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INDIAN FACTORIES JOURNAL

A FORTNIGHTLY JOURNAL OF THE LAW RELATING TO FACTORIES, LABOUR, WORKMEN'S COMPENSATION, INDUSTRIAL DISPUTES, EMPLOYEES' INSURANCE PAYMENT OF WAGES, PROVIDENT FUNDS, LAW REGULATING WORK IN MINES, ETC.

WITH

The Acts, Ordinances, Rules and Notifications passed by the Central Government and the State Governments, and Reports of Cases and Awards.

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NOTICE TO SUBSCRIBERS.

As the General Index to Vol. XIII is not yet ready, the same will be despatched with the next issue on the 15th February, 1958.

Kerala Factories Rules.

As subscribers may desire to have spare copies of the Kerala Factories Rules, 1957, and as spare copies of the Indian Factories Journal are not printed, we have arranged to have extra copies of the Rules alone printed. Subscribers who desire to have spare copies of the Rules may intimate to us their requirements along with a remittance of Rs. 1·50 per copy to cover cost and postage.

Laws of India Private Ltd.,
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INDIAN FACTORIES JOURNAL
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THE KERALA FACTORIES RULES, 1957.

*Notification No. D. Dis. 4373/57/L&LAD. dated Trivandrum, 12th December, 1957.**

In exercise of the powers conferred by section 112 of the Factories Act, 1948 (Central Act LXIII of 1948), the Government of Kerala hereby make the following rules, the same having been previously published as required by section 115 of the said Act.

CHAPTER I.

PRELIMINARY.

1. *Short title, extent and commencement.*—(1) These rules may be cited as the Kerala Factories Rules, 1957.

(2) These rules shall extend to the whole of the State of Kerala.

(3) These rules except rules 29 to 33, 81, 88, 90 to 102 and 122 shall come into force at once and rules 29 to 33, 81, 88, 90 to 102 and 122 shall come into force on such dates as are specified therein.

2. *Definitions.*—In these rules unless there is anything repugnant in the subject or context—

(*a*) "Act" means the Factories Act, 1948.

(*b*) "Appendix" means an appendix appended to these rules.

(*c*) "Artificial Humidification" means the introduction of moisture into the air of a room by any artificial means, whatsoever, except the unavoidable escape of steam or water vapour into the atmosphere directly due to a manufacturing process:

Provided that the introduction of air directly from outside through moistened mats or screens placed in openings at times when the temperature of the room is 80 degrees or more, shall not be deemed to be artificial humidification.

(*d*) "Belt" includes any driving strap or rope.

(*e*) "Degrees" (of temperature) means degrees on the Fahrenheit scale.

(*f*) "District Magistrate" includes such other official as may be appointed by the State Government in that behalf.

(*g*) "Fume" includes gas or vapour.

(*h*) "Health Officer" means the Municipal Health Officer in a municipality or corporation, the District Health Officer concerned in any area within the jurisdiction of a district board or panchayat or such other officer as may be appointed by the State Government for any area in that behalf irrespective of whether such area is within the limits of a municipality or the jurisdiction of a district board or panchayat.

(*i*) "Hygrometer" means an accurate wet and dry bulb hygrometer conforming to the prescribed conditions as regards construction and maintenance.

(*j*) "Inspector" means an officer appointed under Section 8 of the Act and includes "Chief Inspector."

(*k*) "Maintained" means maintained in an efficient state, in efficient working order and in good repair.

(*l*) "Manager" means the person responsible to the occupier for the working of the factory for the purposes of the Act.

(*m*) "Family" means the wife, son, daughter, father, mother, brother or sister of the owner of any place wherein a manufacturing process is carried on and who lives with, or is dependent on, such owner.

(*n*) "Local Authority" means the commissioner in the case of an area within the limits of a municipality or corporation, the executive officer in the case of an area within the jurisdiction of a panchyat, and the president of a district board in the case of any other area.

(*o*) "Public Health Authority" means the local Health Officer having jurisdiction over the area.

3. *Approval of plans.*—(1) No building shall be constructed, extended or taken into use as a factory or a part of a factory after the date of the commencement of the Act unless the previous permission in writing is obtained from the State Government or the Chief Inspector of Factories.

Application for such permission shall be made in the prescribed Form No. 1 which shall be accompanied by the following documents :

(*a*) A flow chart of the manufacturing process supplemented by a brief description of the process in its various stages.

(*b*) Plans in triplicate drawn to scale showing—

(i) the site of the factory and immediate surroundings including adjacent buildings and other structures, roads, drains, etc.;

(ii) the plan, elevation and necessary cross-sections of the various buildings, indicating all relevant details relating to natural lighting, ventilation and means of escape in case of fire. The plans shall also clearly indicate the position of the plant and machinery, aisles and passage ways ; and

(iii) the plans and lay-outs of factory buildings sent to the Chief Inspector for approval under this rule shall be prepared by a person not below the rank of a draughtsman possessing a certificate recognised by the State Government in this regard.

(*c*) Such other particulars as the Chief Inspector may require.

(2) If the Chief Inspector is satisfied that the plans are in consonance with the requirements of the Act he shall, subject to such conditions as he may specify, approve them by signing and returning to the applicant one copy of each plan ; or he may call for such other particulars as he may require to enable such approval to be given.

(3) The plans approved by the Chief Inspector under this rule shall be readily available in the factory for inspection by the Inspectors and Additional Inspectors appointed under Section 8 of the Act.

(4) After the date of the commencement of the Act no manufacturing process shall be carried on in any factory constructed, extended or taken into use as a factory or part of a factory until a certificate of stability in respect of the buildings in Form No. 3 has been sent by the occupier or management of the factory to the Inspector.

4. *Application for registration and grant of licence.*—The occupier of every factory shall submit to the Chief Inspector an application for registration and grant or renewal of licence and notice of occupation, specified in sections 6 and 7 in Form No. 2 in duplicate.

5. *Grant of licence.*—(1) A licence for a factory shall be granted by the Chief Inspector in Form No. 4, prescribed for the purpose and on payment of the fees specified in Appendix I.

(2) Every licence granted or renewed under this Chapter shall remain in force up to 31st of December of the year for which the licence is granted or renewed.

(3) A licence issued under the Travancore-Cochin Factories Rules, 1952, or the Madras Factories Rules, 1950, and duly renewed for the current year, shall be considered and treated as a licence issued under these Rules until the necessary corrections have been effected on the licence or a fresh licence is issued by the Chief Inspector.

(4) The licence granted for a factory by the Chief Inspector under this rule shall be readily available in the factory for inspection by the Inspectors and Additional Inspectors appointed under section 8 of the Act.

6. *Amendment of licence.*—(1) A licence granted under rule 5 may be amended by the Chief Inspector.

(2) A licensee who desires to have his licence amended shall submit it to the Chief Inspector with an application stating the nature of the amendment and reasons therefor.

(3) The fee for the amendment of a licence shall be Rs. 5 plus the amount (if any) by which the fee that would have been payable if the licence had originally been issued in the amended form under these rules exceeds the fee originally paid for the licence.

If the fee that would have been payable if the licence had originally been issued in the amended form under these rules is less than the fee already paid under the Travancore-Cochin Factories Rules, 1952, or the Madras Factories Rules, 1950, the excess of fee shall not be refunded or adjusted towards any other fee.

7. *Renewal of licence.*—(1) A licence may be renewed by the Chief Inspector.

(2) Every application for the renewal of licence shall be in Form No. 2 prescribed under rule 4, in duplicate, and shall be made not less than 60 days before the date on which the licence expires, and, if the application is

so made the premises shall be held to be duly licensed until such date as the Chief Inspector renews the licence.

(3) The same fee shall be charged for the renewal of licence as for the grant thereof :

Provided that if the application for renewal is not received within the time specified in sub-rule (2), the licence shall be renewed only on payment of fee 25 per cent. in excess of the fee ordinarily payable or the fee payable for the licence in the amended form (if there is any amendment), whichever is lower.

8. *Transfer of licence.*—(1) The holder of a licence may, at any time before the expiry of the licence, apply for permission to transfer his licence to another person.

(2) Such application shall be made to the Chief Inspector who shall, if he approves of the transfer, enter upon the licence, under his signature, an endorsement to the effect that the licence has been transferred to the person named.

(3) A fee of Rs. 5 shall be charged on each such application.

9. *Procedure on death or disability of licensee.*—If a licensee dies or becomes insolvent, the person carrying on the business of such licensee shall not be liable to any penalty under the Act for exercising the powers granted to the licensee by the licence during such time as may reasonably be required to allow him to make an application for the amendment of the licence under rule 6 in his own name for the unexpired portion of the original licence.

10. *Loss of licence.*—Where a licence granted under these rules is lost or accidentally destroyed, a duplicate may be granted on payment of a fee of Rs. 5.

11. *Payment of fees.*— Every application under these rules shall be accompanied by a treasury receipt showing that the appropriate fee has been paid into the local treasury under the correct head of account.

(2) If an application for the grant, renewal or amendment of a licence is rejected, the fee paid shall be refunded to the applicant.

12. *Notice of occupation.*—The notice of occupation shall be in Form No. 2.

CHAPTER II.

INSPECTING STAFF.

Rules prescribed under section 9.

13. *Powers of Inspectors.*—An Inspector shall, for the purpose of the execution of the Act, have power to do all or any of the following things, that is to say :—

(*a*) to photograph any worker, to inspect, examine, measure, copy, photograph, sketch or test as the case may be, any building or room, any plant, machinery, appliance or apparatus, any register or document or anything provided for the purpose of securing the health, safety or welfare of the workers employed in a factory;

(*b*) in the case of an Inspector who is a duly qualified medical practitioner, to carry out such medical examinations as may be necessary for the purpose of his duties under the Act;

(*c*) to prosecute, conduct or defend before a court any complaint or other proceeding arising under the Act, or in discharge of his duties as an Inspector:

Provided that the powers of the District Magistrates and such other public officers as are appointed to be Additional Inspectors shall be limited to the inspection of factories in respect of the following matters, namely :—

Cleanliness (section 11), overcrowding (section 16), lighting (section 17), drinking water (section 18), latrines and urinals (section 19), spittoons (section 20), precautions in the case of fire (section 38), welfare (Chapter V), working hours of adults (Chapter VI—except the power of exemption under the proviso to section 62), employment of young persons (Chapter VII), leave with wages (Chapter VIII) and display of notices (section 108).

Rule prescribed under sub-section (4) of section 10.

14. *Duties of Certifying Surgeon.*—(1) For purposes of the examination and certification of young persons who wish to obtain certificates of fitness, the Certifying Surgeon shall arrange a suitable time and place for the attendance of such persons, and shall give previous notice in writing of such arrangements to the managers of the factories situated within the local limits assigned to him.

(2) The Certifying Surgeon shall issue his certificates in Form No. 5. The foil and counterfoil shall be filled in and the left thumb-mark of the person in whose name the certificate is granted shall be taken on them. On being satisfied as to the correctness of the entries made therein and of the fitness of the person examined, he shall sign the foil and initial the counterfoil and shall deliver the foil to the person in whose name the certificate is granted. The foil so delivered shall be the certificate of fitness granted under section 69. All counterfoils shall be kept by the Certifying Surgeon for a period of at least 2 years after the issue of the certificate.

(3) The Certifying Surgeon shall, upon request by the Chief Inspector, carry out such examination and furnish him with such report as he may indicate, for any factory or class or description of factories where—

(*a*) cases of illness have occurred which it is reasonable to believe are due to the nature of the manufacturing process carried on, or other conditions of work prevailing therein, or

(*b*) by reason of any change in the manufacturing process carried on, or in the substances used therein, or by reason of the adoption of any new manufacturing process or of any new substance for use in a manufacturing process, there is a likelihood of injury to the health of workers employed in that manufacturing process, or

(*c*) young persons are, or are about to be, employed in any work which is likely to cause injury to their health.

(4) For the purpose of the examination of persons employed in processes covered by the rules relating to dangerous operations, the Certifying Surgeon shall visit the factories within the local limits assigned to him at such intervals as are prescribed by the rules relating to such dangerous operations.

(5) At such visits the Certifying Surgeon shall examine the persons employed in such processes and shall record the results of his examination in a register known as the Health Register (Form No. 17) which shall be kept by the Factory Manager and produced to the Certifying Surgeon at each visit.

(6) If the Certifying Surgeon finds as a result of his examination that any person employed in such process is no longer fit for medical reasons to work in that process he shall suspend such person from working in that process for such time as he may think fit and no person after suspension shall be employed in that process without the written sanction of the Certifying Surgeon in the Health Register.

(7) The manager of a factory shall afford to the Certifying Surgeon facilities to inspect any process in which any person is employed or is likely to be employed.

(8) The manager of a factory shall provide for the purpose of any medical examination which the Certifying Surgeon wishes to conduct at the factory (for his exclusive use on the occasion of an examination) a room which shall be properly cleaned and adequately ventilated and lighted and furnished with a screen, a table (with writing materials) and chairs.

CHAPTER III.

HEALTH.

Exemptions under sub-section (2) of section 11.

15. *Cleanliness of walls and ceilings.*—(1) Clause (d) of sub-section (1) of section 11 of the Act shall not apply to the class or description of factories or parts of factories specified in the schedule hereto:

Provided that they are kept in a clean state by washing, sweeping, brushing, dusting, vacuum cleaning or other effective means:

Provided further that the said clause (d) shall continue to apply—

(i) as respects factories or parts of factories specified in Part A of the said schedule, to work-rooms in which the amount of cubic space allowed for every person employed in the room is less than 500 cubic feet;

(ii) as respects factories or parts of factories specified in Part B of the said schedule, to work-rooms in which the amount of cubic space allowed for a every person employed in the room is less than 2,500 cubic feet;

(iii) to engine houses, fitting shops, lunch rooms, canteens, shelters, creches, cloak-rooms, rest-rooms and wash-places; and

(iv) to such parts of walls, sides and tops of passages and stair-cases as are less than 20 feet above the floor or stair.

(2) If it appears to the Chief Inspector that any part of a factory to which by virtue of sub-rule (1) any of the provisions of the said clause (d) do not apply, or apply as varied by sub-rule (1) is not being kept in a clean state, he may by written notice required the occupier to whitewash or

colourwash, wash, paint or varnish the same, and in the event of the occupier failing to comply with such requisition, within two months from the date of the notice sub-rule (1) shall cease to apply to such part of a factory, unless the Chief Inspector otherwise determines.

SCHEDULE.

PART A.

Blast furnaces.
Brick and tile works in which unglazed bricks or tiles are made.
Cement works.
Chemical works.
Copper Mills.
Gas works.
Iron and steel mills.
Stone, slate and marble works.
The following parts of factories:—
Rooms used only for the storage of articles.

Rooms in which the walls or ceilings consist of galvanized iron, glazed bricks glass, slate, asbestos, bamboo, thatch.

Parts in which dense steam is continuously evolved in the process.

Parts in which pitch, tar or like material is manufactured or is used to a substantial extent, except in brush works. The parts of a glass factory known as the glass house. Rooms in which graphite is manufactured or is used to a substantial extent in any process.

Parts in which coal, coke, oxide of iron, ochre, lime or stone is crushed or ground.

Parts of walls, partitions, ceilings or tops of rooms which are at least 20 feet above the floor.

Ceilings or tops of roofings in print works, bleach works or dye works with the exception of finishing rooms or warehouses.

Inside walls of oil mills below a height of 5 feet from the ground floor level. Inside walls in tanneries below a height of 5 feet from the ground floor level where a wet process is carried on.

Parts in which cashew-nuts are roasted or cashew oil is extracted.

Walls in tea factories.

PART B.

Coach and motor body works.
Electric generating or transforming stations.
Engineering works.
Factories in which sugar is refined or manufactured.
Foundries other than foundries in which brass casting is carried on
Gun factories.
Ship building works.

Those parts of factories where unpainted or unvarnished wood i manufactured.

Register prescribed under sub-section (1) of section 11.

16. *Record of whitewashing etc.*—The record of dates on which white-washing, colour-washing, varnishing etc., are carried out shall be entered in a register maintained in Form No. 7.

Rule prescribed under sub-section (2) of section 12.

17. *Disposal of trade wastes and effluents.*—(1) In the case of a factory where the drainage system is proposed to be connected to the public sewerage system, prior approval of the arrangements made shall be obtained from local authority.

(2) In the case of a factory situated in a place where no public sewerage system exists, prior approval of the arrangements made for disposal of trade wastes and effluents shall be obtained from the Public Health Authorities or such authority as the State Government may appoint in this behalf.

Rules 18 to 28 prescribed under sub-section (1) of section 15.

18. *When artificial humidification not allowed.*—There shall be no artificial humidification in any room of a cotton spinning or weaving factory :

(*a*) by the use of steam during any period when the dry bulb temperature of that room exceeds 85 degrees.

(*b*) at any time when the wet bulb reading of the hygrometer is higher than that specified in the following Schedule in relation to the dry bulb reading of the hygrometer at that time : or as regards a dry bulb reading intermediate between any two dry bulb readings indicated consecutively in the schedule when the dry bulb reading does not exceed the wet bulb reading to the extent indicated in relation to the lower of these two dry bulb readings :

SCHEDULE.

