia*, was on

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- A the basis that the Act including the amendment thereto made in the year 1974 was constitutionally invalid and further that the constitution of the Wage Boards was contrary to the statutory provisions contained in the Act. The procedure adopted by the Wage Boards in determining the wages of working journalists as well as non-journalist employees was erroneous and faulty requiring interference of the Court.
- B 9. The aforesaid Writ petitions challenging the Wage Board recommendations as well as the Notification dated 11.11.2011 accepting the said recommendations were negatived by this Court by its judgment and order dated 07.02.2014. It will be necessary at this stage to summarize the following conclusions of the Court in its judgment dated 07.02.2014 while dismissing the writ petitions in question.
 - C *"(i) After having exhaustively gone through the record of proceedings and various written communications, we are fully satisfied that the Majithia Wage Board proceedings had been conducted and carried out in a legitimate approach and no decision of the Wage Board is perceived to having been taken unilaterally or arbitrarily. Rather all decisions were reached in a coherent manner in the presence of all the Wage Board members after having processed various statistics and we find no irregularity in the procedure adopted by the impugned Wage Boards.*
 - D *(ii) After perusing the relevant documents, we are satisfied that comprehensive and detailed study has been carried out by the Wage Board by collecting all the relevant material information for the purpose of the Wage Revision. The recommendations are arrived at after weighing the pros and cons of various methods in the process and principles of the Wage Revision in the modern era. It cannot be held that the wage structure recommended by the Majithia Wage Board is unreasonable.*
 - E *(iii) We have carefully scrutinized all the details. It is clear that the recommendations of the Sixth Central Pay Commission have not been blindly imported/relied upon by the Majithia Wage Board. The concept of 'variable pay' contained in the recommendations of the Sixth Central Pay Commission has been incorporated into the Wage Board recommendations only to ensure that the wages of the newspaper employees are at*

par with those employees working in other Government sectors. Such incorporation was made by the Majithia Wage Board after careful consideration, in order to ensure equitable treatment to employees of newspaper establishments, and it was well within its rights to do so. A

(iv) Accordingly, we hold that the recommendations of the Wage Boards are valid in law, based on genuine and acceptable considerations and there is no valid ground for interference under Article 32 of the Constitution of India. Consequently, all the writ petitions are dismissed. B

(v) In view of our conclusion and dismissal of all the writ petitions, the wages as revised/ determined shall be payable from 11.11.2011 when the Government of India has notified the recommendations of the Majithia Wage Boards. All the arrears up to March, 2014 shall be paid to all eligible persons in four equal installments within a period of one year from today and continue to pay the revised wages from April, 2014. C

(Underlining is ours)

10. A look at the Majithia Wage Board Award would indicate that the Wage Board had classified newspaper establishments in different categories based on the average gross revenue of the establishments for the preceding three accounting years, i.e., 2007-08, 2008-09, 2009-10. Eight categories of newspaper establishments, based on the average gross revenue, were worked out and the working as well as non-working journalist employees were classified into different categories. The recommendations were not only with regard to revised scale of wages and "variable pay" but also in respect of revised rates of dearness allowance, house rent allowance, transport allowance, hill area allowance (hardship allowance) etc. E F

11. At this stage Clause 20(j) of the Majithia Wage Board Award, which is one of the core areas of controversy in the present proceedings, may be specifically noticed. G

"20(j) The revised pay scales shall become applicable to all employees with effect from the 1st of July, 2010. However, if an employee within three weeks from the date of publication of the Government Notification under Section 12 of the Act enforcing these recommendations exercises his option for H

A *retaining his existing pay scale and 'existing emoluments', he shall be entitled to retain his existing scale and such emoluments."*

B 12. The Majithia Wage Board Award also specified that establishments which suffered heavy cash losses consequently in three preceding accounting years shall be exempt from payment of arrears, which is clear from Clause 21 of the Award extracted below.

C "21. *The arrears payable from the date of enforcement of the Award, if any, as a result of retrospective implementation, shall be paid in three equal installments after every six months from the date of enforcement of the Award and the first installment shall be paid within three months;*

D *Provided that the newspaper establishments, who suffered heavy cash losses consequently in three accounting years preceding the date of implementation of the Awards, shall be exempt from payment of any arrears. However, these newspaper establishments would be required to fix salaries or wages of their employees on notional basis in the revised scales of pay with effect from the date of implementation of the Awards, i.e., the 1st July, 2010."*

E 13. Alleging that wages and allowances as per the Award of the Majithia Wage Board, duly approved and notified by the Central Government, have not been paid, the present contempt petitions (numbering 83) have been filed. Three(3) writ petitions under Article 32 of the Constitution, i.e., Writ Petition Nos. 998 of 2016, 148 of 2017 and 299 of 2017 have also been filed alleging arbitrary transfer and termination/retrenchment of the concerned journalists and employees, who claim to have demanded due implementation of the Majithia Wage Board Award. The above is the subject matter of consideration in the present group of cases.

