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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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INDIAN FACTORIES JOURNAL

VOL. XV] 1ST AND 15TH DECEMBER, 1958. [PARTS VII & VIII

CONTENTS

REPORTS OF CASES

CUMULATIVE TABLE OF CASES REPORTED (Parts I to VIII)

SUPREME COURT

* Asterisks denote cases reported in this part. Bold figures indicate part number.

HIGH COURTS

AWARDS

*Asterisks denote cases reported in this part. Bold figures indicate part number.

CUMULATIVE INDEX TO REPORTS OF CASES

*Asterisks denote cases reported in this part. Bold figures indicate part number.

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West Bengal Minimum Wages Rules, 1951—Amendments

*Notification No. 4377 L.W./LW/IR-23/57, dated 29th September, 1958.**

In exercise of the power conferred by sub-sections (1) and (2) of section 30 of the Minimum Wages Act, 1948 (XI of 1948), the Governor is pleased to make the following amendments in the West Bengal Minimum Wages Rules, 1951, the same having been previously published under notification No. 3290 L.W./LW/IR-23/57, dated the 25th September, 1957, as required under sub-section (1) of the said section, namely :—

AMENDMENTS

1. In the said rules *after* rule 26, *insert* the following rule, namely :—

"26A(1) Any amount directed to be paid under section 20 may be deposited with the Authority along with a Statement in Form X.

(2) When any deposit is made under sub-rule (1), the Authority shall grant a receipt in Form XI for the amount so deposited and this receipt shall be a sufficient discharge in respect of any amount deposited with him :

Provided that the said receipt in Form XI may be signed under the direction of the Authority and on his behalf by any officer subordinate to him, appointed by him in writing for this purpose.

(3) Any sum deposited with the Authority under sub-rule (1), or recovered under sub-section (5) of section 20 shall, on application, be paid by the Authority to the person entitled thereto ;

2. *after* Form IX, *insert* the following Forms :—

"FORM X"

"Form for deposit"

RULE 26A(1) OF THE WEST BENGAL MINIMUM WAGES RULES, 1951.

The sum of Rs. ....(Rupees....................) is hereby presented for deposit in accordance with the direction issued on........... (date) in the matter of an application No.................of 19..............filed by.. (applicant) against.......................... ....(opposite party).

Signature of the depositor.

Dated.

FORM XI

Receipt

RULE 26A(2) OF THE WEST BENGAL MINIMUM WAGES RULES, 1951.

Name of depositor...
Name of payee...
No. of application... of 19 ...
Name of applicant...
Name of opposite party...
Date of direction...
Amount deposited—Rupees...
Date of deposit...

Authority,
Minimum Wages Act, West Bengal."

*Cal. Gaz., 6-11-'58, Pt. I, p. 3525.

Minimum Wages Act, 1948—Notification regarding local authorities in West Bengal

*Notification No. 4696 L.W./LW/2W-46/58, dated 11th October, 1958.**

Whereas minimum rates of wages in respect of employment under local authorities for municipalities in the State of West Bengal, other than the Corporation of Calcutta and the Municipal Commissioners of Howrah, have been revised under the Minimum Wages Act, 1948 (XI of 1948);

Now, therefore, in exercise of the powers conferred by section 13 and section 14 read with clause (d) of sub-section (2) of section 3 of the Minimum Wages Act, 1948 (XI of 1948), the Governor is pleased to fix for the employees under the local authorities for municipalities in the State of West Bengal, other than the Corporation of Calcutta and the Municipal Commissioners of Howrah, not being part-time employees engaged at an emergency, the hours of work constituting a normal working day, inclusive of a period of interval for rest, the day for weekly rest, the rate of payment for work on the day for weekly rest and the overtime rate for work done on any day in excess of the number of hours constituting a normal working day as specified in the schedule below :—

The Schedule

1. *Hours of work constituting a normal working day*: The hours of work constituting a normal working day shall be :—

(*a*) in the case of office staff—seven hours of work including half an hour's interval for rest;

(*b*) in the case of conservancy staff except night soil cleaners—seven hours of work including half an hour's interval for rest ;

(*c*) in the case of night soil cleaners—six hours of work including half an hour's interval for rest ;

(*d*) other employees—eight hours of work including half an hour's interval for rest.