Dry bulb.	Wet bulb.	Dry bulb.	Wet bulb.	Dry bulb.	Wet bulb.
60·0	58·0	77·0	75·0	94·0	86·0
61·0	59·0	78·0	76·0	95·0	87·0
62·0	60·0	79·0	77·0	96·0	87·5
63·0	61·0	80·0	78·0	97·0	88·0
64·0	62·0	81·0	79·0	98·0	88·5
65·0	63·0	82·0	80·0	99·0	89·0
66·0	64·0	83·0	80·5	100·0	89·5
67·0	65·0	84·0	81·0	101·0	90·0
68·0	66·0	85·0	82·0	102·0	90·0
69·0	67·0	86·0	82·5	103·0	90·5
70·0	68·0	87·0	83·0	104·0	90·5
71·0	69·0	88·0	83·5	105·0	91·0
72·0	70·0	89·0	84·0	106·0	91·0
73·0	71·0	90·0	84·5	107·0	91·5
74·0	72·0	91·0	85·0	108·0	91·5
75·0	73·0	92·0	85·5	109·0	92·0
76·0	74·0	93·0	86·0	110·0	92·0

Provided however, that clause (b) shall not apply when the difference between the wet bulb temperature as indicated by the hygrometer in the department concerned and the wet bulb temperature taken with a hygrometer outside in the shade is less then 3·5 degrees.

19. *Provision of hygrometer.*—In all departments of cotton spinning and weaving mills wherein artificial humidification is adopted, hygrometers shall be provided and maintained in such positions as are approved by the Inspector. The number of hygrometers shall be regulated according to the following scale :—

(*a*) Weaving department. One hygrometer for departments with less than 500 looms, and one additional hygrometer for every 500 or part of 500 looms in excess of 500.

(*b*) Other departments. One hygrometer for each room of less than 300,000 cubic feet capacity and one extra hygrometer for each 200,000 cubic feet or part thereof, in excess of this.

(*c*) One additional hygrometer shall be provided and maintained outside each cotton spinning and weaving factory wherein artificial humidification is adopted, and in a position approved, by the Inspector, for taking hygrometer shade reading.

20. *Exemption from maintenance of hygrometer.*—When the Inspector is satisfied that the limits of humidity allowed by the schedule to rule 18 are never exceeded, he may, for any department, other than the weaving department grant exemption from the maintenance of the hygrometer. The Inspector shall record such exemption in writing.

21. *Copy of Schedule to rule 18 to be affixed near every hygrometer.*—A legible copy of the Schedule to rule 18 shall be affixed near each hygrometer.

22. *Temperature to be recorded at each hygrometer.*—At each hygrometer maintained in accordance with rule 19, correct wet and dry bulb temperatures shall be recorded thrice daily during each working day by competent persons nominated by the manager and approved by the Inspector. The temperature shall be taken between 7 a.m. and 9 a.m. between 11 a.m. and 2 p.m. (but not in the rest interval) and between 4 p.m.and 5-30 p.m. In exceptional circumstances such additional readings and between such hours, as the Inspector may specify, shall be taken. The temperatures shall be entered in a Humidity Register in the prescribed Form No. 6. maintained in the factory. At the end of each month the persons who have taken the readings shall sign the Register and certify the correctness of the entries. The Register shall always be available for inspection by the Inspector.

23. *Specifications of hygrometer.*—(1) Each hygrometer shall comprise two mercurial thermometers of wet bulb and dry bulb of similar construction, and equal in dimensions, scale, and divisions of scale. They shall be mounted on a frame with a suitable reservoir containing water.

(2) The wet bulb shall be closely covered with a single layer of muslin, kept wet by means of a wick attached to it and dropping into the

mater in the reservoir. The muslin covering and the wick shall be suitable for the purpose, clean and free from size or grease.

(3) No part of the wet bulb shall be within 3 inches from the dry bulb or less than 1 inch from the surface of the water in the reservoir and the water reservoir shall be below it, on the side of it away from the dry bulb.

(4) The bulb shall be spherical and of suitable dimensions and shall be freely exposed on all sides to the air of the room.

(5) The bores of the stems shall be such that the position of the top of the mercury column shall be readily distinguishable at a distance of 2 feet.

(6) Each thermometer shall be graduated so that accurate readings may be taken between 50 and 120 degrees.

(7) Every degree from 50 degrees up to 120 degrees shall be clearly marked by horizontal lines on the stem, each fifth and tenth degrees shall be marked by longer marks than the intermediate degrees and the temperature marked opposite each tenth degree, *i.e.*, 50, 60, 70, 80, 90, 100, 110, and 120.

(8) The markings as above shall be accurate, that is to say, at no temperature between 50 and 120 degrees shall the indicated readings, be in error by more than two tenths of a degree.

(9) A distinctive number shall be indelibly marked upon the thermometer.

(10) The accuracy of each thermometer shall be certified by the National Physical Laboratory, London, or some competent authority appointed by the Chief Inspector and such certificate shall be attached to the Humidity Register.

24. *Thermometers to be maintained in efficient order.*—Each thermometer shall be maintained at all times, during the period of employment in efficient working order, so as to give accurate indications and in particular—

(*a*) the wick and the muslin covering of the wet bulb shall be renewed once a week ;

(*b*) the reservoir shall be filled with water which shall be completely renewed once a day. The Chief Inspector may direct the use of distilled water or pure rain water in any particular mill or mills in certain localities ;

(*c*) no water shall be applied directly to the wick or covering during the period of employment.

25. *An inaccurate thermometer not to be used without fresh certificate.*—If an Inspector gives notice in writing that a thermometer is not accurate it shall not, after one month from the date of such notice be deemed to be accurate unless and until it has been re-examined as prescribed and a fresh certificate obtained which certificate shall be kept attached to the Humidity Register.

26. *Hygrometer not to be affxeed to wall, etc., unless protected by wood.*—(1) No hygrometer shall be affixed to a wall, pillar, or other surface unless protected therefrom by wood or other non-conducting material at least half an inch in thickness and distant at least one inch from the bulb of each thermometer.

(2) No hygrometer shall be affixed at a height of more than 5 feet 6 inches from the floor to the top of thermometer stem or in the direct draughts from a fan, window, or ventilating opening.

27. *No reading to be taken within 15 minutes of renewal of water.*—No reading shall be taken for record on any hygrometer within 15 minutes of the renewal of water in the reservoir.

28. *How to introduce steam for humidification.*—In any room in which steam pipes are used for the introduction of steam for the purpose of artificial humidification of the air the following provisions shall apply :—

(*a*) The diameter of such pipes shall not exceed two inches and in the case of pipes installed after the 1st day of January, 1952, the diameter shall not exceed one inch.

(*b*) Such pipes shall be as short as is reasonably practicable.

(*c*) All hangers supporting such pipes shall be separated from the bare pipes by an efficient insulator not less than half an inch in thickness.

(*d*) No uncovered jet from such pipe shall project more than $4\frac{1}{2}$ inches beyond the outer surface of any cover.

(*e*) The steam pressure shall be as low as practicable and shall not exceed 70 lbs. per square inch.

(*f*) The pipe employed for the introduction of steam into the air in a department shall be effectively covered with such non-conducting material, as may be approved by the Inspector in order to minimise the amount of heat radiated by them into the department.

Rules 29 to 33 prescribed under sub-section (4) of Section 17.

29. *Artificial lighting—application and commencement.*—(1) Subject as in these Rules provided, rules 29 to 33 shall apply to factories in which persons are being regularly employed in a manufacturing process or processes for more than 48 hours a week, in shifts, provided that nothing in these Rules shall be deemed to require the provision of lighting of a specified standard in any building or structure so constructed that, in the opinion of the Chief Inspector, it would not be reasonably practicable to comply with such requirement.

(2) Rules 29 to 33 shall come into force in respect of any class or description of factories on such dates as the State Government may, by notification in the Official Gazette, appoint in this behalf.

30. *Lighting of interior parts.*—(1) The general illumination over those interior parts of a factory where persons are regularly employed shall be not less than 3 foot candles measured in the horizontal plane at a level of 3 feet above the floor :

Provided that in any such parts in which the mounting height of the light source for general illumination necessarily exceeds 25 feet measured from the floor or where the structure of the room or the position or construction of the fixed machinery or plant prevents the uniform attainment of this standard, the general illumination at the said level shall be not less than 1 foot candle and where work is actually being done the illumination shall be not less than 3 foot candles.

(2) The illumination over all other interior parts of the factory over which persons employed pass shall, when and where a person is passing, be not less than 0·5 foot candles at floor level.

(3) The standard specified in this Rule shall be without prejudice to the provision of any additional illumination required to render the lighting sufficient and suitable for the nature of the work.

31. *Prevention of glare* :—(1) Where any source of artificial light in the factory is less than 16 feet above floor level, no part of the light source or of the lighting fitting having a brightness greater than 10 candles per square inch shall be visible to persons whilst normally employed within 100 feet of the source, except where the angle of elevation from the eye to the source or part of the fitting as the case may be exceeds 20°.

(2) Any local light, that is to say an artificial light designed to illuminate particularly the area or part of the area of work of a single operative or small group of operatives working near each other, shall be provided with a suitable shade of opaque material to prevent glare or with other effective means by which the light source is completely screened from the eyes of every person employed at a normal working place or shall be so placed that no such person is exposed to glare therefrom.

32. *Power of Chief Inspector to exempt.*—Where the Chief Inspector is satisfied in respect of any particular factory or part thereof or in respect of any description of work room or process that any requirement of Rules 29 to 31 is inappropriate or is not reasonably practicable he may by order in writing exempt the factory or part thereof of description or workroom or process from such requirements to such extent and subject to such conditions as he may specify.

33. *Exemption from rule 30.*—(1) Nothing in rule 30 shall apply to the parts of factories specified in Part I of the Schedule annexed hereto.

(2) Nothing in sub-rule (1) of rule 30 shall apply to the factories or parts of factories respectively specified in Part II of the said Schedule.

SCHEDULE.

PART I.

Part of factories in which light sensitive Photographic materials are made or used in an exposed condition.

PART II.

Cement works.
Works for the crushing and grinding of limestone.
Gas works.
Coke oven works.
Electrical stations.
Flour Mills.
Malting and Breweries.
Parts of factories in which the following processes are carried out:—
Concrete or artificial stone making,

Conversion of iron into steel.
Smelting of iron ore.
Iron or steel rolling.
Hot rolling or forging' tempering or annealing of metals.
Glass blowing and other working in molten glass.
Tar distilling.
Petroleum refining and blending.

Rules 34 to 39 prescribed under sub-section (4) of section 18.

34. *Quantity of drinking water.*—The quantity of drinking water to be provided for the workers in every factory shall be at least as many gallons a day as there are workers employed in the factory and such drinking water shall be readily available at all times during working hours.

Provided that if the Chief Inspector is of the opinion that the arrangements made in any factory would ensure adequate supply of water, he may make a relaxation in this rule in respect of that factory with such conditions as he may deem necessary.

35. *Source of supply.*—The water provided for drinking shall be supplied—

(a) from the taps connected with a public water supply system, or

(b) from any other source approved in writing by the Health Officer.

36. *Storage of water.*—If drinking water is not supplied from taps connected with a public water supply system which is not continuous such water shall be kept in suitable vessels with taps and dust proof cover, placed on raised platform, in shade and with drains to carry away the spilt water. Such vessels shall always be kept scrupulously clean and the water renewed at least once every day. Where the water is drawn from deep protected wells or tube wells, such supply may be drawn direct from supply taps.

37. *Cleanliness of well or reservoir.*—(1) Drinking water shall not be supplied from any open well or reservoir unless it is so constructed, situated, protected and maintained as to be free from the possibility of pollution by chemical, or bacterial and extraneous impurities.

(2) Where drinking water is supplied from such well or reservoir the water in it shall be sterilised once a week or more frequently if the Inspector by written order so requires, and the date on which sterilising is carried out shall be recorded:

Provided that this requirement shall not apply to any such well or reservoir if the water therein is filtered and treated to the satisfaction of the Health Officer, before it is supplied for consumption.

38. *Report from Health Officer.*—The Inspector may by order in writing direct the manager to obtain, at such time or at such intervals as he may direct, a report from the Health Officer as to the fitness for human consumption of the water supplied to the workers, and in every case to submit to the Inspector a copy of such report as soon as it is received from the Health Officer.

39. *Cooling of water.*—In every factory wherein more than two hundred and fifty workers are ordinarily employed.

(a) the drinking water supplied to the workers shall from the 1st of March to the 15th of June every year, be cooled by ice or other effective method:

Provided that if ice is placed in the drinking water, the ice shall be clean and wholesome and shall be obtained only from a source approved in writing by the Health Officer,

(b) the cooled drinking water shall be supplied in every canteen, lunch-room and rest-room and also at conveniently accessible points throughout the factory which for the purpose of these Rules shall be called " Water Centres ";

(c) the water centres shall be sheltered from the weather and adequately drained ;

(d) the number of water centres to be provided shall be one "centre" for every 150 persons employed at any one time in the factory:

Provided that in the case of a factory where the number of persons employed exceeds 500 it shall be sufficient if there is one such "centre" as aforesaid for every 150 persons up to the first 500 and one for every 500 persons thereafter ;

(e) every water centre shall be maintained in a clean and orderly condition ;

(f) every water centre shall be incharge of a suitable person who shall distribute the water. Such person shall be provided with clean clothes while on duty.

Clause (f) shall not apply to any factory in which suitable mechanically operated drinking water refrigerating units are installed to the satisfaction of the Chief Inspector.

Rules 40 to 49 prescribed under sub-section (3) of section 19.

40. *Latrine accommodation.*—Latrine accommodation shall be provided in every factory on the following scale:—

(a) where females are employed, there shall be at least one latrine for every 25 females ;

(b) where males are employed, there shall be at least one latrine for every 25 males ; provided that, where the number of males employed exceeds 100, it shall be sufficient if there is one latrine for every 25 males upto the first 100, and one for every 50 thereafter.

In calculating the number of latrines required under this Rule, any odd number of workers less than 25 or 50, as the case may be, shall be reckoned as 25 or 50.

41. *Latrines to conform to Public Health requirements.*—Latrines, other than those connected with an efficient water borne sewage system, shall comply with the requirements of the Public Health Authorities.

42. *Privacy of latrines.*—Every latrine shall be under cover and so partitioned off as to secure privacy, and shall have a proper door and fastenings.

43. *Sign boards to be displayed.*—Where workers of both sexes are employed, there shall be displayed outside each latrine block, a notice in the language understood by the majority of the workers " For Men Only " or " For Women Only " as the case may be. The notice shall also bear the figure of a man or of a woman as the case may be.

44. *Urinal accommodation.*—Urinal accommodation shall be provided for the use of male workers and shall not be less than 2 feet in length for every 50 males ; provided that where the number of males employed exceeds 500, it shall be sufficient if there is one urinal for every 50 males up to the first 500 employed, and one for every 100 thereafter.

In calculating the urinal accommodation required under this Rule any odd number of workers less than 50 or 100, as the case may be, shall be reckoned as 50 or 100.

45. *Urinals to conform to Public Health requirements.*—Urinals other than those connected with an efficient water borne sewage system and urinals in a factory wherein more than two hundred and fifty workers are ordinarily employed shall comply with the requirements of the Public Health Authorities.

46. *Certain latrines and urinals to be connected to sewerage system.*—When any general system of underground sewerage with an assured water supply for any particular locality is provided in a municipality, all latrines and urinals of a factory situated in such locality shall, if the factory is situated within 100 feet of an existing sewer, be connected with that sewerage system.

47. *White-washing, colour-washing of latrines and urinals.*—The walls, ceilings and partitions of every latrine and urinal shall be white-washed or colour washed and the white-washing or colour-washing shall be repeated at least once in every period of four months. The dates on which the white-washing or colour-washing is carried out shall be entered in the prescribed Register (Form No. 7):

Provided that this Rule shall not apply to latrines and urinals, the walls, ceilings or partitions of which are laid in glazed tiles or otherwise finished to provide a smooth, polished impervious surface and that they are washed with suitable detergents and disinfectants at least once in every period of four months.

48. *Construction and maintenance of drains.*—All drains carrying waste or sullage water shall be constructed in masonry or other impermeable material and shall be regularly flushed and the effluent disposed of by connecting such drains with a suitable drainage line :

Provided that where there is no such drainage line, the effluent shall be deodorized and rendered innocuous and then disposed of in a suitable manner to the satisfaction of the Health Officer.

49. *Water in latrines.*—(1) Where piped water supply is available a sufficient number of water taps, conveniently accessible shall be provided in or near such latrine accommodation.

(2) When there is no continuous supply of water, water cisterns with cans should be provided for washing purposes.

Rules 50 to 52 prescribed under sub-section (2) of Section 20.

50. *Number and location of spittoons.*—The number and location of the spittons to be provided shall be to the satisfaction of the Inspector.

51. *Type of spittoons.*—The spittoons shall be of either of the following types :—

(a) a galvanized iron container with a conical funnel shaped cover. A layer of suitable disinfectant liquid shall always be maintained in the container ; or

(b) a container filled with dry, clean sand and covered with a layer of bleaching powder ; or

(c) any other type approved by the Chief Inspector.

52. *Cleaning of spittoons.*—The spittoons mentioned in clause (a) of rule 51 shall be emptied, cleaned and disinfected at least once every day ; and the spittoon mentioned in clause (b) of rule 51 shall be cleaned by scrapping out the top layer of sand as often as necessary or at least once every day.

CHAPTER IV.

SAFETY.

Rules 53 to 69 under sub-section (2) of section 21.

53. *Any guard specified to be deemed to be fencing.*—Any guard specified in the rules in this Chapter for the protection of workers from danger shall be deemed to be fencing, required by section 21 of the Act.

54. *Certain parts of machinery to be fenced.*—The following parts of machinery shall if in motion and within reach, be securely fenced or protected.

All shafts whether vertical or horizontal, wheels (including balancing and momentum wheels) besides the parts mentioned in sub-section (1) of section 21 of the Act, drums or pulleys (including fast and loose pulleys), couplings, collars, clutches, toothed wheels, straps, whether horizontal, inclined or vertical bands, belts, chains, ropes and wires or other devices by which any machine or appliance receives its motion, also all projecting set screws, keys nuts, or bolts or revolving parts of machinery and the underside of all heavy over-head main driving belts or ropes if there is any possibility of any person having to pass under them.