F G 14. Considering the issues involved and the large number of contempt petitions that had been brought to this Court, different orders have been pronounced by this Court from time to time to effectively resolve the issues. Orders dated 28.4.2015, 14.3.2016 and 8.11.2016 which are extracted below would require a specific notice and mention.

H Order dated 28th of April, 2015:

"All the State Governments acting through their respective Chief Secretaries shall, within four weeks from today, appoint Inspectors under Section 17-B of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 to determine as to whether the dues and entitlements of all categories of Newspaper Employees, including Journalists under the Majithia Wage Board Award, has been implemented in accordance with the terms thereof. The inspectors appointed by the State Government will naturally exercise their powers as provided under the Act and shall submit their report to this Court through the Labour Commissioners of each State indicating the precise findings on the issue indicated above."

(Emphasis is supplied by us)

Order dated 14th of March, 2016:

"We have also taken note of the various interlocutory applications that have been filed alleging wrongful termination of services and fraudulent surrender of the rights under the Wage Board recommendations to avoid liabilities in terms of the order of the Court. As such complaints received till date is substantial in number, this Court is not in a position to individually examine each case. We, therefore, direct the Labour Commissioner of each of the States to look into all such grievances and on determination of the same file necessary reports before the Court which will also be so filed on or before 12th July, 2016. We grant liberty to each of the individual employees who have filed the interlocutory applications and also such employees who are yet to approach this Court but have a grievance of the kind indicated above to move the Labour Commissioner of the State concerned in terms of the present order."

(Emphasis is supplied by us)

Order dated 08th of November, 2016:

"For reasons we do not consider necessary at present to record the exercise of monitoring the implementation of the Majithia Wage Board Recommendations on the basis of the reports called for from the Labour Commissioners of different

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A *States stand deferred to a later date. Instead, it would be prudent and in fact necessary to decide certain questions of law which now stand formulated and have been submitted to the Court by Shri Colin Gonsalves, learned senior counsel, at the request of the Court.*

B *Once the legal formulations are considered and decided, further orders with regard to the mechanism to implement the Majithia Wage Board Recommendations will follow.”*

(Emphasis is supplied by us)

C 15. On the basis of the aforesaid orders of the Court, several reports have been submitted by the Labour Commissioners of different States indicating the position with regard to the implementation of the Majithia Wage Board Award. The said Reports indicate that in some of the States, some establishments have implemented the Award in full, whereas others have so implemented the same partially. In some cases no progress in the matter of implementation has been made at all. The D reasons for non-implementation of the award or partial implementation, as may be, as evident from the reports of the Labour Commissioners can be identified to be four-fold which are indicated below.

E (1) As reported by the Labour Commissioners in some of the establishments, as per Clause 20(j) of the Majithia Award many employees have agreed to be governed by the wage structure which had existed before the Majithia Wage Board recommendations were accepted and notified by the Central Government. The issue of authenticity and the voluntariness of such undertakings, allegedly submitted by the employees, is also highlighted in the reports of the Labour Commissioner indicating that the same are being subjected to the adjudicatory process under the provisions of Section 17 (quoted above) of the Act.

F (2) The terms of the Majithia Wage Board Award are required to be implemented by the newspaper establishments only for regular employees and not for contractual employees.

G (3) The element of “variable pay” recommended by the Majithia Wage Board and accepted by the Central Government are not required to be taken into account for the purpose of calculating other allowances like Dearness Allowance etc.

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(4) As per the reports of the Labour Commissioners submitted to this Court a large number of newspaper establishments have expressed their inability to pay the arrears in view of serious financial constraints. A