2. *Day of rest*: Sunday shall ordinarily be the day for weekly rest: Provided that the local authorities concerned may fix any other day of the week as the day for weekly rest in order to suit local convenience.

3. *Payment for work on the day of weekly rest*: All categories of employees shall be paid for work on the day of rest at the overtime rate.

4. *Overtime rate*: The overtime rate for work done on any day in excess of the number of hours constituting a normal working day shall, for all categories of employees, be the ordinary rate of wages fixed for work up to 48 hours per week and double the ordinary rate of wages for work beyond 48 hours in the week.

The notification will come into force with effect from the 1st November, 1958.

Employees' State Insurance (General) Regulations, 1950—Amendments

*Notification No. Genl/Amend/6 dated New Delhi, the 27th October, 1958***

In exercise of the powers conferred by section 97 of the Employees' State Insurance Act, 1948 (34 of 1948), the Employees' State Insurance

* Cal. Gaz., 6-11-'58, Pt. I, p. 3527.

** Gaz. of India, 15-11-'58, Pt. IV, p. 179.

Corporation hereby makes the following amendments in the Employees' State Insurance (General) Regulations, 1950, the same having been previously published, as required by sub-section (1) of the said section, namely :—

In the said Regulations,

I. in regulation 26 for clause (c), the following shall be substituted, namely :—

"(c) within 42 days of the termination of the contribution period to which it relates;

(d) within 28 days of the date of permanent closure of the factory.";

II. in regulation 52 for sub-regulation (4), the following sub-regulation shall be substituted, namely :—

"(4) Benefits under the Act shall be paid in cash at a Local Office on such days and working hours, as may be fixed by the Director General, or such other officer of the Corporation, as may be authorised by him from time to time in this behalf, or, at the option of the claimant and subject to deduction of the cost of remittance, by means of postal money orders or other orders payable through a post office, or by any other means, which the appropriate office may in the circumstances of any particular case consider appropriate:

Provided that the Corporation may waive the deduction of the cost of remittance in such cases as the Director General may, from time to time, specify."

III. after regulation 76-A, the following regulation shall be inserted, namely :—

"Regulation 76-B—Commutation of small periodical payments of permanent disablement benefit.

(1) An insured person whose permanent disablement has been finally assessed and is exclusively due to one or more employment injuries listed in Schedule I to the Workmen's Compensation Act, 1923 (8 of 1923), and who has been awarded permanent disablement benefit at less than two annas per day, may apply for commutation of the periodical payments of permanent disablement benefit, into a lump sum.

(2) Where such an application is made within 6 months of the date on which he can opt for commutation hereafter called the "date of possible option" the periodical payments shall be commuted into a lump sum.

(3) Where such an application is made after expiry of 6 months from the date of possible option, the periodical payments may be commuted into lump sum if the Corporation is satisfied that the insured person has an average expectation of life for his age. For this purpose, the insured person shall, if so required by the appropriate office, present himself for examination by such medical authority as the Director General may, by general or special order, specify.

(4) For the purpose of this regulation, the date of possible option shall mean—

(*i*) in the case of a person who, on the date on which this regulation comes into force, is in receipt of permanent disablement benefit covered by sub-regulation (1), the date of coming into force of this regulation;

(*ii*) in the case of any other insured person, the date on which assessment of permanent disablement covered by sub-regulation (1) is communicated to him by the appropriate Regional Office.

(5) The amount of lump sum admissible under this regulation shall be determined by multiplying the daily rate of permanent disablement benefit by the figure indicated in column 2 of Schedule III to these Regulations, corresponding to the age last birthday of the insured person on the date on which his application for commutation is received in the appropriate office and on and from that date periodical payments of permanent disablement benefit shall cease to be payable to him.";

IV. in regulation 105, for the words "on receipt of not less than three clear days' notice in writing given", the words "on being so required in writing or otherwise" shall be substituted;

V. in Form 1,

(*a*) for the entry relating to "Date", preceding the words "Signature and thumb impression of the employee" the words "Date of appointment" shall be substituted;

(*b*) after the entry "Date of Appointment" so substituted, the entry "Date of signing the Form", shall be inserted;

(*c*) the temporary Identification Certificate part of the Form shall be replaced by the following, namely :—

"Temporary Identification Certificate.