Explanation :—The fences and other devices for protection shall be constructed and designed as to render it impossible for any person to pass between them and moving part and also in such a manner as to give protection to a person oiling, cleaning or otherwise attending to machinery and to all persons who may be in the neighbourhood of a moving part while it is in motion.

Exception.—Where in any case any of the parts mentioned in this rule are not in the opinion of the Inspector, a source of danger to any person employed in the factory he shall at the request of the occupier or manager of the factory give such occupier or manager certificate in writing clearly specifying the parts which are not a source of danger. This rule shall not apply in respect of any parts specified in such certificate. The Chief Inspector may revise or cancel such certificate at any time.

55. *Certain parts of machine tools to be fenced.*—The following parts of machines shall be securely fenced.

The back gears and change wheels of lathes ; the back gears and bevel gearing of drilling machines ; and the gear wheels of planing, shaping, slotting and milling machines which are within reach.

56. *Emery and abrasive wheels to be provided with an iron cover guard.*—All emery wheels shall be provided with strong guards and the tool rests shall be kept close to the wheels. The guard shall be made of wrought iron not less than ¼ inch thick or of steel plate not less than 1/16 inch thick.

57. *The floor round every machine to be in good repair and non-slippery.*—The floor surrounding every machine shall be level and shall be maintained in good repair and free from chips, grease, oil or other material that may make it slippery.

58. *Important pulleys to be provided with belt hangers.*—As far as practicable all important pulleys shall be provided with belt hangers.

59. *Driving straps of fast and loose pulleys to have suitable string gear.*—Suitable string gear shall be provided and used to move driving straps on all fast and loose pulleys.

60. *Lubrication of bearing etc., of running belts to be done only by experienced or trained persons.*—Lubrication of bearing or gear wheels or replacing or adjusting of belts shall be done only by an experienced and specially trained person.

61. *Service platforms to be provided for overhead shafting.*—Service platforms or gangways shall be provided for overhead shafting where the shafting is over machinery or where it is impracticable to fit a ladder with hooks on to the shaft and if so required by the Inspector, shall be securely fenced with guard rails and toe boards.

62. *Machinery in motion not to be cleaned with cotton wastes etc., held in hand.*—No machinery in motion shall be cleaned with cotton waste, rags or similar material held in the hand.

63. *Shafting ladders.*—Every shafting ladder shall be fitted either with hooks or with some effective non-skid device.

64. *Certain workers to be supplied with certain clothing free of charge.*—Male adult workers whose names are entered in the Register prescribed under section 22(1) shall be supplied by the occupier, with a tight head dress, a tight fitting shirt or banyan and a tight fitted pair of shorts free of cost. At least two such sets shall be supplied every year so that the workers concerned may always be dressed in tight clothing kept as clean as possible consistent with their duties in the factory.

65. *Belts, etc., of machinery requiring attention when in motion to have safe and convenient access.*—Safe and convenient access shall be provided to all belts, bearings of shafts and other parts of machinery in a factory which may require attention while machinery is in motion.

66. *Additional weights not to be placed on safety valve of any boiler except with written sanction.*—No additional weight shall be placed on the safety valve of any boiler except under the written authority of the Chief Boiler Inspector appointed under the Boilers Act.

67. *Gear wheels of cashew roasting drums to be covered.*—The gear wheels of all cashew roasting drums shall be adequately covered by guards.

68. *Display of pictorial safety posters.*—Pictorial safety posters for the prevention of accidents approved by the Chief Inspector shall be displayed at conspicuous places in every room of the factory in which machinery is in use.

69. *The Chief Inspector's decision in regard to measures to be taken for the protection of machinery, final.*—If any question arises as to whether any measure taken or required to be taken in accordance with the rules in this chapter is efficient, effective or practicable, the question shall be referred to the Chief Inspector whose decision shall be final.

Rule prescribed under sub-section (2) of section 23.

70. *Employment of young persons on dangerous machines.*—The following machines shall be deemed to be of such dangerous character that young persons shall not work at them unless the provisions of section 23(1) are complied with :

Power presses other than hydraulic presses ;
Milling machines used in the metal trades ;
Guillotine machines ;
Circular Saws ;
Platen printing machines ;

Rule under sub-section (3) of section 26.

71. *Parts of machines deemed to be guarded by the makers.*—The following parts of machines will be deemed to be machinery to be guarded by the makers for the purpose of Section 26(1) of the Act.

(1) Back gears, change wheels and cog drives of lathes.
(2) Back gears and bevel gearing of drilling machines.
(3) Gear wheels and bevel drives of planing, shaping, slotting and milling machines.
(4) All cog and bevel drives of Oil Expellers.

Rules framed under section 28

72. (1) *Registers to be maintained to record particulars of examination.*—A register shall be opened with the following columns to record particulars of examination of hoists and lifts.

(i) Date of examination.
(ii) Number of hoists and lifts, if more than one.
(iii) Details of tests made.
(iv) Result of examinations.
(v) Signature of examiner.
(vi) Designation and qualifications of the examiner.

Exemption under sub-section (4) of section 28.

(2) *Exemption of certain hoists and lifts.*—In pursuance of the provisions of sub-section(4) of section 28, of the Act in respect of any class of description of hoists or lifts specified in the first column of the following Schedule, the requirements of Section 28 specified in the second column of the said schedule and set opposite to that class or description of hoist or lift shall not apply.

SCHEDULE.

Class or description of hoist or lift	*Requirements which shall not apply.*
Hoists or lifts mainly used for raising materials for charging blast furnaces or lime kilns.	Sub-section 1(b) in so far as it requires a gate at the bottom landing; sub-section 1(d), sub-section 1(e).
Hoists not connected with mechanical power and which are not used for carrying persons.	Sub-section 1(d) in so far as it requires the hoist-way or lift-way enclosure to be so constructed as to prevent any person or thing from being trapped between any part of the hoist or lift and any fixed structure or moving part; sub-section 1(e).

Rules prescribed under sub-section (2) of section 29.

73. *Inspection of lifting machines, chains, ropes and lifting tackles.*—(1) No lifting machine and no chain, rope or lifting tackle, except a fibre rope or fibre rope sling, shall be taken into use in any factory for the first time in that factory unless it has been tested and all parts have been thoroughly examined by a competent person and a certificate of such a test and examination specifying the safe working load or loads and signed by the person making the test and the examination has been obtained and is kept available for inspection.

(2) (a) Every jib-crane so constructed that the safe working load may be varied by the raising or lowering of the jib, shall have attached thereto either an automatic indicator of safe working loads or an automatic jib angle indicator and a table indicating the safe working loads at corresponding inclinations of the jib or corresponding radii of the load.

(b) A table showing the safe working loads of every kind and size of chain, rope or lifting tackle in use, and, in the case of a multiple sling, the safe working loads at different angles of the legs, shall be posted in the store room or place where or in which the chains, ropes or lifting tackles similar parts in a plant or machine, only one set of such mountings need be fitted.

(2) Every vessel or apparatus other than part of a prime mover operated at a pressure greater than atmospheric pressure, and not so constructed as to withstand with safety the maximum permissible working pressure of the boiler or the maximum pressure which can be obtained in the pipe connecting the vessel or apparatus with any other source of supply, shall be fitted with a suitable reducing valve or other suitable automatic appliance to prevent the safe working pressure being exceeded.

(3) A report of the result of every examination made in accordance with the foregoing sub-rule shall be completed in the prescribed Form No. 8 and signed by the person making the examination, and shall be kept available for perusal by the Inspector at any time while the part is in service.

(4) No such part which has previously been used shall be taken into use in any factory for the first time in the factory until it has been examined and reported on in accordance with the foregoing sub-rules and no new part shall be taken into use unless there has been obtained from the maker of part or from a competent person, a certificate specifying the maximum permissible working pressure thereof, and stating the nature of the tests to which the part and its fittings (if any) have been subjected, and the certificate kept available for perusal by an Inspector, and the part is so marked as to enable it to be identified as the part to which the certificate relates.

(5) Where the report of any examination under this Rule specifies conditions for securing the safe working of a part, the part shall not be used except in accordance with those conditions.

(6) The competent person making the report of any examination under this rule, shall within seven days of the completion of the examination, send to the Inspector a copy of the report in every case where the maximum permissible working pressure is reduced, or the examination shows that the part cannot continue to be used with safety unless certain repairs are carried out immediately or within a specified time.

(7) The requirements of this Rule shall be in addition to and not in derogation of the requirements of any other Act, or Rules or Regulations.

(8) Nothing in this rule shall apply to :—

(a) any plant which comes within the scope of the Indian Boilers Act, 1923 (Central Act V of 1923.)

(b) metal bottles or cylinders used for the storage or transport of gases under pressure.

Rule prescribed under sub-section (2) of section 34.

75. *Excessive weights* :—(1) No woman or young person shall, unaided by another person, lift, carry or move by hand or on head, any material, article, tool or appliance exceeding the maximum limit in weight set out in the following schedule.

SCHEDULE.

Persons.	Maximum weight of material, article, tool or appliance.
(a) Adult female	65 lbs.
(b) Adolescent male	65 ,,
(c) Adolescent female	45 ,,
(d) Male child	35 ,,
(e) Female child	30 ,,

(2) No woman or young person shall engage, in conjunction with others, in lifting, carrying or moving by hand or on head, any material, article, tool or appliance, if the weight thereof exceeds the lowest weight fixed by the Schedule to sub-rule (1) for any of the persons engaged multiplied by the number of the persons engaged.

Rule prescribed under Section 35.

76. *Protection of Eyes.*—Effective screens or suitable goggles shall be provided for the protection of persons employed in or in the immediate vicinity of the following processes :—

(a) The process specified in Schedule I annexed hereto, being processes which involve risk of injury to the eyes from particles or fragments thrown off in the course of the process.

(b) The processes specified in Schedule II annexed hereto, being processes which involve risk of injury to the eyes by reason of exposure to excessive light.

SCHEDULE I.

Dry grinding of metals or articles of metal applied by hand to a revolving wheel or disc driven by mechanical power. Turning (external or internal) of non-ferrous metals or of cast iron or articles of such metals or such iron, where the work is done dry, other than precision turning where the use of goggles or a screen would seriously interfere with the work, or turning by means of hand tools.

Welding or cutting of metals by means of an electric, oxy-acetylene or similar process.

The following processes when carried on by means of hand tools or other portable tools :—

Fettling of metal involving the removal of metal.

Cutting out or cutting of cold rivets or bolts from boilers or other plant or from ships.

Chipping or scaling of boilers or ships plates.

Breaking or dressing of stone, concrete or slag.

SCHEDULE II.

Welding or cutting of metal by means of an electrical, oxy-acetylene or similar process.

All processess in connection with glass melting furnaces.

Rules prescribed under sub-section (6) of section 36.

77. *Minimum dimension of manholes.*—Every chamber, tank vat, pipe, flue or other confined space which persons may have to enter and which may contain dangerous fumes to such an extent as to involve risk of the persons being overcome thereby, shall unless there is other effective means of egress, be provided with a manhole which may be rectangular, oval or circular in shape, and which shall—

(*a*) in the case of a rectangular or oval shape, be not less than 16 inches long and 12 inches wide ;

(*b*) in the case of a circular shape, be not less than 16 inches in diameter.

Exemption under sub-section (5) of section 37.

78. *Exemptions.*—The requirements of sub-section (4) of section 37 shall not apply to the following processes caried on in any factory :

(*a*) The operation of repairing a water-sealed gasholder by the electric welding process, subject to the following conditions:—

(i) The gasholder shall contain only the following gases separately or mixed at a pressure greater than atmospheric pressure, namely, town gas, coke oven gas, producer gas, blast furnace gas, or gases other than air, used in their manufacture:

Provided that this exemption shall not apply to any gas-holder containing acetylene or mixture of gases to which acetylene has been added intentionally ;

(ii) Welding shall only be done by the electric welding process and shall be carried out by experienced operatives under the constant supervision of a competent person.

(*b*) The operations of cutting or welding steel or wrought iron gas mains and services by the application of heat subject to the following conditions:—

(i) The main or service shall be situated in the open air, and it shall contain only the following gases, separately or mixed at a pressure greater than atmospheric pressure, namely gas, coke oven gas, producer gas, blast furnace gas, or gases other than air, used in their manufacture.

(ii) The main or service shall not contain acetylene or any gas or mixture of gases to which acetylene has been added intentionally,

(iii) The operation shall be carried out by an experienced person or persons and at least 2 persons (including those carrying out the operations) experienced in work on gas mains and over 18 years of age shall be present during the operation.

(iv) The site of the operation shall be free from any inflammable or explosive gas or vapour.

(v) Where acetylene gas is used as a source of heat in connection with an operation, it shall be compressed and contained in a porous substance in a cylinder ; and

(vi) Prior to the application of any flame to the gas main or service, this shall be pierced or drilled and the escaping gas ignited.

(*c*) The operation of repairing an oil tank on any ship by the electric welding process shall be subject to the following conditions :—

(i) The only oil contained in the tank shall have a flash point of not less than 150° F (close test) and a certificate to this effect shall be obtained from a competent analyst.

(ii) The analyst's certificate shall be kept available for inspection by an Inspector, or by any person employed or working on the ship.

(iii) The welding operation shall be carried out only on the exterior surface of the tank at a place (a) which is free from oil or oil leakage in inflammable quantities and (b) which is not less than one foot below the nearest part of the surface of the oil within the tank ; and

(iv) Welding shall be done only by the electric welding and shall be carried out by experienced operatives under the constant supervision of a competent person.

Rules prescribed under sub-section (1) of section 38.

79. *Means of escape in case of fire* :—(1) Every factory shall be provided with adequate means of escape in case of fire for the persons employed therein, and without prejudice to the generality of the foregoing:—

(*a*) Each room of a factory building shall in relation to its size and the number of persons employed in it be provided with an adequate number of exits for use in case of fire though not necessarily confined to such use, so positioned that each person will have a reasonably free and unobstructed passage from his work place to an exit.

(*b*) No exit intended for use in case of fire shall be less than 3 feet in width not less than 6 feet 6 inches in height ;

(*c*) In the case of a factory building or part of a factory building of more than one storey and in which not less than twenty persons work at any one time there shall be provided at least one substantial stairway permanently constructed either inside or outside the building and which affords direct and unimpeded access to ground level.

(*d*) In the case of a factory building or part of a factory building in which twenty or more persons work at any one time above the level of the ground floor and wherein explosive or highly inflammable materials are used or stored, or which is situated below ground level, the means of escape shall include at least two separate and substantial stairways permanently constructed either inside or outside the building and which afford direct and unimpeded access to ground level.

(*e*) Every stairway in a factory which affords a means of escape in case of fire shall be provided with a substantial handrail which if the stairway has an open side shall be on that side, and if the stairway has two open sides, such handrail shall be provided on both sides.

(2) In the case of a building constructed or converted for use as a factory after the date of the passing of the Act, the following additional requirements shall apply.

(*a*) At least one of the stairways provided shall be of a fire-resisting material.

(*b*) Every hoist-way or lift-way inside a factory building shall be completely enclosed with fire-resisting materials and all means of access to the hoist or lift shall be fitted with doors of fire-resisting materials:

Provided that any such-hoist way or lift-way shall be enclosed only at the top by some material easily broken by fire or be provided with a vent at the top.

(*c*) No fire escape stair shall be constructed at an angle greater than 45° from the horizontal.

(*d*) No part of a factory building shall be further (along the line of travel) than 150 feet from any fire escape stair.

(*e*) No stairway shall be less than 45 inches in width.

(3) *Explanation.*—For the purpose of this rule, 'Fire-Resisting Material' means—

(*a*) Properly constructed brick-work not less than four and a half inches in thickness; or

(*b*) concrete not less than three inches in thickness; or

(*c*) efficiently jointed breeze slabbing not less than three inches in thickness; or

(*d*) glass not less than one-quarter of an inch in thickness in the centre of which wire-mesh is embedded; or

(*e*) wood completely and securely covered on both sides with compressed asbestos not less than one-quarter of an inch in thickness; or

(*f*) iron or steel; or

(*g*) any other material approved in writing by the Chief Inspector.

Special Rules for Match Factories.

80. *In Match Factories.*—(i) The residue of the head composition shall not in any way be mixed with the residue of the friction composition;

(ii) the rooms comprising the two mixing departments namely (*a*) head composition, and (*b*) friction composition shall be entirely separated from each other and the drains from these two departments shall be kept entirely separate;

(iii) rubbish containing the residues of the head composition and friction composition shall be kept and burnt separately;

(iv) departments in which completed matches (matches with heads on) are stored shall be separated from all other departments by means of fire-proof walls and doors providing adequate means of escape in case of fire, provided that the Chief Inspector may, subject to such conditions, as he may deem necessary, exempt any factory in existence on 1st January, 1951, from the provisions of this clause;

(v) Splints, veneers, and other materials required in excess of the quantity required for the day's manufacture shall be kept in separate rooms of the factory where no manufacturing process is carried on. No manufactured materials shall be stored anywhere in the factory compound for more than five days after the manufacture except in the storage godowns:

Provided that nothing contained in this clause shall apply to splints and veneers in cases stored in peeling and box-making departments; and

(vi) store rooms for matches shall be entirely separated by fireproof walls from the buildings used for manufacture.

Rules under section 41 of the Act.

81. *Further safety precautions.*—(1) Without prejudice to the provisions of sub-section (1) of section 21 in regard to the fencing of machines, the further precautions specified in the Schedules annexed hereto shall apply to the machines noted in each Schedule.