16. The petitioners contend that the working journalists as well as the non-journalist employees are entitled to receive their wages as per the Majithia Wage Board Award once the recommendations have been accepted and notified by the Central Government under Section 12 of the Act. This, according to the contempt petitioners, flows from the provisions of Section 13 read with Section 16 of the Act under which provisions, the Wage Board recommendations, on being notified by the Central Government under Section 12 of the Act, supersedes all existing arrangements including specific contractual arrangements governing conditions of service of working and non-journalist employees. The wages recommended by the Wage Board, as approved and accepted by the Central Government, is guaranteed by the Act to the concerned working and non-journalist employees. The wages notified can be departed only to adopt more beneficial and favourable rates. It is, therefore, the contention of the contempt petitioners that any agreement or undertaking to be governed by the previous wage structure, which is less favourable than what has been recommended by the Majithia Wage Board, is *non est* in law. That apart, contentions had been raised that none of the said undertakings are voluntary and have been obtained under duress and under threat of transfer/termination. The contempt petitioners, therefore, urge that the Majithia Wage Board Award to the above extent may be clarified by this Court. B

17. Insofar as variable pay, contractual employees, and financial capacity is concerned, it is the case of the contempt petitioners that all the above matters have been exhaustively dealt with by the Majithia Wage Board. The recommendations thereof having been accepted by the Central Government there is no scope for any further debate or controversy on the said score. The Wage Board recommendations, as approved and notified, would apply to all categories of employees, including contractual employees, who would also be entitled to variable pay and computation of all allowances by inclusion of variable pay. All employers are also obliged to pay the arrears from the stipulated date unless an establishment has suffered "heavy cash losses" in the three preceding accounting years preceding the date of implementation of the G

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A Award which is to be distinguished from mere financial difficulties, as may be projected by an employer.

18. Opposing the contempt petitions and on behalf of the newspaper establishments it is contended that the four issues, urged on behalf of the contempt petitioners, identified above, have not been, in any manner, dealt with in the main judgment dated 07.02.2014 passed in Writ Petition No. 246 of 2011. It is, therefore, submitted that in the exercise of contempt jurisdiction, the judgment dated 07.02.2014 passed in the main writ petition cannot be amplified, clarified or "added to" so as to bring the alleged non-compliance within the four corners of limited contempt jurisdiction. As the four issues, crystallized above, does not form part of the judgment dated 07.02.2014 passed in Writ Petition No. 246 of 2011, it cannot be urged that any of the newspaper establishments are guilty of commission of contempt for allegedly violating or flouting the said terms/requirements which are now sought to be attributed to be a part of the Majithia Wage Board Award and hence contended to be a part of the judgment dated 07.02.2014 passed in Writ Petition NO. 246 of 2011 in respect of which disobedience is alleged.

19. The contours of power of the Court so far as commission of civil contempt is concerned have been elaborated upon in a number of pronouncements of this Court. Illustratively, reference may be made to the following observations in the case of Kapildeo Prasad Sah vs. State of Bihar¹.

"For holding the respondents to have committed contempt, civil contempt at that, it has to be shown that there has been wilful disobedience of the judgment or order of the Court. Power to punish for contempt is to be resorted to when there is clear violation of the Court's order. Since notice of contempt and punishment for contempt is of far reaching consequence and these powers should be invoked only when a clear case of wilful disobedience of the court's order has been made out. Whether disobedience is wilful in a particular case depends on the facts and circumstances of that case. Judicial orders are to be properly understood and complied with. Even negligence and carelessness can amount to disobedience particularly when the attention of the person is drawn to the Court's orders and its implication."

Jurisdiction to punish for contempt exists to provide ultimate sanction against the person who refuses to comply with the order of the court or disregards the order continuously.

.....
No person can defy the Court's order. Wilful would exclude casual, accidental, bona fide or unintentional acts or genuine inability to comply with the terms of the order. A petitioner who complains breach of Court's order must allege deliberate or contumacious disobedience of the Court's order."

(Emphasis is supplied by us)

20. Similar is the view expressed by this Court in Ashok Paper Kamgar Union vs. Dharam Godha², Anil Kumar Shahi vs. Professor Ram Sevak Yadav³, Jhareswar Prasad Paul vs. Tarak Nath Ganguly⁴, Union of India vs. Subedar Devassy PV⁵, Bihar Finance Service House Construction Co-operative Society Ltd. vs. Gautam Goswami⁶ and Chhotu Ram vs. Urvashi Gulati⁷. In view of the consistency in the opinions rendered therein, it will not be necessary to burden this order by any detailed reference to what has been held in the above cases except to reiterate that the standard of proof required to hold a person guilty of contempt would be the same as in a criminal proceeding and the breach alleged shall have to be established beyond all reasonable doubt [Chhotu Ram vs. Urvashi Gulati (supra)]. More recent in point of time is the view expressed by this Court in Noor Saba vs. Anoop Mishra⁸ wherein the scope of the contempt power in case of a breach of a Court's order has been dealt with in paragraph 14 of the report in the following manner -