Insurance No.	Regional office Stamp ....
Full name......	Age...
Local Office......	Signature or thumb impression of the insured person.
Dispensary......	Signature of Employer...
Date of appointment......	Designation...

(*d*) The Receipt of Identity Card part of the Form shall be replaced by the following, namely :—

"Receipt of Identity Card.

Name, Address and Code No. of the employer...............	Received Identity Card bearing Insurance No. overleaf.
Date of issuing Identity Card.............................	Signature or thumb impression of the insured person."

VI. *in Form* 6—

(i) the word and dots "Set..........................." shall be inserted at the top right side of the Form;

(ii) the words and dots "contribution period from.................to ...." shall be added as item No. 3 after the present item No. 2;

(iii) the word "also" shall be inserted between the words "shall" and "be" in the foot note;

VII. after Schedule II, the following Schedule shall be inserted, namely :—

"*Schedule III*

Commutation Values for Permanent Disablement Benefit

(Regulation 76-B)

Age last birth-day of insured person on the date on which his application for commutation is received in the appropriate office	The factor with which daily rate of benefit is to be multiplied.
1	2
Below 20 years	6400
20 years and above but below 25 years	6000
25 years and above but below 30 years	5600
30 years and above but below 35 years	5200
35 years and above but below 40 years	4800
40 years and above but below 45 years	4400
45 years and above but below 50 years	4000
50 years and above but below 55 years	3600
55 years and above but below 60 years	3200
60 years and above but below 65 years	2800
65 years and above but below 70 years	2300
70 years and above	1800."

Bombay Factories Rules, 1950—Amendments

*Notification No. FAC. 1157, dated Bombay, 27th October, 1958.**

In exercise of the powers conferred by sub-section (2) of section 29, sub-section (5) of section 59, section 64, sub-section (3) of section 80, section 83, section 108 and section 112 of the Factories Act, 1948 (LXIII of 1948), the Government of Bombay hereby amends the Bombay Factories Rules, 1950, as follows, namely :—

In the said rules—

(1) After rule 59 for the sub-heading "*Rules prescribed under sub-section* (1) *of section 29*" and rule 60 the following shall be substituted, namely :—

"*Rule prescribed under sub-section* (2) *of section 29.*

60. *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 in use in any factory, for the first time therein unless it has been tested and all parts have been thoroughly examined by a competent person and a certificate of such test and examination specifying the safe working load or loads and signed by the person making the test and examination has been obtained and is kept available for inspection.

(2) A register in Form 10 containing the particulars, therein specified shall be kept of every examination made under sub-rule (1). The Register shall be readily available for inspection.

(3)(*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 load of every kind and size of chain, rope or lifting tackle in use, and, in the case of a multiple sling, the

*Bom. Gaz., 13-11-'58, Pt. IV-A, p. 784.

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 are kept, and in prominent positions on the premises and no rope, chain or lifting tackle not shown in the table shall be used in a factory unless in the case of lifting tackle, the safe working load thereof, or in the case of a multiple sling, the safe working load at different angles of the legs, is plainly marked upon it.

(4) All rails on which a travelling crane moves and every track on which the carriage of a transporter or runway moves, shall be of proper size and adequate strength and have an even running surface. Every such rail or track shall be properly laid and maintained and shall be adequately supported.

(5) All chains and lifting tackle, except a rope sling, shall, unless they have been subjected to such other heat treatment as may be approved by the State Government, be effectively annealed under the supervision of a competent person at the following intervals, namely :—

(*i*) All chains, slings, rings, hooks, shackles and swivels used in connection with molten metal or molten slag or when they are made of half inch bar or smaller, at least once in every six months.