(2) This Rule shall come into force in respect of any class or description of factories, where machines noted in the said Schedules are in use on such dates as the State Government may, by notification in the official Gazette, appoint in this behalf.

SCHEDULE I.

(COTTON TEXTILES).

I. Cotton Openers, Scutchers, Combined Openers and Scutchers, Scutcher and Lap Machines, Hard Waste Breakers, etc.

(1) All Cotton Openers, Scutchers, Combined Openers and Scutchers, Scutcher and Lap Machines, Hard Waste Breakers and similar machines shall be driven by separate motors or from counter shafts provided with fast and loose pulleys and efficient belt shifting devices.

(2) In all openers, Combined Openers and Scutchers, Scutchers, Scutcher Lap Machines, Hard Waste Breakers and similar machines, the beater covers and doors which give access to any dangerous part of the machine shall be fitted with effective inter-locking arrangements which shall prevent—

(*a*) the covers and doors being opened while the machine is in motion; and

(*b*) the machine being re-started until the covers and doors are closed:

Provided that in respect of doors of openings, other than dirt doors or desk doors such openings shall be so fenced as to prevent access to any dangerous parts of the machine if effective inter-locking arrangement is not provided.

(3) In all Openers, Combined Openers and Scutchers, Scutchers, Scutcher lap machines, Hard Waste Breakers and similar machines, the openings giving access to the dust chamber shall be provided with permanently fixed fencing which shall, while admitting light, yet prevent contact between any portion of a worker's body and the beater grid bars.

II. Combined Openers and Scutchers, Scutcher, Scutchers-lap, Silver-lap, Lap Machines, Derby Doublers and Ribbon Machines.

(1) The lap forming rollers shall be fitted with a guard or cover which shall prevent access to the intake of the lap roller and fluted roller as long as the weighted rack is down; or

(2) The guard or cover shall be so locked that it cannot be raised until the machine is stopped and the machine cannot be started until the guard or cover is closed.

(3) *Carding Machines.*—All cylinder doors shall be secured by an automatic locking device which shall prevent the door being opened until the cylinder has ceased to revolve and shall render it impossible to restart the machine until the door has been closed.

(4) *Speed Frames.*—Headstocks shall be fitted with automatic locking arrangements which shall prevent the doors giving access to jack box wheels being opened while the machinery is in motion and shall render it impossible to restart the machine until the doors have been closed.

(5) *Self-acting Mules.*—The drive shall be from counter-shafts which shall be provided with fast and loose pulleys and efficient belt shifting devices.

(6) *Calendering Machines etc.*—In respect of calendering machines, mangles and similar machines, all such machines shall be provided with an efficient "nip" guard along the whole length on the intake side of each pair of bowls and similar parts, which shall be so fitted and maintained, whilst the rollers of bowls are in motion, as to prevent access to the point of contact of the rollers or bowls.

SCHEDULE II.

(COTTON GINNING.)

Line Shaft.—The line shaft or second motion in cotton ginning factories, when below floor level, shall be completely enclosed by a continuous wall or unclimbable fencing with only so many openings as are necessary for access to the shaft for removing cotton seed, cleaning and oiling and such opening shall be provided with gates or doors which shall be kept closed and locked.

SCHEDULE III.

(WOOD WORKING MACHINERY.)

(1) *Definitions.*—For the purposes of this schedule :—

(a) "Wood-working machine' means a circular saw, band saw, planing machine, chain mortising machine or vertical spindle moulding machine operating on wood or cork.

(b) 'Circular saw' means a circular saw working in a bench (including a rack bench) but does not include a pendulum or similar saw which is moved towards the wood for the purpose of cutting operation.

(c) 'Band saw' means a band saw, the cutting portion of which runs in a vertical direction but does not include a log saw or band re-sawing machine.

(d) 'Planing machine' means a machine for overhand planing or for thicknessing or for both operations.

(2) *Stopping and Starting device.*—An efficient stopping and starting device shall be provided on every wood-working machine. The control of this device shall be in such a position as to be readily and conveniently operated by the person in charge of the machine.

(3) *Space around machine.*—The space surrounding every wood-working machine in motion shall be kept free from obstruction.

(4) *Floors.*—The floor surrounding every wood-working machine shall be maintained in good and level conditions and shall not be allowed to become slippery, and as far as practicable shall be kept free from chips or other loose material.

(5) *Training and supervision.*—(1) No person shall be employed at a wood-working machine unless he has been sufficiently trained to work that class of machine, or unless he works under the adequate supervision of a person who has a thorough knowledge of the working of the machine.

(2) A person who is being trained to work wood-working machine shall be fully and carefully instructed as to the dangers of the machines and the precautions to be observed to secure safe working of the machine.

(6) *Circular saws.*—Every circular saw shall be fenced as follows :—

(a) Behind and in direct line with the saw there shall be a riving knife, which shall have a smooth surface, shall be strong, rigid and easily adjustable and shall also conform to the following conditions—

(i) The edge of the knife nearer the saw shall form an arc of a circle having a radius not exceeding the radius of the largest saw used on the bench.

(ii) The knife shall be maintained as close as practicable to the saw, having regard to the nature of the work being done at the time, and at the level of the bench table the distance between the front edge of the knife and the teeth of the saw shall not exceed half an inch.

(iii) For a saw of a diameter of less than 24 inches, the knife shall extend upwards from the bench table to within one inch of the top of the saw, and for a saw of a diameter of 24 inches or over shall extend upwards from the bench table to a height of at least nine inches.

(*b*) The top of the saw shall be covered by a strong and easily adjustable guard, with a flange at the side of the saw farthest from the fence. The guard shall be kept so adjusted that the said flange shall extend below the root of the teeth of the saw. The guard shall extend from the top of the riving knife to a point as low as practicable at the cutting edge of the saw.

(*c*) The part of the saw below the bench table shall be protected by two plates of metal or other suitable material one on each side of the saw; such plates shall not be more than six inches apart and shall extend from the axis of the saw outwards to a distance of not less than two inches beyond the teeth of the saw. Metal plates, if not beaded, shall be of a thickness of at least 1/10 inch, or if beaded be of a thickness of at least 1/20 inch.

(7) *Push sticks.*—A push stick or other suitable appliance shall be provided for use at every circular saw and at every vertical spindle moulding machine to enable the work to be done without unnecessary risk.

(8) *Band saws.*—Every band saw shall be guarded as follows :—

(*a*) Both sides of the bottom pulley shall be completely encased by sheet or expanded metal or other suitable material.

(*b*) The front of the top pulley shall be covered with sheet or expanded metal or other suitable material.

(*c*) All portions of the blade shall be enclosed or otherwise securely guarded except the portion of the blade between the bench table and the top guide.

(9) *Planing Machines.*—(i) A planing machine (other than a planing machine which is mechanically fed shall not be used for overhand planing unless it is fitted with a cylindrical cutter block.

(ii) Every planing machine used for overhand planing shall be provided with a 'bridge' guard capable of covering the full length and breadth of the cutting slot in the bench, and so constructed as to be easily adjusted both in a vertical and horizontal direction.

(iii) The feed roller of every planing machine used for thicknessing, except the combined machine for overhand planing and thicknessing shall be provided with an efficient guard.

(10) *Vertical spindle moulding machines.*—(i) The cutter of every vertical spindle moulding machine shall be guarded by the most efficient guard having regard to the nature of the work being performed.

(ii) The wood being moulded at a vertical spindle moulding machine shall, if practicable, be held in a jig or holder of such construction as to reduce as far as possible the risk of accident to the worker.

(11) *Chain mortising machines.*—The chain of every chain mortising machine shall be provided with a guard which shall enclose the cutters as far as practicable.

(12) *Adjustment and maintenance of guards.*—The guards and other appliances required under this schedule shall be-

(*a*) maintained inan efficient state.

(*b*) constantly kept in position while the machinery is in motion, and

(*c*) so adjusted as to enable the work to be done without unnecessary risk.

(13) *Exemption.*—Paragraphs 6, 8, 9 and 10 shall not apply to any wood-working machine in respect of which it can be proved that other safeguards are provided, maintained and used which render the machine as safe as it would be if guarded in the manner prescribed in this Schedule.

SCHEDULE IV.

Rubber Mills.

1. *Installation of machines.*—Mills for breaking down, cracking, grating, mixing, refining and warming rubber or rubber compounds shall be so installed that the top of the front roll is not less than forty-six inches above the floor or working level. Provided that in existing installations where the top of the front roll is below this height a strong rigid distance bar guard shall be fitted across the front of the machines in such position that the operator cannot reach the nip of the rolls.

2. *Safety devices.*—(1) Rubber mills should be equipped with—

(*a*) hoppers so constructed or guarded that it is impossible for the operators to come into contact in any manner with the nip of the rolls;

(*b*) horizontal safety-trip rods or tight wire cables across both front and rear, which will, when pushed or pulled, operate instantly to disconnect the power and apply the brakes, or to reverse the rolls.

(2) Safety-trip rods or tight wire cables on rubber mills shall extend across the entire length of the face of the rolls and shall be located not more than sixty-nine inches above the floor or working level.

(3) Safety-trip rods and tight wire cables on all rubber mills shall be examined and tested daily in the presence of the manager or other responsible person and if any defect is disclosed by such examination and test the mill shall not be used until such defect has been remedied.

SPECIAL RULES FOR JUTE MILLS.

Site of feed tables and protective devices.

82. *In Jute Mills.*—(*a*) The feed table of every softener machine shall as far as practicable be not less than 5 feet in length;

(*b*) the feed table of such softener machine shall be provided with an automatic knocking off device which shall stop the machine in case the worker's hand is drawn in and prevent the hand from reaching the spiked rollers; and

(*c*) the automatic device mentioned in clause (b) shall be maintained in an efficient state and be kept in position whenever the machinery is working.

SPECIAL RULE FOR TEA FACTORIES

The roll table to be fenced and brushes for sweeping the roll table to be provided.

83. In tea factories, the roll table shall be fenced to the satisfaction of the Inspector and brushes shall be provided to the workers for the purpose of sweeping the roll table.

SPECIAL RULE FOR BRICK AND TILE WORKS

Finger guard to be provided at the feed end of every revolving press.

84. In brick and tile works, a finger guard shall be fitted at the feed end to the full length of the mould of every revolving press.

SPECIAL RULE FOR DECORTICATING FACTORIES.

The beater arms and feed mouth of decorticators to be guarded.

85. In deorticating factories the beater arms and the feed mouth of the decorticator shall, as far as practicable, be guarded as follows:

A grating of ⅜ inch diameter wrought iron rods spaced 2½ inches apart and supported by iron stiffeners 2 inches × ¼ inch thick shall be fixed at a height of 6 inches above the tip of the beater arms. A strong wooden plank 1½ inches thick and iron plated on the underside shall be clamped with bolts and nuts over this grating leaving a space of 8 inches wide for the feeding of groundnuts. A grating of one inch diameter wrought iron rods spaced 1½ inches apart shall be fixed at a height of 5 inches just above the feed mouth and another wooden plank 9 inches wide shall be fixed over the full length of the decorticator platform.

PRINTING PRESSES.

Guards to platen and guillotine machine.

86. In printing works every platen machine driven by power shall be fitted with an efficient fingerguard and every guillotine machine, driven by power, with an efficient knifeguard.

SPECIAL RULE RELATING TO ELECTRIC FITTINGS.

Protective measures against danger from electrical shocks.

87. (1) All electrical conductors shall either be covered with adequate insulating material and otherwise effectively protected to prevent danger or be so placed and guarded as effectively to prevent danger.

(2) All electrical apparatus, machines and fittings shall be -

(a) so placed or effectively guarded as to prevent danger ; and

(b) provided with efficient handles or other means of working insulated from the electrical system and so arranged that the worker cannot accidentally touch live metal.

(3) The fencing of motors and other electrical apparatus shall, as far as practicable, be so arranged that the switches and other controlling appliances can be operated from outside the fencing.

(4) Only specially trained and experienced persons shall be allowed to operate, adjust or repair any electrical apparatus.

(5) Instructions, both in English and Malayalam or Tamil, for the restoration of persons suffering from electric shock shall be affixed in a conspicuous place in every factory using electrical energy for lighting or power purposes.

CHAPTER V

WELFARE.

Rule prescribed under sub-section (2) of section 42.

88. *Washing facilities* :—(1) This rule shall come into force, in respect of any class or description of factories, on such dates as the State Government may, by notification in the Official Gazette, appoint in this behalf.

(2) There shall be provided and maintained in every factory for the use of employed persons adequate and suitable facilities for washing which shall include soap and nail brushes or other suitable means of cleaning and the facilities shall be conveniently accessible and shall be kept in a clean and orderly condition.

(3) Without prejudice to the generality of the foregoing provisions the washing facilities shall include—

(a) a trough with taps or jets at intervals of not less than two feet, or

(b) wash basins with taps attached thereto, or

(c) taps on stand-pipes, or

(d) showers controlled by taps, or

THE

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VOLUME XIV

[IN THE SUPREME COURT OF INDIA.]

GANESH FLOUR MILLS CO., LTD.

v.

THEIR WORKMEN

N. H. Bhagwati, Jafer Imam and P. B. Gajendragadkar, JJ.

November 19, 1957.

BONUS—COMPUTATION OF AVAILABLE SURPLUS PROFITS—PRINCIPLES —MONEY BLOCKED UP IN FOREIGN COUNTRY—WHETHER SHOULD BE EXCLUDED—BAD DEBTS—DEDUCTION OF, FROM GROSS PROFITS.

In the computation of the surplus of profits available for distribution as bonus to workmen on the basis of the Full Bench Formula, Held :

(*i*) *That it is necessary that the employer should be shown to be in possession of the surplus which is actually available for distribution as bonus. Where a large part of the balance shown in the balance sheet is locked up in a foreign country and on the evidence it was clear that the amount could not be brought to India in the near future, the amount so locked up must be deducted in computing the surplus of profits available for distribution as bonus to the workmen in India.*

(*ii*) *Though bad debts are not a prior charge in computing the surplus profits in accordance with the Full Bench Formula, such irrecoverable debts would, to that extent, reduce the gross profits and must be deducted in the computation of available surplus profits. If any such debts are recovered in subsequent years, they should then be added to the profits of the year in which they are recovered.*

Civil Appeal No. 365 of 1957.

M. C. Setalvad and *Iqbal Ahmed* for the appellants.

N. C. Chatterjee for the respondents.

JUDGMENT.

The Judgment of the Court was delivered by

GAJENDRAGADKAR, J.—This appeal arises out of an industrial dispute between the appellant M/s. Ganesh Flour Mills Co. Ltd., and its employees. The appellant company is a Joint Stock Company incorporated and registered at Delhi under the Indian Companies Act, 1913. It has three factories at Delhi, one Vegetable Ghee Factory, one Flour Mills and one Breakfast Food Factory. It also runs a Vegetable Ghee Factory at Kanpur and a Vegetable Ghee Factory and a Flour Mill at Lyallpur in West Pakistan. For the accounting year 1952-53, the appellant's employees claimed bonus equivalent to six months' basic wages and annual increment in basic wages on the same scale as for the year 1948-49. The industrial dispute arising out of this claim was referred by the Chief Commissioner, Delhi, to the Additional Industrial Tribunal, Delhi, on 20th September 1954. By this reference, two issues were raised for adjudication by the Tribunal. In the present appeal we are concerned with only one of these two issues and that is in relation to the employees' claim for bonus for the year 1952-53. The appellant urged before the Tribunal that for the year in question the appellant had no surplus available in its hands for distribution by way of bonus. This contention was rejected by the Tribunal and the Tribunal awarded to the respondents bonus equivalent to 25% of the basic wages subject to certain directions given by the award. This award was pronounced on 31st January, 1955. Against this part of the award, both the appellant and the respondents preferred appeals before the Labour Appellate Tribunal. The Labour Appellate Tribunal confirmed the award of the Industrial Tribunal and dismissed the appeals preferred by both the appellant and the employees in that behalf. The decision was pronounced on 16th July, 1955. It is against this decision that the present appeal has been filed by the appellant in this Court by special leave.

The legal position in regard to the employees' claim for bonus is no longer in doubt. The Full Bench Formula evolved by the Labour Appellate Tribunal in the case of the *Mill Owners Association, Bombay* v. *Rashtriya Mill Mazdoor Sangh, Bombay*, [1950] 2 F.J.R. 107, is accepted by both the parties. In the present case, after applying the Full Bench Formula, the Appellate Tribunal has reached the conclusion that the available surplus is Rs. 9,61,371. This conclusion has been reached after providing for prior charges as recognized by the Full Bench Formula. The appellant's grievance is that adequate provision has not been made in respect of prior charges, no provision has been made at all for rehabilitation charges and the claim made by the appellant in respect

of irrecoverable debts has been wrongly rejected. Besides, it is the appellant's case that basically the Tribunals erred in holding that the available surplus should be determined on the footing that the business carried on by the appellant in India as well as the business carried on in Pakistan should be taken to constitute one business and the consolidated account of profit and loss of this entire business should be taken into account. The appellant's business in India during the relevant year has resulted in a loss and that, according to the appellant, is decisively against the respondents' claim to any bonus during the relevant period.