"To hold the respondents or anyone of them liable for contempt this Court has to arrive at a conclusion that the respondents have wilfully disobeyed the order of the Court. The exercise of contempt jurisdiction is summary in nature and an adjudication of the liability of the alleged contemnor

² (2003) 11 SCC, 1

³ (2008) 14 SCC 115

⁴ (2002) 5 SCC 352

⁵ (2006) 1 SCC 613

⁶ (2008) 5 SCC 339

⁷ (2001) 7 SCC 530

⁸ (2013) 10 SCC 248

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A for wilful disobedience of the Court is normally made on admitted and undisputed facts. In the present case not only there has been a shift in the stand of the petitioner with regard to the basic facts on which commission of contempt has been alleged even the said new/ altered facts do not permit an adjudication in consonance with the established principles of exercise of contempt jurisdiction so as to enable the Court to come to a conclusion that any of the respondents have wilfully disobeyed the order of this Court”

B (Emphasis is supplied by us)

C 21. Similarly, in Sudhir Vasudeva vs. George Ravishankaran⁹ the issue has been dealt with in a manner which may be of relevance to the present case. Para 19 of the report is as follows.

D “The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act of 1971. It is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very nature of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution. This is also necessary as, more often than not, adjudication of a contempt plea involves a process of self-determination of the sweep, meaning and effect of the order in respect of which disobedience is alleged. The Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Only such directions which are explicit in a judgment or order or are plainly self-evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or wilful violation of the same. Decided issues cannot be reopened; nor can the plea of equities be considered. The Courts must also ensure that while considering a contempt plea the power available to the Court in other corrective jurisdictions like review or appeal is not entrenched upon. No order or direction supplemental to what has been already

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expressed should be issued by the Court while exercising jurisdiction in the domain of the contempt law; such an exercise is more appropriate in other jurisdictions vested in the Court, as noticed above.”

(Emphasis is supplied by us)

22. From the stand adopted by the newspaper establishments in the various counter affidavits filed; from the statements made in the reports submitted by the Labour Commissioners of different States from time to time; and also from the written arguments filed and the oral submissions advanced it is clear that part implementation/non-implementation of the Majithia Wage Board Award by the concerned newspaper establishments is on account of what the said establishments have perceived to be the scope and ambit of the Majithia Wage Board Award as approved and notified by the Central Government, the challenge to which has been dismissed by this Court by judgment dated 07.02.2014 passed in Writ Petition No. 246 of 2011. The stand taken for what is alleged to be non-implementation or partial implementation of the Award, as may be, having clearly stemmed from the understanding of the Award of the concerned newspaper establishments in a particular manner, it is our considered view that the said establishments cannot be held to have wilfully disobeyed the judgment of this Court dated 07.02.2014 passed in Writ Petition No. 246 of 2011. At best, the default alleged has taken place on account of a wrong understanding of the Award as upheld by this Court. This would not amount to wilful default so as to attract the liability of civil contempt as defined under Section 2(b) of the Contempt of Courts Act, 1971. The default alleged though is unmistakably evident to us, in the absence of any wilful or deliberate intention to commit the same cannot make any of the newspaper establishments liable for contempt. On the other hand, they are entitled to one more opportunity to implement the Award in its proper spirit and effect in the light of what we now propose to say.

23. The Majithia Wage Board Award has been approved by this Court by its judgment dated 07.02.2014 passed in Writ Petition No. 246 of 2011. The Award, therefore, has to be implemented in full. While it is correct that issues concerning, (i) Clause 20(j); (ii) whether the award applies to contractual employees; (iii) whether it includes variable pay and (iv) the extent of financial erosion that would justify withholding of