(*ii*) All other chains, rings, hooks, shackles and swivels in general use at least once in every twelve months:

Provided that chains and lifting tackle not in frequent use shall, subject to the approval necessary and particulars of such annealing shall be entered in a register in Form 10.

(6) Nothing in sub-rule (5) shall apply to the following classes of chains and lifting tackle, namely :—

(*i*) Chains made of malleable cast iron.

(*ii*) Plate link chains.

(*iii*) Chains, rings, hooks, shackles and swivels made of steel or of any non-ferrous metal.

(*iv*) Pitched chains, working on sprocket or pocketed wheels.

(*v*) Rings, hooks, shackles and swivels permanently attached to pitched chains, pulleys blocks or weighing machines.

(*vi*) Hooks and swivels having screw threader parts or ball bearing or other case hardened parts.

(*vii*) Socket shackless secured to wire ropes by white-metal capping.

(*viii*) Bordeau connections.

(*ix*) Any chain or lifting tackle which has been subjected to the heat treatment known as "normalising" instead of annealing. Such chains and lifting tackle shall be thorougly examined by a competent person at least once in every twelve months, and particulars of such examination shall be entered in the register in Form 10.

(7) All lifting machines, chains, ropes and lifting tackle, except a fibre rope or fibre rope sling, which have been lengthened, altered or repaired by welding or otherwise, shall, not be used again, unless it is adequately tested and examined by a competent person and certified in writing by him to be in order."

(2) In Chapter VIII for the heading and sub-heading "Leave with wages" and *"Rules 94-101 prescribed under sections 83 and 112"* the following shall be substituted, namely :—

"ANNUAL LEAVE WITH WAGES.

Rules 94-101 prescribed under sections 80 (3) and 83."

(3) In rule 95 in sub-rule (1) for the words "entries of the dates of holidays or interruption in service", the words "relevant entries therein", shall be substituted.

(4) For rule 96 the following shall be substituted, namely :—

"**96**. *Medical Certificate.*—If any worker is absent from work and if he wants to avail himself of the leave with wages due to him to cover the period of illness as provided in sub-section (7) of section 79, he shall, if so required by the manager, produce a medical certificate signed by a registered medical practitioner or by a registered or recognised *Vaid* or *Hakim* stating the cause of the absence and the period for which the worker is, in the opinion of such medical practitioner, *Vaid or Hakim* unable to attend to his work ".

(5) For rule 97 the following shall be substituted, namely :—

" 97. *Notice to Inspector of lay-off.*—The Manager shall give, as soon as possible, a notice to the Inspector of every case of lay-off of workers by agreement or contract or as permissible under the standing orders, giving the numbers of such workers and the reasons for the lay-off, entries to this effect shall be made in the Leave with Wages Register and the Leave Book in respect of each worker concerned."

(6) For rule 98, the following shall be substituted, namely :—

" 98. *Notice by worker.*—Before or at the end of every calendar year, a worker may give notice to the Manager of his intention not to avail himself of the annual leave with wages falling due to him during the following year. The Manager shall make an entry to that effect in the leave with Wages Register and in the Leave Book of the worker concerned."

(7) For rule 100, the following shall be substituted, namely :—

" 100. *Payment of leave wages due if worker dies.*—If a worker, who is not entitled to advance payment in accordance with the provisions of section 81, dies before he resumes work, the balance of his pay due for the period of leave shall be paid to his nominee and failing such nominee to his legal representative within one month of the receipt of intimation of death of the worker. The nomination shall be in Form No. 35 and signed by the worker and attested by two witnesses."

(8) For Form No. 10, the following shall be substitued, namely :—

"FORM No. 10.

(Prescribed under Rule 60.)

Prescribed for report of Examination of the lifting machines, ropes and lifting tackles.

Particulars.

1. Name of occupier of factory.
2. Address of factory ...

3. Distinguishing number or mark (if any) and description sufficient to identify the lifting machine, chains, rope or the lifting tackle.