The learned Attorney-General contends that having regard to the true nature and character of the employees' claim for bonus, it would be necessary for the employees to show that the surplus from which they claimed the bonus was the result of the contribution of their labour. In support of this argument, reliance is placed on a decision of this Court in *Muir Mills Co., Ltd.* v. *Suti Mill Mazdoor Union, Kanpur*, [1955] 7 F.J.R. 483. The judgment of this Court in this case has laid down two conditions which have to be fulfilled before a demand for bonus can be sustained—the wages paid to workmen must fall short of the living standard and the industry must make profits part of which are due to the contribution which the workmen make in increasing the production. It is on the latter condition that the present argument purports to be raised. It is perfectly true that the theoretical basis for the employees' claim for bonus is the assumption that profit in respect of which the claim for bonus is made is partially the result of production to which the employees make contribution by their labour. But this argument is sought to be met by Mr. Chatterjee, for the respondents, by pointing out that the contribution of labour mentioned in the judgment of this Court is the contribution made by the labour as a whole. It is not necessary, says Mr. Chatterjee, that every section of labour must be shown to have contributed towards the profit made by the employer; it would be enough if it is shown that profit made by the employer is partially due to the contribution made by the labour as a whole. Mr. Chatterjee referred us to several statements in the judgment in support of his argument that contribution of labour mentioned in the judgment is the contribution of labour considered as a whole. Mr. Chatterjee has also relied on the decision of *Burn & Co., Calcutta* v. *Their Employees*, [1956] 11 F.J.R. 217, in support of his argument. "The entire profits of the company", observed Venkatarama Aiyar, J., in his judgment, "are the result of labour in all its units". It is interesting to note that in this particular case, the argument urged by labour was that if bonus cannot be granted to all the workmen of the employer, at least that section of the workmen which had definitely contributed to more production should be awarded bonus. This argument was repelled on the ground that a claim for bonus on the ground that labour has contributed to more production must be entertained on behalf of workmen considered as a whole and not on behalf of any section amongst them. Similarly, in the *Baroda Borough Municipality* v. *Its Workmen*, [1956] 11 F.J.R. 305, it has been held that the workers employed in the electricity department of the municipality were not entitled to bonus claimed. because the different activities of the municipality constituted one integrated whole and the activities of the different departments were not distinct or unconnected activities so as to permit the isolation of one department from another or of an earning department from a spending department. It was also held that it would be unfair to draw a distinction between the workers of the earning department and the workers of the spending department for the payment of bonus. Such a distinction would, instead of promoting peace and harmony among the employees of the municipality, create unrest and discontent. These are the considerations on which Mr. Chatterjee seeks to repel the argument of the learned Attorney-General that, since the employees of the mills in India have not contributed to the profits made by the appellant in Pakistan, their claim for bonus should be rejected on that account alone.

However, there are other relevant considerations on which the learned Attorney-General has relied in support of the said contention. He argues that the labour laws in Pakistan are not the same as those in India; that the conditions of work, wages etc., of labour in Pakistan are entirely different from those in India; that, if the business carried on in Pakistan and in India are treated as constituting one unit for the purpose of deciding the question of bonus, several complications would arise and several difficulties in actual working of the decision as to bonus would present themselves. Whatever may be the position in respect of different factories run by the employer in the Union of India, a line must be drawn where the employer runs different units of the same industry in two different countries. In dealing with industrial disputes of this character it would be wrong to rely solely on theoretical considerations, says the learned Attorney-General; and if there are serious practical difficulties in giving effect to abstract theoretical considerations those practical difficulties must be taken into account and the units working in two different countries must be treated as two distinct and separate units unconnected with each other for the purpose of deciding the workmen's claim for bonus in one country, *viz.*, in India. In support of this position, he has referred us to the decision of the Labour Appellate Tribunal in *The British Insulated Callender's Cables, Ltd.* v. *Their Workmen* [1952] 1 L.A.C. 87. The employer in this case was carrying on business in India, Pakistan and Ceylon for the relevant years and it was held that the bonus for the Indian employees must depend upon the figures of India alone and not on the figures contained in the consolidated accounts of the three countries in question. Reliance has also been placed on the decision of the *Workmen employed in the Ahmedabad Manufacturing and Calico Printing Co. Ltd. (Chemical Division)* v. *Ahmedabad Manufacturing and Calico Printing Co. Ltd. (Chemical Division), Ahmedabad* [1952] 4 F.J.R. 58. In this case it appears that the company carried on business in textiles as well as chemicals. About 1/3 of one of the products, and 1/30 of another of the chemical section were supplied to the textile section. The remaining products of the chemical section were sold to outsiders. The accounts and the management of the two sections were separate although under single top direction with a single balance-sheet and profit and loss account. The majority view of the Labour Appellate Tribunal was that the workmen of the chemical section in which there was no available surplus of profits could not claim the same bonus as had been given to the workmen of the textile section which made profits. Then our attention was drawn to the decision of the Labour Appellate Tribunal in *The British India Steam Navigation Co. Ltd.* v. *Its workmen in Bombay* [1952] 2 L.A.C. 826. According to this decision, to base bonus on global trading results of the company must have special justification. Though it may be true that the trading results of the relevant year are collated and ascertained only at the head office in England, it should not be impracticable, on the figures available at the head office, to make allocation of earnings and expenditure arising out of the company's work in India for the purpose of the Full Bench Formula. "It is a long call", said the Tribunal, "from the claim of 270 tally clerks in Bombay to the world profits of this global organization operating from England; it would be more realistic to discover the figures on an All-India basis or on a larger regional area and discover available surplus, and only if that could not be done, then it would be permissible to take trading results of the entire world." The last decision on which the appellant relied is reported in *Greaves Cotton Co. Ltd., Bombay* v. *Its Workmen* [1954] 6 F.J.R. 555. In this case, the company was carrying on business both in India and Pakistan. It was urged by the company that a portion of the investment income could not be brought to India from Pakistan owing to exchange restrictions and the argument was that, since a part of the investment income could not be brought to India, that must be deducted from the surplus deduced from the balance-sheet because the portion lying in Pakistan was not available to the company for distribution by way of bonus. This argument was not accepted though the Appellate Tribunal found that the exchange difficulties might prevent the company from bringing the investment income in question for some time. "The fact", said the Tribunal, "that the money is not available for immediate use in India would, however, be a relevant consideration in determining the quantum of bonus after available surplus has been determined." It is urged that, if, as in the present case, the whole of the surplus determined from the consolidated statement of accounts is locked up in Pakistan and is not available for immediate use in India, that itself should lead to the inference that the employees were not entitled to any bonus for the relevant year. If the non-availability of any portion of the surplus for the immediate use is a relevant consideration, it must be relevant not only for the purpose of determining the quantum of bonus but also for the purpose of deciding whether any surplus was really available for immediate distribution. That is why the appellant has contended before us that the Labour Appellate Tribunal was in error in holding that Rs. 9,61,371 was the net surplus immediately available for distribution in the hands of the appellant.

On the other hand, Mr. Chatterjee has strenuously argued that the liability of the appellant to pay bonus to its workmen must be decided on the basis that the factories run by the appellant both in India and Pakistan constituted one business and it is in the light of the consolidated statement of the profit and loss account alone that the question must be decided. Mr. Chatterjee points out that the dividend has been paid to the shareholders during the relevant year on the basis of this consolidated account and commission has been paid to the Managing Director on the same basis. According to Mr. Chatterjee, in deciding the question of bonus, it is important to remember that the claim for bonus is made by workmen considered as a whole. It does not make any material distinction that some workmen may be contributing their labour in one country and other workmen in another country. The payment of bonus is, in a sense, a domestic matter between the employer and his employees and if the employer is one it would not be open to him to say that a distinction should be made as between his employees *inter se* and the question of net surplus should be decided by treating his Indian business as separate and distinct from his business in Pakistan. If the employer is one and if the work carried on by the factories in different countries is of the same kind and is otherwise integrated and regulated under one management, the existence of national barriers between the factories in two different countries would make no difference to the essential position that the employer is one and his workmen constitute one body of workmen. In such a case workmen in India can say that

they have contributed to the profits which leads to surplus in the employer's hands for distribution of bonus even though the business carried on by the employer in India considered in itself has resulted in a loss. The argument is that practical difficulties on which the learned Attorney-General very strongly relied are exaggerated and in any case the presence of practical difficulties cannot could the issue which is one of principle and it must be decided as such substantially on theoretical considerations. In support of this contention, Mr Chatterjee referred us to several decisions of the Labour Appellate Tribunal. The first case on which reliance was placed by him is reported in *The Indian Oxygen and Acetylene Co. Ltd., Kanpur* v. *Indian Oxygen Workers' Union, Kanpur* [1952] 1 L.A.C. 254. According to this decision, in the case of a company having manufacturing centres in different localities but doing business as a single undertaking, the profit and loss of the entire concern and not of any particular branch determines the question of bonus to employees of all localities. "The profits of a particular branch", observed the Tribunal, "are never earmarked for expenditure in that branch and what is of greater importance is that the return on the share capital in the shape of dividends to the shareholders which have been invested in the different factories of the company is declared and paid from the profits of the company, that is to say, from the net amount which is the result of pooling the profits and losses of the entire concern." Similarly, in *Ajodhya Distillery, Raja-Ka-Sahaspur* v. *Ajodhya Distillery Mazdoor Union*, [1951] 2 L. L. J. 613, the Appellate Tribunal has held that "where the company had several concerns and the profits of all of them were pooled and the liabilities of different concerns met out of the joint resources irrespective of the profit of each concern, then the bonus payable to workmen of any one concern cannot depend upon the profits by that individual concern only." To the same effect is the decision of the Labour Appellate Tribunal in *Herman & Mohatta* v. *Their Workmen* [1956] 2 L.L.J. 210. In this case, the Appellate Tribunal held that "where the trading results of the various branches are ultimately collected into a consolidated balance-sheet and where there is an integrated policy and control from the head office, it would be unrealistic to take into account the trading results of the workshops separately for the purpose of deciding whether the bonus is payable or not to its workmen". In *Inland Steam Navigation Workers Union* v. *Inland General Navigation and Railway Company, Ltd., and Another*, [1956] 11 F. J. R. 137, it has been held that "workmen are entitled to share in the prosperity of the industry taken as a whole in one picture. If there are profits in one area of the activities of the industry and loss in another, the prosperity of the industry must be judged from the net result of the profit or loss especially as workmen do not share the loss under any circumstances". The Tribunal further held that "the converse proposition also is true that if in fact there are two distinct industries or two distinct units of the same industry, though run by the same concern and have always been treated as distinct units by the concern for the purpose of ascertaining profits or losses, they cannot be combined only for the purposes of ascertaining bonus payable to workmen. In other words, what has been one whole cannot be broken up into compartments and what has been separate units cannot be combined into one to suit the convenience of either the employer or the employees for the sake of ascertaining bonus." Mr. Chatterjee conceded that he was not able to cite any case where, by the application of the principle for which he contends, factories run by the same concern in two different countries were treated as constituting one business; but he contends that, if the appellant's argument is carried to its logical conclusion, different units run by the appellant in different parts of the Union of India cannot be treated as constituting one business.

The question thus raised by the parties before us is no doubt of some importance; but we do not think it necessary to decide this question in the present appeal because we have reached the conclusion that even assuming that the business carried on by the appellant in India as well as in Pakistan is treated as one unit, and even if the consolidated statement of profit and loss account is taken as the sole guide for deciding whether the appellant holds in his hands net surplus available for distribution, it would be difficult to sustain the award passed by the Tribunals below in favour of the respondents.

At this stage it would be relevant to set out the method adopted by the Labour Appellate Tribunal in determining the quantum of the available surplus during the relevant year. The total profits of the year are thus calculated in the judgment of the Appellate Tribunal :—

		Rs.
"Profits as shown in the Profit & Loss Statement	...	17,35,630
Add the amount provided for bad debts	...	1,47,289
Add bonus for 1951-52 paid in 1952-53	...	2 06,300
Total	...	20,89,219

From this amount of total profits the following prior charges have been deducted:—

Income-tax	...	8,00,000
Return on paid-up capital	...	1,79,937
Return on reserves employed as working capital	...	1,47,911
Rehabilitation Charges	...	Nil.
Total	...	11,27,848

As a result of these deductions the available surplus is found to be Rs. 9,61,371."

Now the appellant's case is that, though on paper the available surplus has been determined at Rs. 9,61,371, in point of fact no surplus is really available to the appellant from which bonus could be distributed. The balance-sheet produced by the appellant shows the cash in hand with the appellant as Rs. 14,576-2-4 and the amount with the bankers on current account as Rs. 32,50,285-0-11. Evidence was led by the appellant to show that out of this latter amount, Rs. 30,98,000 were locked up in Pakistan and it was impossible for the appellant to withdraw this amount from Pakistan and bring it over to India. Shri Surajbhan Sharma, who is the chief accountant with the appellant at Delhi since 1931, has deposed to the material facts in this connection. He admitted that from 1947 upto 1952 the appellant was able to withdraw from Pakistan an amount in the neighbourhood of Rs. 9,00,000; but according to him there were no prospects of any money coming from Pakistan after 30th September, 1952, on account of the restrictions placed by the Pakistan Government on the export of capital. He frankly stated that the Pakistan Government had theoretically allowed that, after deducting the income-tax, the money accruing as profits in each year can be brought to India but practically no money was being allowed to come to India owing to the obstructive attitude adopted by the Pakistan officials. Both the Tribunals below have not disbelieved the evidence of Shri Sharma. They have, however, held that the difficulty of bringing over cash from Pakistan to India cannot last long and in that view they refused to consider this difficulty seriously in determining the question as to whether any surplus was available for distribution by way of bonus to the employees. The Labour Appellate Tribunal has observed that taking into consideration the fact that a portion of the capital of the company is temporarily blocked up in Pakistan there was no valid ground to raise the rate of bonus which had been awarded by the Tribunal below. In other words, it is clear that the Appellate Tribunal accepted Shri Sharma's evidence but gave effect to it only in a limited way by refusing to increase the amount of bonus already awarded to the employees. The learned Attorney-General contends that if the evidence of Shri Sharma is accepted there is no warrant on record to assume that the difficulty of bringing over cash from Pakistan to India would be of short duration. No doubt Mr. Chatterjee suggested that despite the difficulties pleaded by Shri Sharma the appellant would be able to bring over cash from Pakistan to India and may, in fact, have brought substantial amount of cash during the intervening period. We cannot accede to this argument having regard to the material on the record. After all, this question must be considered only in the light of evidence produced by the parties before the Tribunals below and if the evidence of Shri Sharma has been believed and nothing else is shown on the record to discredit his statement that the appellant has not been able to bring any amount from Pakistan to India subsequent to 30th September, 1952, we must proceed to deal with the argument of the appellant on the basis that the whole amount of Rs. 30,98,000 was locked up in Pakistan and was not readily available to the appellant for the purpose of distribution of bonus. Indeed, the main infirmity in the decision of the Labour Appellate Tribunal is that the Appellate Tribunal has not considered the full and logical effect of its finding that the evidence of Shri Sharma in regard to the difficulties experienced by the appellant in bringing cash from Pakistan to India is substantially true. As we have already pointed out, the fact that the employer is unable to bring part of his profits from Pakistan into India was regarded as relevant by the Labour Appellate Tribunal in the case of *Greaves Cotton Co. Ltd., Bombay* v. *Its Workmen* [1954] 6 F.J.R. 555, and even in the present case this fact has been partially taken into account by the Labour Appellate Tribunal in rejecting the employees' claim for an increase in the amount of bonus. We are, therefore, inclined to take the view that, in deciding what amount was available as surplus for the relevant year, the whole of the amount of Rs. 30,98,000 which was locked up in Pakistan must be excluded. On the record we see no justification for assuming that any substantial portion of this amount was available to the appellant in India at the material time. If that be the true position, from the total amount of Rs. 32,50,285-0-11 which is shown in the balance-sheet to be with the bankers on current account, the amount of Rs. 30,98,000 which was locked up in Pakistan must be deducted. That leaves the balance of about Rs. 1,52,285. In dealing with the question of bonus it is necessary that the employer should be shown to be in possession of surplus which is actually available for distribution and we cannot say that the amount which was locked up in Pakistan was available to the appellant in that sense.

The next point which is urged by the learned Attorney-General is in respect of the failure of the Labour Appellate Tribunal to make allowance for any interest on the preference shares. This appears to be clearly a case of oversight and the validity of the contention urged by the appellant in this behalf is, therefore, not disputed by Mr. Chatterjee for the respondents. This item entitles the appellant to make a further deduction of Rs. 69,325 as interest on preference shares.

Then it is urged that the Tribunals below erred in law in not taking into account bad debts shown in the accounts of the appellant. In the

accounts of the appellant Rs. 1,47, 289 are shown as bad and irrecoverable debts. On this point again, both the Tribunals below have not held that the relevant entry in the books of account has been made with the intention of defeating the employees' claim for bonus. The argument urged by the appellant in respect of these bad debts appears to have been misunderstood by the Tribunals below. They appear to have assumed that the appellant claimed that bad debts should be treated as having a prior charge in determining the amount of surplus available for distribution and it is stated in both the judgments that no further addition can be made in the list of items which can be regarded as prior charges in determining the appellant's surplus. It was not the appellant's case that bad debts should be a prior charge at all. The appellant's case was that, if the debts were irrecoverable they would, to that extent, reduce the gross profits. In our opinion, the failure of the Tribunals below to appreciate correctly the contention raised by the appellant in this behalf has led to a finding which is erroneous in law and it needs to be corrected. If any of these debts are fortunately recovered in subsequent years they would no doubt be credited when they are so recovered. Indeed in the relevant year itself Rs. 12,028 which had been shown as an item of bad debt in the previous year has been credited because it has been recovered. We must, accordingly, hold that the Tribunals below erred in law in not accepting the argument of the appellant that, for determining the gross profits, the amount of irrecoverable debts must be deducted.