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- A payment of arrears has not been specifically dealt with either in the Award or in the judgment of this Court, there can be no manner of doubt that a reiteration of the scope and ambit of the terms of the Award would necessarily be called for and justified. This is what we propose to do hereinafter so as to ensure due and full compliance with the order(s) of the Court.
- B 24. Insofar as the highly contentious issue of Clause 20(j) of the Award read with the provisions of the Act is concerned it is clear that what the Act guarantees to each "newspaper employee" as defined in Section 2(c) of the Act is the entitlement to receive wages as recommended by the Wage Board and approved and notified by the
- C Central Government under Section 12 of the Act. The wages notified supersedes all existing contracts governing wages as may be in force. However, the Legislature has made it clear by incorporating the provisions of Section 16 that, notwithstanding the wages as may be fixed and notified, it will always be open to the concerned employee to agree to and accept
- D any benefits which is more favourable to him than what has been notified under Section 12 of the Act. Clause 20(j) of the Majithia Wage Board Award will, therefore, have to be read and understood in the above light. The Act is silent on the availability of an option to receive less than what is due to an employee under the Act. Such an option really lies in the domain of the doctrine of waiver, an issue that does not arise in the
- E present case in view of the specific stand of the concerned employees in the present case with regard to the involuntary nature of the undertakings allegedly furnished by them. The dispute that arises, therefore, has to be resolved by the fact finding authority under Section 17 of the Act, as adverted to hereinafter.
- F 25. In any event having regard to the Legislative history and the purpose sought to be achieved by enactment of the Act i.e. to provide the minimum if not a fair wage to Newspaper employees, the ratio of the pronouncement in Bijay Cotton Mills Ltd. and Ors. vs. State of Ajmer¹⁰, holding wages notified under the Minimum Wages Act, 1948 to be non-negotiable would squarely govern the wages notified under the present Act. Para 4 of the report in Bijay Cotton Mills Ltd. (supra) which deals with the above issue is extracted hereinbelow for specific notice.
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"4. It can scarcely be disputed that securing of living wages to labourers which ensure not only bare physical subsistence

but also the maintenance of health and decency, is conducive to the general interest of the public. This is one of the Directive Principles of State Policy embodied in Article 43 of our Constitution. It is well known that in 1928 there was a Minimum Wages Fixing Machinery Convention held at Geneva and the resolutions passed in that convention were embodied in the International Labour Code. The Minimum Wages Act is said to have been passed with a view to give effect to these resolutions. Vide –South India Estate Labour Relations Organisation vs. State of Madras¹¹.

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If the labourers are to be secured in the enjoyment of minimum wages and they are to be protected against exploitation by their employers, it is absolutely necessary that restraints should be imposed upon their freedom of contract and such restrictions cannot in any sense be said to be unreasonable. On the other hand, the employers cannot be heard to complain if they are compelled to pay minimum wages to their labourers even though the labourers, on account of their poverty and helplessness are willing to work on lesser wages.”

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(Emphasis is ours)

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26. There is nothing either in the provisions of the Act or in the terms of the Wage Board Award which would enable us to hold that the benefits of the Award would be restricted to the regular employees and not contractual employees. In this regard we have taken note of the definition of “newspaper employees”, “Working Journalist” and “Non-Journalist newspaper employees” as defined in Section 2(c), 2(f) and 2(dd) of the Act. Insofar as “variable pay” is concerned, as already noticed and extracted in paragraph 7 above, this Court while dealing with the concept of variable pay has taken the view that the said relief has been incorporated in the Majithia Wage Board Award in order to give fair and equitable treatment to employees of newspapers. Therefore, no question of withholding the said benefit by taking any other view with regard to “variable pay” can arise. In fact, a reading of the relevant part of the Award would go to show that the concept of “variable pay” which was introduced in the Award stems from grade pay contained in the Report of the 6th Pay Commission and was intended to bring the working

¹¹ AIR 1955 Mad 45 at p.47

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- A journalist and non-journalist employees covered by the Act at par with the Central Government employees to the extent possible. So far as the concept of heavy cash losses is concerned, we are of the view that the very expression itself indicates that the same is different from mere financial difficulties and such losses apart from the extent of being crippling in nature must be consistent over the period of time stipulated in the Award. This is a question of fact that has to be determined from case to case.

- 27. Having clarified all doubts and ambiguities in the matter and upon holding that none of the newspaper establishments should, in the facts of the cases before us, be held guilty of commission of contempt, we direct that henceforth all complaints with regard to non-implementation of the Majithia Wage Board Award or otherwise be dealt with in terms of the mechanism provided under Section 17 of the Act. It would be more appropriate to resolve such complaints and grievances by resort to the enforcement and remedial machinery provided under
- D the Act rather than by any future approaches to the Courts in exercise of the contempt jurisdiction of the Courts or otherwise.

- 28. Insofar as the writ petitions seeking interference with transfer/termination, as the case may be, are concerned, it appears that the same are relatable to service conditions of the concerned writ petitioners.
- E Adjudication of such question in the exercise of high prerogative writ jurisdiction of this Court under Article 32 of the Constitution would not only be unjustified but such questions should be left for determination before the appropriate authority either under the Act or under cognate provisions of law (Industrial Disputes Act, 1947 etc.), as the case may be.

- F 29. In the light of the above, all the contempt petitions as well as the writ petitions filed under Article 32 of the Constitution shall stand answered and disposed of in the terms hereinabove.