4. Date when the lifting machine, chain, rope or lifting tackle was first used in the factory.

5. Date of each examination made under section 29(1)(*a*) (*iii*) and by whom it was carried out.

6. Date and number of the certificate relating to any test and examination made under sub-rule (1) of rule 60 together with the name of the person who issued the certificate.

7. Date of annealing or other heat treatment of the chain and lifting tackle carried out under sub-rule (5) of rule 60 and by whom it was carried out.

8. Particulars of any defect found at any such examination or after annealing and affecting the safe working load, and of the steps taken to remedy such defect.

I/We certify that on......................I/We thoroughly examined the above mentioned lifting machine/chain/rope/lifting tackle and that the above is a correct report of the result.

Signature... Counter Signature...

Qualification... If employed by a Company or Association give name and Address.

Address...

Date... Date ,,

(9) For Form No. 13, the following shall be substituted, namely :—

"FORM No. 13.

(Prescribed under Rule 85.)

Overtime Muster Roll for exempted Workers.

month ending 19 .

No. in register.	Name.	Department.	Dates on which overtime has been worked.	Extent of overtime on each occasion.	Total overtime worked on production in case of Piece workers.
1	2	3	4	5	6

Normal hours.	Normal rate wage.	Cash equivalent of advantage accruing through concessional sale of food grains or other articles.	Over time rate of wage (double the rate in columns 8 and 9).	Normal earnings.
7	8	9	10	11

Overtime earnings.	Total earnings.	Dates on which overtime payment made.
12	13	14

(10) For Form No. 18, the following shall be substituted, namely :—

"FORM No. 18

(Prescribed under Rule 94.)

Register of leave with Wages.

Factory... Part I—Adults.

Department... Part II—Children.

Name...

Father's Name...

Serial No.	Serial No. in the Register of adults child workers	Date of entry into service	Calendar year of service
1	2	3	4

Number of days worked during calendar year				
No. of days of work performed	No. of days of lay-off	No. of days of maternity leave with wages	No. of days leave with wages enjoyed	Total columns 5 to 8
5	6	7	8	9

Leave with wages to credit					Leave with wages enjoyed
Balance of leave with wages from preceding year	Leave with wages earned during the year (mentioned in column 4)	Total of columns 10 and 11	Whether leave with wages refused in accordance with scheme under section 79 (8)	Whether leave with wages not desired during the next calendar year	From To
10	11	12	13	14	15

Balance to credit	Normal rate of wages	Cash equivalent or advantage accruing through concessional sale of food-grains or other articles.
16	17	18

Rate of wages for leave with wages period (total of columns 17 and 18)	Discharged worker		Remarks
	Date of discharges	Date and amount of payment made in lieu of leave with wages due	
19	20	21	22

Note.—Separate page will be allotted to each worker."

11. In Form No. 23—

(*i*) under the heading " Interpretation "—

(*a*) in the first paragraph for the words, figures and brackets " the Indian Mines Act, 1923 (IV of 1923)", the following words, figures and brackets shall be substituted, namely :—

" the Mines Act, 1952 (XXXV of 1952).",

(*b*) in the third paragraph for the words " printing by letter-press, lithography, photogravure or other similar work or book-binding, which is carried on by way of trade or for purposes of gain, or incidentally to another business so carried on ", the following words shall be substituted, namely :—

" composing types for printing, printing by letter-press, lithography, photogravure or other similar process or book-binding ;",

(*ii*) under the heading " Working Hours, Holiday, Intervals for Rest, etc."—

(*a*) in paragraph 1 the following words shall be added at the end, namely :—

" The minimum daily limit may be exceeded in order to facilitate the change of shifts subject to the previous approval of the Chief Inspector.",

(*b*) in paragraph 2 the words " throughout the day " shall be deleted, and after the words " transmission machinery " the following shall be added, namely :—

" in the printing of news papers, which may be held up on account of breakdown of machinery, in the loading and unloading of railway wagons.",

(*c*) in paragraph 2 after the second sub-paragraph, the following shall be added, namely :—

"The restrictions imposed by clauses (i) and (ii) of sub-section (4) of section 64 shall not apply to cases where a shift worker has failed to report for duty and another shift worker has to work the whole or part of a subsequent shift subject to the conditions prescribed by Government",