It would thus appear to be clear that, if the amount of gross profits found by the Labour Appellate Tribunal is reduced after deducting from it the amount of Rs. 1,47,289 as bad debts and if an allowance is made as a prior charge for Rs. 69,324 as interest on preference shares, it would be difficult to hold that there is any surplus worth the name which is available for distribution by way of bonus amongst employees.

The position then would be that the cash available would consist of cash in hand Rs. 14,576-2-4 and the amount with the bankers in India Rs. 1,52,285. This total comes to Rs. 1,66,861-2-4. From this amount Rs. 1,47,289 must be deducted as bad and irrecoverable debts and Rs. 69,324 must likewise be deducted as interest on preference shares which have a prior charge. Unfortunately the Tribunals below did not take into account the fact that if the evidence of Shri Sharma was believed in regard to the difficulties experienced by the appellant in bringing over to India cash locked up in Pakistan, they could not have logically reached the conclusion that there was any surplus actually available to the appellant for distribution amongst the employees. There is on paper a fairly large amount of surplus available but in point of fact this surplus is not actually available to the employer for the relevant year and, so far as the record shows, is not shown to be likely to be available to him in the near future. That is why we think that, even if the claim for bonus is considered on the basis that the business carried on by the appellant in India as well as in Pakistan constitutes one business, it would be difficult to uphold the conclusion of the Labour Appellate Tribunal that there was any surplus available during the relevant period or was likely to be available in the near future from which bonus could be paid to the employees.

There remain three more points which have been urged by the learned Attorney-General before us and to which brief reference may be made. It appears that the appellant had claimed an allowance for Rs. 10,29,800 as a prior charge in respect of rehabilitation charges for the relevant year. The whole of this claim has been rejected by the Tribunals below on the ground that sufficient material had not been placed by the appellant in support of its claim. The learned Attorney-General conceded that it would have been much better if the appellant had led more satisfactory evidence in support of this claim; but he argued that it was not right to treat the evidence produced by the appellant as wholly insufficient and in any case, according to him, refusal to allow any amount in respect of rehabilitation charges was not justified. It is true that the present appellant company itself had been similarly penalised by the Labour Appellate Tribunal in *Ganesh Flour Mills Co. Ltd., Kanpur* v. *Ganesh Flour Mills Staff Union, Kanpur, and Another* [1952] 1 L.A.C. 172, and that naturally makes the default of the appellant in leading satisfactory evidence more glaring; but, on the other hand, reasonable rehabilitation charges have been consistently assigned the position of a prior charge in determining the available surplus in cases where claims are made by workmen for bonus. If it had been necessary to decide this point in the present appeal we might have had to consider whether, subject to such terms as to costs as we might have deemed fit to impose, an opportunity should not be given to the appellant to lead more satisfactory evidence in support of the item claimed by the appellant under the heading of rehabilitation charges. As has been held by the Labour Appellate Tribunal in *M/s. Singh Plate Mills Limited* v. *The Workmen of M/s. Singh Plate Mills Limited etc.*, [1955] L.A.C. 216, the data necessary for the computation of the rehabilitation charges are:

"(a) Dates of purchases of machinery or of erection of building as the case may be, together with the costs incurred for the same;

(b) The number of shifts for which this concern has been working;

(c) The existing depreciation fund and evidence as to the life of the machinery and the building. Higher depreciation charges are allowed where a factory works for three shifts."

We have looked at the evidence of Sri Kapur to which our attention was invited by the learned Attorney-General and we are prepared to agree with the view taken by the Tribunals below that this evidence is not satisfactory; but the appellant's argument is that the penalty visited on the appellant for his failure to lead more satisfactory evidence is unduly severe. However, in view of the conclusion which we have reached in this appeal we do not think it necessary to pursue this point any further.

The learned Attorney-General has also contended in this appeal that the Appellate Tribunal has erred in awarding interest at 5% on the paid-up capital and at 2% on the reserves employed as working capital. We do not think it necessary to deal with these points also.

The result is that the conclusion of the Labour Appellate Tribunal that a surplus of Rs. 9,61,371 was available for distribution during the relevant period or would have become available within a reasonable time thereafter cannot be sustained in view of their own appreciation of the evidence led in the case.

The order passed by the Labour Appellate Tribunal for the payment of bonus must, therefore, be set aside and the appeal allowed; but, in the circumstances of this case, we direct that the parties should bear their own costs in this Court.

As pointed out in the above-mentioned decision this term also cannot be taken out of the sphere of rationalisation. It also implies a system which aims at greater or better production with less labour and waste. This is sufficiently indicated from the word "other" which occurs before the term "efficiency system". I think that the difference between this term and rationalisation is, that when this object is aimed at by merely changing the system of work, it comes under this term and anything done beyond that for the same purpose, will fall under the definition of "rationalisation". It is contended that when three persons work on a machine, which used to be worked by four, the labour is saved, and the company gets more production, and the three workers who work on that machine have to work more efficiently and diligently, in order to get the same production; this is, therefore, a step towards rationalisation and introduction of other efficiency systems of work. I do not agree. For application of any of these terms it must be clear that the alleged change was made either by way of experiment or permanently with a view to attain the objects above stated. An isolated act of the company like that of withdrawing a workman from a particular work and putting him on to some other job could have been done with a view to adjustment of work so as to meet demand of work on other machine and in some other department. Merely because this action of the company might have resulted in increase of work-load for some workmen is not sufficient as already stated, for holding that it amounts either to rationalisation or introduction of other efficiency system. I, therefore, in conclusion agree with the opinion of the Court below that no grounds have been made out for declaring the action of the company an illegal change.

7. This appeal is, therefore, dismissed.

[IN THE BOMBAY HIGH COURT.]

CORPORATION OF THE CITY OF NAGPUR

v.

N. H. MAJUMDAR AND OTHERS.

J. R. Mudholkar and S. P. Kotval, JJ.

September 11, 1957.

C. P. & BERAR INDUSTRIAL DISPUTES SETTLEMENT ACT, 1947, SECTION 39—REFERENCE OF INDUSTRIAL DISPUTE TO INDUSTRIAL COURT—FACTUAL EXISTENCE OF DISPUTE—CONDITIONS STIPULATED FOR REFERENCE OF DISPUTE—WHETHER MATTERS QUESTIONABLE IN COURT OF LAW.

INDUSTRY—MEANING OF—MUNICIPALITY—GOVERNMENTAL AND COMMERCIAL ACTIVITIES—APPLICABILITY OF INDUSTRIAL DISPUTES LAW TO COMMERCIAL ACTIVITIES—TESTS TO DETERMINE WHETHER ACTIVITY FALLS WITHIN DEFINITION OF 'INDUSTRY'—C. P. & BERAR INDUSTRIAL DISPUTES SETTLEMENT ACT, 1947, SECTION 2(14).

INDUSTRIAL DISPUTE—PARTIES—EMPLOYEES RETIRINC BEFORE REFERENCE OF DISPUTE—WHETHER INCLUDED—WHETHER AWARD CAN BE MADE IN FAVOUR OF SUCH PERSONS—C. P. & BERAR INDUSTRIAL DISPUTES SETTLEMENT ACT, 1947, SECTION 2(10).

Section 39 of the C.P. and Berar Industrial Disputes Settlement Act, 1947, which provides for the reference of industrial disputes to Industrial Courts, contemplates the existence of an industrial dispute, and, as a condition for coming to the conclusion that there is an industrial dispute, the Government must have sufficient knowledge that there is a dispute of some nature between the employer and the employees. But, the satisfaction of the Government as to whether any of the three conditions, mentioned in the section for the reference of an industrial dispute, exists is subjective and not a matter which can be examined by the Court.

In the case of a municipality which has various functions, governmental as well as commercial, the Act will apply only to those activities which can be said to fall within the definition of 'industry' in section 2(14) of the Act and only to those persons who fall within the definition of "employee" in section 2(10) of the Act. The test to determine whether a particular activity of a municipaiity is an 'industry' would be to consider whether if that activity had been undertaken by a private agency it would have been an 'industry' to which the Act would apply.

A reference under the Act of an industrial dispute can cover only persons who fall within the definition of 'employee' in section 2(10) of the Act.

It cannot include persons who had ceased to be employees having been superannuated or ceased to serve for any reason other than "dismissal, discharge or removal on account of any industrial dispute". Therefore, the Industrial Court cannot award gratuity to persons who had retired before the date of the reference.

Special Civil Application No. 211 of 1957.

M. N. Phadke for the petitioner.

S. W. Dhabe and *N. L. Abhyankar* for the respondents.

ORDER.

J. R. MUDHOLKAR, J. This is a petition under article 226 of the Constitution for the issue of a writ of *certiorari* for quashing the award made by the State Industrial Court at Nagpur, on 3rd June, 1957, and for issue of such orders and directions to the respondents 2 and 3 prohibiting them from taking steps for implementing that award.

The relevant facts are as follows: The petitioner is the Corporation of the City of Nagpur. The Government of the former State of Madhya Pradesh, by a notification published on 23rd October, 1956, referred twenty-one demands of the employees of the Corporation for arbitration to the State Industrial Court under section 39 of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947. A preliminary objection as to the jurisdiction of the State Industrial Court to entertain the reference was raised by the Corporation. The State Industrial Court ruled that this objection would be decided after recording evidence. A further objection was raised by the Corporation thereafter that the evidence should be taken only with reference to the question of jurisdiction and that the evidence on other matters should be taken only after the State Industrial Court came to the conclusion that it had jurisdiction to adjudicate upon the reference. This objection was also overruled by the State Industrial Court. It then proceeded to record such evidence as was tendered by the parties and eventually made the award which is challenged before us. The State Industrial Court directed the Corporation to implement the award within two months of the publication of the award by the State Government. After the petition was admitted by us, the Corporation made an application for staying the implementation of the award. Upon that application we made the following order after hearing the respondent No. 2, the Labour Officer, Nagpur, who represents the employees of the Corporation:

"Stay granted subject to the condition that the Corporation shall implement their resolutions approving the recommendation of the

Pay Committee within a week and complete the payment within fifteen days."

The first point which was urged before us by Shri Phadke, who appears for the Corporation, is that there is nothing to show that the Government had before it any material from which it could be inferred that there was any dispute at all between the Corporation on the one hand and its employees on the other. It was said that section 39 of the Act requires that there must, in the first place, be a dispute, and, in the second place, there must be the satisfaction of the Government that any of the serious consequences contemplated by section 39 would ensue unless that dispute is referred to an arbitration. Section 39 of the Act reads thus:

"Notwithstanding anything hereinbefore contained the Provincial Government may, at any time, refer any industrial dispute to the arbitration of the Provincial Industrial Court, if it is satisfied that

(i) serious disorder or a breach of the public peace is likely to be caused; or

(ii) serious or prolonged hardship to a large section of the community is likely to be caused, or

(iii) the industry concerned is likely to be seriously affected and employment curtailed by reason of the continuance of the dispute."

It will be seen that this section contemplates the existence of an industrial dispute.

On behalf of the respondents 3 and 4 it is argued that when a matter has been referred by the Government to an arbitration all that the Industrial Court is entitled to do is to ascertain whether what has been referred by the Government is an industrial dispute or not and that it has no power to ascertain whether in fact any dispute existed between the employer and the employees. In this connection reliance was placed by Shri Abhyankar, who appears for the respondent No. 3, on a decision of the Supreme Court reported in *Newspapers Ltd.* v. *State Industrial Tribunal*, [1957] 12 F.J.R. 129. In that case Kapur, J., who delivered the judgment of the Court observed:

"In spite of the fact that the making of a reference by the Government under the Industrial Disputes Act is the exercise of its administrative powers, that is not destructive of the rights of an aggrieved party to show that what was referred was not an "industrial dispute" at all and therefore the jurisdiction of the Industrial Tribunal to make the award can be questioned, even though the factual existence of a dispute may not be subject to a party's challenge."

Reliance was placed by his Lordship on the decision in *State of Madras v. C. P. Sarathy and another*. 1953 S.C.R. 334 at 347; 4 F.J.R. 431, in support of his observations.

In the first place, these observations cannot be construed to mean that in no case can the factual existence of a dispute be subjected to a party's challenge; for, the word used by his Lordship is "may" and not "can" as would have been the case had his Lordship been of the view that in no case could the fact whether a dispute does or does not exist be examined. Indeed, no such view has been expressed in the decision relied upon by his Lordship. In that case what Patanjali Sastri, Chief Justice, who delivered the judgment of the Court observed at page 347 was:

> "The Government must, of course, have sufficient knowledge of the nature of the dispute to be satisfied that it is an industrial dispute within the meaning of the Act, as, for instance, that it relates to retrenchment or reinstatement."

This, in our opinion, implies that as a condition for coming to the conclusion that there is an industrial dispute, the Government must, in the first place, have sufficient knowledge that there is a dispute of some nature between the employer and the employees. For, without such knowledge there will be no occasion for ascertaining whether there was an industrial dispute at all, or in other words, whether the dispute alleged between the parties was or was not an industrial dispute. However, we need not detain ourselves further on this point because it would appear from the documents placed before us that the Government had before it material on the basis of which it could come to the conclusion that there was a dispute between the Corporation and its employees.

In the first place, there is annexure S, which is a copy of the representation made to the then Labour Minister, Madhya Pradesh by Vasant Luley in his capacity as President of the Nagpur Corporation Employees' Association. This representation was submitted to the Minister on 6th October, 1956. In that representation it is stated that the Association had submitted to the Corporation a memorandum of demands on 21st February, 1954, that the representatives of the Association had a discussion with the then Mayor and the Chief Executive Officer, that eventually a Pay and Reorganisation Sub-Committee was constituted on 19th December, 1954, that this Sub-Committee submitted part of its report to the Corporation on 31st March, 1955, and that though this report was placed on the agenda of the meeting of the Corporation for consideration held immediately afterwards, its considera-

tion was postponed from time to time for several months. It also stated that 15th July, 1955, was observed as a "demands day" and that thereafter the report was taken up for consideration by the Corporation and accepted. A complaint was made that even though the report had been accepted, it had not been fully implemented by the authorities as yet. The representation then proceeded to state that the Association thereafter requested the Corporation for taking up the remaining demands, that is presumably the demands which were not dealt with in the report submitted by the Sub-Committee on 31st March, 1955. After stating that the second part of the report was submitted by the Sub-Committee some time in March 1956, a further complaint was made in the representation to the effect that the consideration of the demands had been postponed by the Corporation from time to time. After reiterating faith in the methods of negotiation, conciliation and arbitration, it was stated that the Association regarded strike as a last weapon. In the concluding portion of the representation it is stated:

> "But most respectfully we would like to tell you that the employees of the Corporation are not wooden frames (*sic.*) and they are prepared to fight for their demands and against injustice to the last. But before such a step was to be taken, we thought it desirable to come to you and place our demands. There is very much discontent (*sic.*) amongst the employees and a situation is highly explosive. We, therefore, request you to refer our dispute to the Provincial Industrial Court under section 39 of the Madhya Pradesh Industrial Disputes Settlement Act, 1947 and avoid inconvenience and hardship that would cause to the public if the employees are forced to resort to strike."

It is true that all the demands referred to the State Industrial Court are not specified in this representation. However, from the documents before us and also from the statements in the returns it is clear that after the representation was made by the Association to the Minister for Labour, he referred them to the Labour Commissioner and asked them to place all their demands before him. This was done as would appear from memo. No. 737/X(b)/L.C., dated 10th October, 1956, sent by the Labour Commissioner, Madhya Pradesh to the Secretary to Government, Madhya Pradesh, Labour Department. Along with this memo. the Labour Commissioner forwarded a list of demands which the Association had presented to the Corporation authorities from time to time. The Labour Commissioner also expressed the opinion that conditions existed to justify reference of the dispute to the State Industrial Court, under section 39 of the Act. It is true that the original documents are not before us but the official file of the Labour Commissioner, which has been placed before us, contains an office copy of the memo. of the Labour Commissioner quoted above and a list of all the demands put forward by the employees. Besides these documents, we find draft of the notification which was actually published and of the annexure thereto which contains the twenty-one demands actually referred to arbitration by the Government. From all these documenes it is clear that the Government had material before it for showing that a dispute did exist between the Corporation on the one hand and its employees on the other.

It was also argued before us that there was no relevant material before the Government for being satisfied that serious or prolonged hardship to a large section of the community was likely to be caused if the dispute was not referred to arbitration. The satisfaction of the Government in this matter is necessarily to be subjective and is not a matter which can be examined by the Court. At any rate where, as here, the Government has stated in its notification that it is satisfied that serious and prolonged hardship to a large section of the community is likely to be caused if the dispute is not referred to arbitration and, where, as here, it is clear that the Government had some material before it to come to that conclusion, we have no power to go behind its satisfaction.

It was next urged that the dispute in question is not an industrial dispute at all inasmuch as none of the activities of the Corporation of the City of Nagpur can in any sense be termed as an 'industry', and that therefore the provisions of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947, did not apply. It was urged that as sub-section (2) of section 59 of the City of Nagpur Corporation Act, 1948, shows that this Act generally vests the municipal government of the city in the Corporation, the activities of the Corporation such as supplying amenities to the citizens of Nagpur and ensuring sanitation and so on are only in the nature of governmental activities and as such cannot be made the subject of arbitration under the Industrial Disputes Settlement Act. That an activity whether of the Government or of a local authority is carried on by it by virtue of its sovereign power or by virtue of a delegated power cannot be disputed, for quite a number of industrial activities as commonly so understood, are in fact being carried on by the Government as also by the local bodies in these days. The Act itself recognises that where such is the case its provisions would apply to those activities. This is clear from the definition of "employer" contained in section 2(11) of the Act. The term 'employer' includes—

"(a)...

(b)...