(*d*) in paragraph 6 the following shall be added at the end, namely :—

"Subject to the control of the State Government, the Chief Inspector may, by written order and for the reasons specified therein, exempt any factory so however that the total number of hours worked by a worker without any interval does not exceed six",

(*e*) in paragraph 9 for the words "between hours of 7 p.m. and 6 a.m." the following words and brackets shall be substituted, namely :—

"during the night, (Night means a period of at least twelve consecutive hours which shall include the interval between 10 p.m. and 6 a.m.)",

(*iii*) under the heading "Leave with Wages" for paragraph 11 the following shall be substituted, namely :—

"11. *Leave with wages—Sections 79, 80 and 83 and Rules.*—Every worker who has worked for a period of 240 days or more in a factory during a calendar year shall be allowed during the subsequent, calendar year leave with wages for a number of days calculated at the rate of—

(*i*) if an adult, one day for every twenty days of work performed by him during the previous calendar year;

(*ii*) if a child, one day for every fifteen days of work performed by him during the previous calendar year;

For the purpose of computation of the period of 240 days or more, (*a*) any days of lay-off, by agreement or contract or as permissible under the standing orders ; (*b*) in the case of a female worker, maternity leave for any number of days not exceeding twelve weeks; and (*c*) the leave earned in the year prior to that in which the leave is enjoyed shall be deemed to be days on which a worker has worked in a factory.

The leave admissible shall be exclusive of all holidays whether occurring during or at—either end of the period of leave.

For the leave allowed to him, a worker shall be paid at a rate equal to the daily average of his total full-time earnings, exclusive of any overtime earnings, and bonus, but inclusive of dearness allowance and the cash equivalent of any advantage accruing by the sale, by the employer, of food-grains and other articles at concessional rates for the days on which he worked during the month immediately preceding his leave.

Where the employment of a person commences otherwise than on the first day of January he shall be entitled to leave with wages at the rates laid down in sub-paragraph (1), if he has worked for two-thirds of the total number of days in the remainder of the calendar year.

If a worker is discharged or dismissed, from service during the course of the years he shall be entitled to leave with wages at the rates laid down in sub-paragraph (1) irrespective of the number of days he has worked.

If the employment of a worker entitled to leave with wages is terminated by the occupier before he has taken the entire leave to which he is entitled, or if having applied for and having not been granted such leave, the worker quits his employment before he has taken the leave, the occupier of the factory shall pay him the amount payable in respect of the leave not taken and such payment shall be made, where the employment of the worker is terminated by the occupier, before the expiry of the second working day after such termination and where a worker who quits his employment, on or before the next pay day.

If a worker wants to avail himself of the leave with wages due to him to cover a period of illness he shall be granted such leave even though an application for the same is not made within 15 days in advance and in such cases he shall be paid wages leave.

The Manager, shall maintain a leave with wages register in Form No. 18 and shall provide each worker with a book called the "Leave Book" in Form No. 19. The leave Book shall be the property of the worker and the Manager or his agent shall not demand it except to make relevant entries therein whenever necessary, and shall not keep it for more than a week at a time. If a worker loses Leave Book the Manager shall provide him with another copy on payment of one anna and shall complete it from his record."

(*iv*) under the heading "Safety"—

(*a*) for paragraph 21 the following shall be substituted, namely :—

"No woman or young person shall be allowed to clean, lubricate or adjust any part of a prime mover or of any transmission machinery while the prime mover or transmission machinery is in motion, or to clean, lubricate or adjust any part of any machine, if the cleaning, lubrication or adjustment thereof would expose the woman or young person to risk of injury from any moving part either of that machine or of any other adjacent machinery."

(*b*) after paragraph 24 the following shall be inserted, namely :—

"24A. *Lifting machines, chains, ropes and Lifting tackles—Section 29.*—All parts including the working gear, whether fixed or moveable of every lifting machine and every chain, rope or lifting tackle shall be of good construction, sound material and adequate strength and free from defects; properly maintained and thoroughly examined by a competent person at least once in every period of twelve months and a register shall be maintained in a prescribed form of every such examination. Effective measures shall also be taken to ensure that the crane does not approach within twenty feet of the place where a person is employed or working on or near the wheel track of a travelling crane."