(c) where an industry is conducted or carried on by a department of the State Government the authority prescribed in that behalf, and where no such authority has been prescribed, the head of such department;

(d) where an industry is conducted or carried on by or on behalf of a local authority. the Chief Executive Officer of such authority."

What is, therefore, to be determined in this case is which of the activities held by the Corporation fall within the definition of 'industry' as contained in the Act.

Now, 'industry' is defined in section 2(14) of the Act. According to this definition, 'industry' includes (a) any business, trade. manufacturing or mining undertaking or calling of employers and (b) any calling, service, employment, handicraft or industrial occupation or avocation of employees. It is common ground that the activities of the Corporation of the City of Nagpur are classified under the following heads:

"1. Central Administration Department.	12. Health.
2. Octroi.	13. Market.
3. Tax.	14. Cattle Pond.
4. Public Conveyance.	15. Public Gardens.
5. Fire Brigade.	16. Public Works.
6. Lighting.	17. Assessment.
7. Water Works.	18. Estate.
8. City Engineer.	19. Education.
9. Enforcement.	20. Printing Press.
10. Sewage Pumping Station.	21. Workshop.
11. Sewage Farm.	22. Building."

It was, therefore, incumbent on the State Industrial Court to examine each of these activities and ascertain which, if any of these, would fall within the definition of 'industry' contained in the Act. The State Industrial Court however relying on the decisions in *D. N. Banerjee* v. *P. R. Mukherjee*, [1953] 4 F.J.R. 243, *Baroda Borough Municipality* v. *Its Workmen*, [1957] 11 F.J.R. 305 and *Hospital Mazdoor Sabha* v. *State* [1956] 13 F.J.R. 473, came to the conclusion that every activity of the Corporation is an 'industry'.

9. In the first mentioned case, their Lordships were called upon to construe the meaning of the words 'industry' and 'industrial dispute' contained in section 2(j) and (k) of the Industrial Disputes Act. 1947, which is a Central Act. Chandrasekara Aiyar, J., who delivered the judgment of the Court observed:

"Having regard to the definitions found in our Act, the aim or objective that the Legislature had in view and the nature, variety and

range of disputes that occur between employers and employees, we are forced to the conclusion that the definitions in our Act include also disputes that might arise between municipalities and their employees *in branches of work that can be said to be analogous to the carrying out of a trade or business.*"
The words which we have underlined* would clearly show that in the opinion of their Lordships each and every branch of work or activity of a local body cannot be regarded as a trade or business. No doubt, the judgment does contain rather a long quotation from the speech of Lord Wright in *National Association of Local Government Officers* v. *Bolton Corporation* [1943] A.C. 166, in which, among other things, it is stated :

"Indeed, 'trade' is not only in the etymological or dictionary sense, but in the legal usage, a term of the widest scope."

And also "...........but I take them as illustrating that modern conditions involve the idea that the functions of local authorities may come under the expression 'trade' or 'industry'."
But it does not follow from this that their Lordships regarded every activity or a trade of a local authority as an 'industry'. Indeed, as we understand the opinion of Lord Wright, every function of a local authority does not come under the expression 'trade' or 'industry' though some or many of its functions may fall within that definition.

In the next case, S. K. Das, J., who delivered the judgment of the Court has observed at page 308 of the report:

"It is now finally settled by the decision of this Court in *D. N. Banarjee* v. *P. R. Mukherjee* that a municipal undertaking of the nature we have under consideration here is an 'industry' within the meaning of the definition of that word in section 2(j) of the Industrial Disputes Act, 1947, and that the expression 'industrial dispute' in that Act includes disputes between municipalities and their employees *in branches of work that can be regarded as analogous to the carrying on of a trade or business.*" Clearly, the portion which we have underlined* governs both a 'municipal undertaking' and the expression "industrial dispute". This decision therefore instead of lending support to the conclusion of the State Industrial Court negatives it. The Court however has quoted the following from that decision in support of its conclusion:

"Considering the question with reference to the facts of the present case it is clear to us that the different activities of the Baroda Municipality constituted one integrated whole and the activities of the different departments of the municipality were not distinct or

*Here printed in italics—Ed.

unconnected activities so as to permit the isolation of one department from another or of an earning department from a spending department." It has to be borne in mind that these observations were made with respect to the argument advanced before their Lordships to the effect that the profits earned by the municipality from their electric supply concern ought to be utilised only for the purpose of giving bonus to the employees in that concern. Their Lordships negatived the contention on the ground that there was a single budget of the municipality and that it would be unfair to make a distinction between the workers of the earning department and the workers of the spending department in the matter of payment of bonus because such a distinction would, instead of promoting peace and harmony among the employees of the municipality, create unrest and discontent. These observations must therefore be taken in their context and cannot be regarded as justifying the conclusion that where some of the activities of a local authority partake of the character of a trade or industry all the activities of that authority must be deemed to be of the same kind.

Then, as regards the third case, reliance is placed by the State Industrial Court on the following observations :

"...........the test we should lay down in order to determine whether a particular activity undertaken by Government is an 'industry' would be to consider whether if that activity had been undertaken by a private agency, would it have been an industry to which the Act applied. If the Act had applied to that activity, then in our opinion, it is entirely immaterial whether that activity is undertaken by Government."
In that case it was held that the running of a hospital is not in the strict sense an essential Government function and that therefore that activity of the Government is an 'industry' within the meaning of the definition of that word contained in the Industrial Disputes Act, 1947. The learned Chief Justice who delivered the judgment of the Court was however careful to observe:

"In the wider sense, undoubtedly in which we now understand Governmental duty and Governmental work, it may be considered to be a Governmental function. But, in its strict sense, the Governmental function would be the maintenance of law and order, administration of justice, collection of tax and similar functions which must always be attributed to a Government and which can only be discharged by a Government." Now, these observations clearly militate against the conclusion drawn by the State Industrial Court. Then, again, the learned Chief Justice, after quoting a passage from an Australian case, observed:

"We accept that principle, and, as we have already pointed out the Act does not purport to regulate relations between all employers and all employees. It only purports to regulate relations of all employers and employees engaged in an industry as defined by the Act."

The State Industrial Court has not stated whether all the activities of the Corporation of the City of Nagpur answer the test set out by the learned Chief Justice. It may be that it was of the view that every activity carried on by the Corporation was such as could, if authorised, be also carried on by a private agency. It is clear from the aforesaid decision that some of the activities of the Corporation, as, for instance, levying or collecting taxes, assessing house property, or carrying on any other Governmental function are not activities of a kind which it is permissible for a private individual to engage in. It was therefore necessary for the State Industrial Court to examine carefully each of the activities carried on by the Corporation and to ascertain which of those activities answer the test set out by the learned Chief Justice.

It was suggested by Shri Phadke that the test laid down by this Court in the *Hospital Mazdoor Sabha* v. *State*, [1957] 13 F.J.R. 473, cannot be accepted as a correct one in view of the fact that the Supreme Court had accepted a different test in *D. N. Banerji* v. *P. R. Mukherjee*. (*Budge Budge Municipality Case*). In that case their Lordships quoted the following observations by Isaacs and Rich, JJ., in the *Federated Municipal and Shire Council Employees' Union of Australia* v. *Melbourne Corporation*, 26 Com. L.R. 508.

"Industrial disputes occur when, in relation to operations in which capital and labour are contributed in co-operation for the satisfaction of human wants and desires, those engaged in co-operation dispute as to the basis to be observed, by the parties engaged, respecting either a share of the product or any other terms and conditions of their co-operation."

Though this quotation is to be found in that judgment, it does not appear that their Lordships were of the view that for an activity to be classed an industry it must necessarily be carried on by the co-operation of capital and labour for the satisfaction of human wants and desires. Nor, indeed, does it appear that the two learned Judges who made the observation in the Australian case regarded them as laying down an infallible test for determining whether the activity is an industry or not. Indeed, one of the Judges, Isaacs, J., himself laid down in a later case the test which was accepted by this Court in *The Hospital Mazdoor Sabha* v. *State*, [1957] 13 F.J.R. 473. That Judge observed in *Federated State School Teachers' Association of Australia* v. *The State of Victoria*, 41 Com. L.R. 569 at 585 :

"If it was a function that a private person could lawfully do and being so done was industrial, that was sufficient." Indeed, a perusal of the earlier Australian case would show that what had to be considered was whether for an activity to be regarded as an industry it has necessarily to be carried on for profit. The majority of the Judges held that it was necessary to show that an activity to be regarded as an industry was carried on by the co-operation of capital and labour for the satisfaction of human wants and desires. On the basis of that decision and some other decisions a theory was advanced in the second mentioned Australian case to the effect that society is industrially organised for the production and distribution of wealth in the sense of tangible, ponderable corpuscular wealth and, therefore, an industrial dispute cannot possibly occur execpt where there is furnished to the public—the consumers—by the combined efforts of employers and employed, wealth of that nature. Consequently it was contended on behalf of the employers that education not being wealth in that sense, there can never be an industrial dispute between the employers and the employees engaged in the avocation of education regardless of the wealth derived by the employers from the joint co-operation. This argument was accepted by the majority. Isaacs, J., who dissented from them set out the test which we have already indicated and which has been accepted by this Court. There is no reference to this decision in any of the Supreme Court cases. That apart, we do not see in what way the test accepted by this Court would be inconsisten with what has been held by their Lordships either in the *Baroda Borough Municipality Case*, or in the *Budge Budge Municipality Case*. Apart from the fact that the decision of the Division Bench is binding on us in this matter we would say with respect that we entirely agree with the test laid down by the learned Chief Justice. The State Industrial Court had therefore to examine the activities of the Corporation in the light of the test laid down in the case of *Hospital Mazdoor Sabha* v. *State*.

The State Industrial Court, after quoting an extract from the judgment of Powers, J., in the first Australian case, observed thus in para. 9 of its award :

"These observations and the fact that their Lordships refused to interfere with the decision of the Industrial Court directing reinstatement of a Sanitary Inspector who obviously must have been an employee in the Health Department, and of the Head Clerk who must have been an employee of the General Administration Department of the Municipality, clearly lead to the conclusion that none of the departments are such as can be excluded from the definition of the term 'industry'. It is obvious, their Lordships did not consider the Health Department to demand is wide enough to cover the revision of pay-scales. There is therefore no substance in the objection raised in this behalf.

Lastly, it was contended that the State Industrial Court had no power to direct in its award that gratuity be paid to the persons who retired subsequent to 24th October, 1954, but prior to the date of reference. In our opinion, this contention is sound. The reference deals with "employees" who must necessarily be existing employees or employees "dismissed, discharged or removed on account of any industrial dispute." It does not include persons who have ceased to be employees having been superannuated or having ceased to serve the Corporation for any reason other than dismissal, discharge or removal.

It is also open to doubt whether the question of granting gratuity other than on discharge would fall within the definition of "industrial matter" as contained in section 2(13) of the Act. It is not specifically mentioned in that clause that gratuity falls within any of the expressions "work, pay, wages, reward......privileges, rights" occurring in the clause. After all, the payment of gratuity is entirely in the discretion of the employer and cannot be regarded as a term of the service unless it is expressly so made either by a contract or by a statute. However, we would not say anything further in this matter, as the first ground given by us is adequate to dispose of the matter.

The question then is as to what order we should pass. The State Industrial Court, in the operative portion of its order, has set out 172 types of employees and dealt with their scales of salaries. The activities in connection with which these categories of persons are employed are not clear from the schedule. We are therefore not in a position to say as to whether the award should be upheld in respect of all or only some of these categories. We would therefore direct the Industrial Court to re-examine the Schedule in the light of our observations and limit it to persons who can be said to be engaged in an industry There is another thing also which the State Industrial Court must bear in mind and that is whether the employees fulfil another requirement of the Act, that is, whether they perform clerical or manual work as distinguished from supervisory work, or work involving use of initiative or performance of statutory duties. Its jurisdiction to make an award is limited only to employees doing manual or clerical work even in an industrial undertaking.

Reliefs other than those relating to pay-scales will also have to be restricted so these classes of employees.

We therefore allow the petition partially, quash the award and the Schedule thereto as well as the direction to pay gratuity to persons who had retired prior to the date of reference and direct the

State Industrial Court to make a fresh award and prepare a fresh Schedule in the light of our observations. Bearing in mind the plight of the Corporation employees, particularly those in the lower grades of service, the rising spiral of prices and the inordinate delay that has already taken place in granting their just demands, we expect the State Industrial Court to deal with the matter with expedition.

The costs of this petition will be borne as incurred.

[IN THE MADRAS HIGH COURT.]

ASHER TEXTILES LTD., TIRUPPUR
v.
INDUSTRIAL TRIBUNAL, COIMBATORE AND ANOTHER.

Rajagopala Ayyangar, J.

December 4, 1957.

INDUSTRIAL DISPUTES ACT, 1947, SECTION 33—APPLICATION FOR PERMISSION UNDER SECTION 33—WHETHER SHOULD STATE NATURE OF PUNISHMENT—SCOPE OF DECISION BY TRIBUNAL—DUTY OF TRIBUNAL TO GIVE PERMISSION WHEN THERE IS NO VICTIMISATION AND MISCONDUCT IS PROVED.

An Industrial Tribunal dismissed an application for permission to dismiss a workman made by an employer under section 33 of the Industrial Disputes Act, 1947, on the ground that that section contemplates only an application for permission to punish the workman and that an application under that section should not specify the nature of the punishment proposed to be inflicted on a workman as that would necessitate the Tribunal considering the nature of the punishment. The Tribunal found that the workman was guilty of the misconduct alleged against him and did not find that there was any victimisation on the part of the employer. On a petition by the employer to quash the order of the Tribunal dismissing the application: Held, *that an application under section 33 of the Act could not be rejected simply because it stated the nature of the punishment proposed to be inflicted on the workman. On the other hand, the provisions of the Act indicate that it is essential for the employer to specify the punishment he seeks to impose.*

What is to be considered by an Industrial Tribunal in dealing with an application under section 33 is whether the action of the employer was motivated by a desire to hinder the adjudication pending before the Tribunal; whether it was motivated by a desire to wreak vengeance on, or punish, those *who raised the dispute or whether it was directed against the workmen who took a prominent part in the dispute, who, if coerced, would facilitate the employer gaining an unfair advantage in the proceedings before the Tribunal. If these were answered in favour of the employer and the misconduct alleged against the workman was also established, the Tribunal should grant the permission asked for.*

Writ Petition No. 1247 of 1956.

Advocate-General for *T. T. Srinivasan* for the petitioner.

G. Ramanujam and *B. Lakshminarayana Reddi* for respondents.

JUDGMENT.

The controversy between the parties which calls for decision is as regards the legality of an order of the Industrial Tribunal, Coimbatore, in petition No. 64 of 1955 on its file.

The petitioners are Messrs. Asher Textiles Ltd. They were parties to an industrial dispute between themselves and their workers which had been referred for adjudication to the Industrial Tribunal, Coimbatore I.D. No. 13 of 1952. This writ petition is concerned with matters that transpired between the petitioners and one of their workmen, Subbaraman (second respondent here) who will hereafter be referred to as the respondent. Subbaraman was originally employed as a blow-room clerk and while so the management transferred him to the post of a clerk in the despatch and filing section. It was the common case that this transfer did not injuriously affect the grade, pay or future prospects of this employee. The respondent however refused to accept the transfer on the ground that it was an act of humiliation and that it was beneath his dignity to work as a clerk in the despatch and filing section. The management thereafter issued notices to the respondent to explain his wilful disobedience of lawful orders and his act of insubordination. The respondent repeated what he stated earlier and this was not found to be satisfactory. The management applied to the Tribunal for permission to dismiss the workman for misconduct under section 33(b) of the Industrial Disputes Act which was numbered as petition No. 64 of 1955 and pending the disposal of this application, they passed an order of suspension on the employee. The respondent in his turn filed 13 (A. 71) of 1952 to the Tribunal being a petition under section 33-A of the Act complaining that the employer had contravened the provisions of section 33 by punishing him by way of suspension and sought reinstatement and wages for the period of suspension. By consent of parties, the two applications were dealt with together, the evidence recorded in petition No. 64 of 1955 being treated as evidence in the complaint by the

respondent. As a result of this enquiry, the Tribunal passed an order refusing permission sought in petition No. 64 of 1955 and it is the legality of this order that is challenged in this petition.

In order to appreciate the contentions raised on behalf of the petitioners, it is necessary to set out the findings recorded by the Tribunal. After setting out the facts which were not in dispute or were proved before the Tribunal, it recorded:

"On an analysis of both the oral and documentary evidence, I have no hesitation in coming to the conclusion that the management is well founded in contending that Subbaraman is guilty of misconduct...... in my opinion Subbaraman's transfer from a blow-room clerk to the despatching section is a legitimate and valid one. Therefore it necessarily follows that his refusal to accept the transfer and join duty as despatching and filing clerk tantamounts to disobedience of a lawful order......"

The learned Tribunal then proceeded to discuss the justification which the respondent put forward before it for sustaining his attitude and after disposing of it in favour of the management concluded:

"Thus the stand taken by him cannot be upheld. It necessarily follows that his refusal to join as clerk in the despatch and filing section on a transfer by the management is inexcusable, irrespective of the question as to what punishment that should be imposed upon him. The worst of it is that he has attributed *mala fides* on the part of the management on the basis of his own erroneous idea of misconception about his status when he was attending to the duties of a typist......The management is well founded in their contention that even this letter only goes to show that he does not want to accept the transfer as despatching and filing clerk but only wants to be a blow-room clerk at least, even though he may be asked to do the work of despatching and filing clerk."

The Tribunal then went on:

"In view of these converging considerations detailed above, I am constrained to come to the conclusion as pointed at the outset that he is guilty of wilful disobedience or insubordination which is clear misconduct".

The Tribunal next dealt with the contention that the respondent was given no opportunity by the management to meet the charges levelled against him. It decided this point also in favour of the management saying:

"Even before me no particular evidence has been let in to show that the management's decision is vitiated for want of a proper enquiry. Practically Subbaraman has repeated whatever he has conveyed in his letters. Thus the only point which remains to be considered is whether on the facts proved in this case permission to dismiss this Subbaraman should be granted."

The Tribunal also impliedly in the course of its order negatived the plea of victimisation and *mala fides* with which the respondent had charged the management. Indeed it looks that during the course of the inquiry before the Tribunal this charge of *mala fides* was not persisted in by the respondent.

The question next to be considered is as regards the order that the Tribunal was bound to pass on the findings thus recorded. The Tribunal in the present case proceeded to consider this matter in paragraph 10 and decided to dismiss the application of the management on grounds which appear to me not very intelligible. It extracted the terms of section 33(b), which enacted:

"33. During the pendency of any......proceedings before a Tribunal in respect of any industrial dispute, no employer shall

(b) discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute save with the express permission in writing of......the Tribunal."

and then continued:

"It is significant to note that the permission that is sought for under this clause is to 'punish' a delinquent workman irrespective of the kind of punishment. Therefore if a Tribunal is satisfied that a particular workman deserves to be punished, it can grant permission. All that the management has to ask for from this Tribunal is permission to punish the worker. On the other hand, permission asked for is not for mere punishment but for punishing in a particular manner, *i.e.*, for dismissal. This Tribunal is called upon to consider whether permission should be given for punishing in that manner. It is common ground that this Tribunal has no jurisdiction to substitute or suggest another kind of punishment, *i.e.*, indicate what kind of punishment should be awarded. In this case, the management did not amend this petition asking for permission merely to punish, leaving it to the management to punish in their own manner and leaving it to the workman to take such appropriate steps against that order of punishment, if any, available. In this case I am of opinion that the nature of punishment which is sought to be imposed upon this employee is so severe that I do not see any way to grant that request......It is not for this Tribunal to suggest the punishment. In the result, the petition asking specifically to grant permission for dismissal has to be dismissed and I accordingly do so."

The Tribunal is no doubt right in its view that under the terms of section 33 it had no jurisdiction to impose conditions as a pre-requisite for granting to the employer the permission he sought. It had no jurisdiction to substitute a punishment which it considered appropriate for the misconduct which on its finding had been committed by the workman. The question that remains is as to whether an application by the employer under section 33 is liable to be rejected because it specified the punishment which the employer intends to inflict. This can be answered only in one way, in the negative. The language employed in section 33 does not support the construction which the Tribunal adopted of this provision. On the other hand, it appears to me that the section itself contemplated, that the management should state the action which they proposed to take against the workman, the permission referred to in the section being in regard to that action.

Apart from the language of the section, more than one consideration ought to lead one to the conclusion that it is essential for the employer to specify the punishment he seeks to impose when he seeks the permission of the Tribunal. The first is founded upon the place of section 33 in the scheme of the Industrial Disputes Act. It is a provision designed to preserve the *status quo* pending the adjudication of an industrial dispute. Its aim and purpose is therefore to keep the ring clear for the contestants to fight their case before the Tribunal. During the pendency of these proceedings, the section enjoins that neither party shall so to speak queer the pitch. Section 23 enjoins on workmen and employers not to resort to strikes and locks-out during the pendency of the proceedings before the Industrial Tribunal. Section 33 is another provision on the same lines and is designed to prevent action by the employer to prejudice the conduct of the proceedings before the Tribunal. This is achieved by two prohibitions. (1) In regard to alteration of the conditions of service of the employees to their prejudice and (2) the punishment of employees for misconduct. The aim of both these is the same, namely, that undue and improper pressure shall not be brought to bear on the workmen to coerce them, in regard to the conduct of their case before the Tribunal. It is this factor that is referred to in the several decisions of Industrial Tribunals and Appellate Tribunals when they speak to the necessity of the *bona fides* of the employer or absence of victimisation on his part. In this context want of *bona fides* and victimisation are merely two aspects or forms of the same concept. The matter which is considered in this connection is, was the action of the employer motivated by a desire to hinder the fair adjudication of the dispute before the Tribunal? Was it motivated by a desire to wreak vengeance on or punish those who raised the dispute under adjudication and sought redress from the Labour Tribunal? Was that directed against the workmen who took a prominent part in that dispute and who if coerced would facilitate the employer gaining an unfair advantage in the conduct of the proceedings before the Tribunal? If these were answered in favour of the employer and the Tribunal found that the misconduct alleged did in fact exist, the law requires that the Tribunal should grant the permission asked for (vide the *Automobile Products of India* v. *Rukmaji*, [1955] 7 F.J.R. 716, and *Lakshmidevi Sugar Mills Ltd.* v. *Pt. Ram Sarup* [1956] 11 F.J.R. 273. It would be apparent that for considering this matter about the *bona fides* of the employer or as to whether the step taken was one intended to victimise any workman or a group of workmen the severity of the punishment would not be an irrelevant factor. For instance, if for a very trifle or venial breach of duty the employer proposes to dismiss him the Tribunal may well consider whether the motive of the employer in imposing a punishment, which was out of all proportion to the misconduct of which the workman was guilty, was not motivated by other factors than the maintenance of discipline and the just protection of the employer. This however does not mean that the Tribunal sits in judgment on the employer as regards the exact punishment to be meted out and that if it found the particular punishment intended to be a little more severe than what it would itself impose if it were the employer, it draws the conclusion that the motive of the employer, was victimisation. Such an inference of *mala fides* would be possible from the severity of the punishment, only if there were other factors present and if no reasonable person could taking into account the previous conduct of the workman, the situation of the business and other relevant material impose that punishment for the misconduct proved. It is for these reasons that I consider that it was not only not improper but it was necessary for the employer to have informed the Tribunal of the punishment it proposed to inflict, while seeking permission of the Tribunal under section 33.

This apart, take the other matter specified in the section in its first sub-clause namely prejudicial alterations in the conditions of the service of a workman. It could not be contended that in cases covered by this sub-section, the employer was to approach the Tribunal with a request for permission to alter the conditions of the service of the employees without specifying what the alteration proposed was. The matter does not require any elaboration and it is sufficient to say that the two sub-clauses (a) and (b) would stand on the same footing in regard to the contents of the petition, the approach of the Tribunal and the basis upon which the permission asked should be granted or refused.

In the present case the Tribunal has found (1) that the misconduct was proved and (b) that the employer was not actuated by improper motives in seeking to dismiss the workman guilty of misconduct. The Tribunal no doubt recorded a finding that the punishment was more severe than what it would have inflicted if it were the employer. But this in my opinion was a wholly irrelevant finding which had no bearing upon the decision of the matter under section 33. I, therefore, disregard that finding. The net result is that on the other findings recorded by the Tribunal it follows that the permission asked for should have been granted and there will be an order accordingly. Taking into account the conclusion I have reached I thought this was a simpler course to adopt, than merely to set aside the order of the Tribunal and asking it to pass the appropriate order in the light of this judgment which would have only meant a little more delay in these proceedings.

The petition is allowed and the rule *nisi* is made absolute. The order of the Tribunal is set aside and in its place there will be an order that the permission asked for in petition No. 64 of 1955 is granted. There will be no order as to costs.

[IN THE PUNJAB HIGH COURT.]

MAHARAJ WEAVING MILLS

v.

STATE OF PUNJAB AND OTHERS.

Bishan Narain, J.

December 30, 1957.

CLOSURE—DISPUTE REGARDING RETRENCHMENT COMPENSATION ON CLOSURE—WHETHER INDUSTRIAL DISPUTE—WHETHER CAN BE REFERRED TO INDUSTRIAL TRIBUNAL—INDUSTRIAL DISPUTES ACT, 1947, SECTIONS 2(K), 2(OO), 25FFF.

As from the 28th November, 1956, the date on which the provisions relating to retrenchment in the Industrial Disputes (Amendment) Act, 1957, came into force, any workman discharged on the closure of an undertaking must be considered to have been retrenched as defined in section 2(oo) of the Industrial Disputes Act, 1947, subject to the conditions laid down in section 25FFF of the Act and he will be entitled to compensation. That being so, any dispute relating to the compensation payable to him will be an industrial dispute and the machinery provided under the Act will be available to settle a dispute relating to such compensation payable on discharge of a workman on closure of the factory, notwithstanding the closure.

Civil Writ No. 806 of 1957.

Bhagirath Dass for the petitioner.

L. D. Kaushal and *Anand Sarup* for the respondents.

JUDGMENT.

The Governor of Punjab, being of opinion that an industrial dispute exists between the Maharaj Weaving Mills of Amritsar (hereinafter called the Mill) and its workmen, referred by order, dated the 23rd July, 1957, the following dispute to the Labour Court under section 10 (1) (c) of the Industrial Disputes Act, 1947, (hereinafter called the Act) for adjudication—

"Whether the workmen of the Maharaj Weaving Mills, (list to be supplied by the Union) who were retrenched by the management on the closure of the Mills, are entitled to retrenchment compensation. If so, what should be the quantum of such compensation and the terms and conditions of its payment to the workmen concerned."

The Mill has filed this petition under article 226 of the Constitution challenging the validity of this order.

The facts relevant for the decision of this petition are not in dispute. On the 10th December, 1956, the management of the Mill gave a notice to its workmen individually that it decided to close the Mill from the 10th January, 1957, in view of heavy financial losses. In reply some workmen sent a counter-notice on the 15th December, 1956, to the management calling upon it *inter alia* to recall the notice of closure, as the proposed closure was *mala fide* and had been taken to harass the workmen, and they also made certain other demands on the Mill. The Mill informed one Ram Lal by letter, dated the 30th January, 1957, that the Mill had been closed on the 10th January, 1957, and the workmen had been paid their dues in full and final settlement till the 10th, and a copy of this letter was sent to the Labour Inspector. The Punjab Government then made the reference reproduced above.

It is contended on behalf of the Mill that the Act applies only to that dispute which arises out of an existing undertaking and that when there is a *bona fide* closure of an industry, then any dispute arising with reference thereto falls outside the purview of the Act, and as the present dispute had arisen after the closure of the business, the action taken under section 10 (1) (c) is invalid. In support of this contention the learned counsel has relied on the Supreme Court judgment in *Pipraich Sugar Mills Limited* v. *Pipraich Sugar Mills Mazdoor Union*, [1957] 11 F.J.R. 262.

Now, in this Supreme Court case the industry concerned closed down in 1951. At that time the Act did not contain any definition of "retrenchment". Their Lordships held that this expression in ordinary sense means discharge of the workmen of the surplus and not their discharge on closure of business. Their Lordships observed—

"The view........................that the industrial dispute to which the provisions of the Act apply is only one which arises out of an existing industry is clearly correct. Therefore, where the business has been closed and it is either admitted or found that the closure is real and *bona fide*, any dispute arising with reference thereto would, as held in *K. M. Padmanabha Ayyar* v. *State of Madras* [1953] 11 F.J.R. 257, fall outside the purview of the Industrial Disputes Act. And that will *a fortiori* be so, if a dispute arises—if one such can be conceived—after the closure of the business between the *quondam* employer and employees."

Their Lordships in this decision did not deal with the effect of section 2(oo) defining 'retrenchment' and section 25F regulating compensation payable on retrenchment, as these provisions had been introduced in the Act by the Industrial Disputes (Amendment) Act, 1953 (No. 43 of 1953). A similar matter again arose before the Supreme Court in *Hariprasad* v. *A. D. Divelkar*, [1957] 11 F.J.R. 317, in which case the industries concerned closed their business after the 1953 Amending Act had come into force. Their Lordships construing section 2(oo) and section 25F laid down—

"Retrenchment as defined in section 2(oo) and as used in section 25F has no wider meaning than the ordinary accepted connotation of the word. It means the discharge of surplus labour or staff by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and it has no application where the services of all workmen have been terminated by the employer on a real and *bona fide* closure of business..."

Thereafter, the Legislature stepped in and an Ordinance, The Industrial Disputes (Amendment) Ordinance, 1957 (No. 4 of 1957), was promulgated on the 27th April, 1957, by which section 25FF was completely recast and a new section 25FFF was inserted in the main Act. This Ordinance became effective from the 1st December, 1956, but it was repealed by the Industrial Disputes (Amendment) Act, 1957 (No. 18 of 1957) and the aforesaid provisions of the Ordinance were re-enacted but they were made enforceable retrospectively with effect from the 28th November, 1956. In the present case, we are concerned with section 25FFF. It is to be noted that this section has been made applicable from the 28th November, 1956, while the Supreme Court gave its judgment in *Hariprasad's case* on the 27th November, 1956. In that case the Supreme Court had rejected the contention that the words "for any reason whatsoever" occuring in section 2(oo) would bring a workman's discharge on closure of the industry within "retrenchment" as defined in the Act, and in the course of that judgment it was observed—

"What is being defined is retrenchment, and that is the context of the definition. It is true that an artificial definition may include a meaning different from or in excess of the ordinary acceptation of the word which is the subject of definition; but there must then be compelling words to show that such a meaning different from or in excess of the ordinary meaning is intended."

Section 25FFF is obviously designed to bring such a workman within the term "retrenchment" provided other conditions laid down in this section are satisfied. It is always open to courts of law while construing provisions of an enactment to take into consideration the circumstances in which that enactment came to be passed. In my opinion, the Legislature has used words of sufficient amplitude to accomplish this object. It must, therefore, be held that after the 27th November, 1956, any workman discharged on closure of an undertaking must be considered to to have been retrenched as defined in section 2(oo) of the Act subject to certain conditions laid down in section 25FFF and that he is entitled to get compensation. That being so, any dispute relating to such compensation is a dispute within the Act. This is not seriously contested.

It is, however, argued that this dispute is not such an industrial dispute that can be referred for adjudication under section 10(1)(c) of the Act, and reliance is placed on the observations of the Supreme Court in *Pipraich Sugar Mills' case* [1957] 11 F.J.R. 262, that the Act only relates to matters arising out of a living and existing business and not out of a dead business. I am unable to accept this argument. It is true that the 1957 amendment does not specifically provide that such a dispute can be referred to an industrial tribunal under section 10(1)(c) of the Act, but to my mind it is implicit. In this very Supreme Court decision, it was observed—

"The power of the State to make a reference under that section (section 3) must be determined with reference not to the date on which it is made but to the date on which the right which is the subject-matter of the dispute arises, and that the machinery provided under the Act would be available for working out the rights which had accrued prior to the dissolution of the business."

The right in the present case accrued on the closure of business and instantaneously with it. The artificial definition of the word "retrenchment" has the effect of artificially prolonging the life of the undertaking or has the effect of making the machinery provided under the Act available, for working out this right. It seems to me clear from the way that the Legislature intervened immediately after the decision of the Supreme Court in *Hariprasad's case* that it considered that the decision had revealed a defect in law which must be immediately removed and

[*To be reprinted*]

such a dispute should be decided under the Industrial Disputes Act. The language used in section 25-FFF is of sufficient amplitude to lead this court to come to the conclusion that this object has been achieved. I am of the opinion that the machinery provided under the Act is available to settle a dispute relating to compensation payable on discharge of workmen on closure of the industry. It has been fairly and rightly conceded by the learned counsel for the mill that the mere fact that the reference was made after the closure of the mill does not make it invalid (*vide* [1957] 11 F.J.R. 262) if it is held that the dispute could be decided under the Act.

In this view of the matter, it must be held that the impugned reference is in accordance with law. This petition, therefore, fails and is accordingly dismissed with costs. Counsel's fee Rs. 100.

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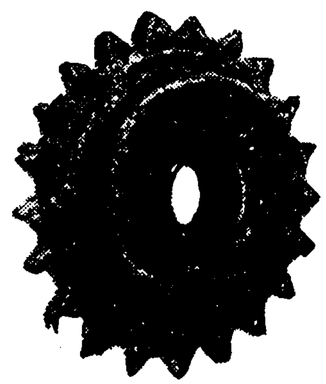

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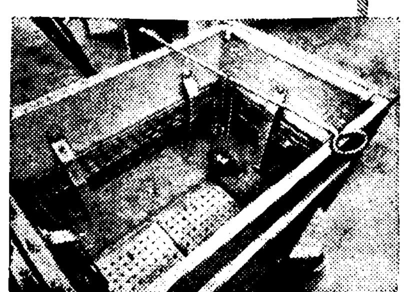
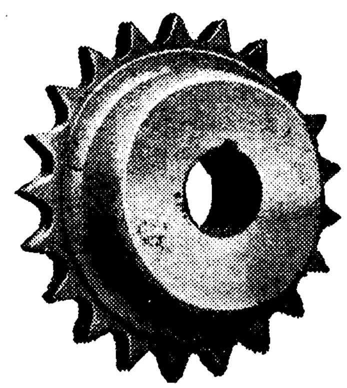


In modern engineering practice, metal degreasing is an essential part of manufacture, maintenance or repair. Successful manufacture of metal parts and final finishing processes depend upon successful degreasing.

Since I.C.I. introduced the Trichloroethylene metal degreasing process more than 25 years ago, industry has had at its command a speedy, economic and efficient process whose flexibility permits of its incorporation in all types of production lines. The whole cleaning operation is completed in one plant from which the work emerges in a dry neutral state ready for subsequent processing.



A range of standard I.C.I. Trichloroethylene degreasing plants is available. Whenever necessary plants are specially designed to deal with specific problems.

As usual, I.C.I. (India) offers free technical service and advice to all its customers.

If you have a degreasing problem, please write to us and let us help you.

IMPERIAL CHEMICAL INDUSTRIES (INDIA) PRIVATE LIMITED

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