(*v*) In paragraph 31 for the words "all such boxes and cupboards shall be kept in the charge of a responsible person" the following shall be substituted, namely :—

"Each first-aid box or cupboard shall be kept in the charge of a separate responsible person.",

(*vi*) under the heading "Special Provisions" in paragraph 42 in the second sub-paragraph after the words "employment of young persons" the following shall be inserted, namely :—

"No such adolescent who has not attained the age of seventeen years shall be employed or permitted to work in any factory during night and for this purpose "night" shall mean a period of at least twelve consecutive hours which shall include an interval of at least seven consecutive hours falling between 10 p.m. and 7 a.m."

(12) After Form 34 the following new Form No. 35 shall be added namely :—

FORM No. 35

I hereby nominate Shri*... who is my... and resides at †... to receive the amount of the balance of my pay due for the period of leave with wages not availed of, in the event of my death before resuming work.

Dated this day of 19 , at

Witnesses—

1.

2.

Signature or left thumb
Impression of the workers.

* Here insert name of nominee. † Here insert address of nominee.

Bombay Cotton Ginning & Pressing Rate Fixing Rules, 1958.

Notification No. GPF. 2058-Tex. dated, Bombay-1, 24th October, 1958.‡

In exercise of the powers conferred by clause (*c*) of sub-section (1) of section 13 of the Cotton Ginning and Pressing Factories Act, 1925 (XII of 1925), in its application to the State of Bombay excluding the Vidarbha Region, the Government of Bombay hereby makes the following rules, namely :—

1. *Short title, extent and commencement.*—(*a*) These rules may be called the Bombay (pre-Reorganisation Bombay, Saurashtra, Hyderabad and Kutch areas) Cotton Ginning and Pressing Rate Fixing Rules, 1958.

(*b*) They extend to the whole of the State of Bombay excluding the Vidarbha region.

(*c*) They shall come into force on 1958.

2. *Definitions.*—In these rules, unless the context otherwise requires,—

(*a*) "Act" in relation to any area to which these rules extend, means the Cotton Ginning and Pressing Factories Act, 1925 as in force in that area;

(*b*) "Committee" means the rate fixing committee appointed under sub-section (2) of section 5B for any local area;

(*c*) "Factory" means a Cotton Ginning or Pressing factory;

‡Bom. Gaz., 6-11-'58, Pt. IV-A, p. 776.

(d) "Season" means,—

(i) in relation to the Districts of East Khandesh, West Khandesh and Nasik, the period commencing on the 1st October and ending on the 15th June of each year;

(ii) in relation to the Districts of Bhanaskanta, Sabarkantha, Mehsana, Ahmedabad, Baroda, Broach and Surat, the period commencing on the 15th January and ending on the 30th June of each year;

(iii) in relation to the Saurashtra area of the State of Bombay, the period commencing on the 1st September and ending on the 31st August of each year;

(iv) in relation to the Hyderabad area of the State of Bombay, the period commencing on the 1st September and ending on the 30th June of each year;

(v) in relation to any other area, the period commencing on the 1st August and ending on the 31st July of each year;

and the expression "part of a season" shall be construed accordingly;

(e) "section" means a section of the Act.

3. *Appointment of representatives on Committee.*—As soon as an order is issued under sub-section (1) of section 5B in respect of any local area, the Collector having jurisdiction over such area shall in consultation with the District Development Board of the area, by notification in the *Official Gazette*, appoint on the Committee two representatives of the growers of cotton of such area and two representatives of the owners of the factories in such area.

4. *Term of office of non-official members of Committee.*—Every non-official member of the Committee shall hold office for a period of three years from the date of his appointment but shall be eligible for re-appointment:

Provided that such member shall continue in office until his successor is duly appointed.

5. *Vacancy of non-official member of Committee.*—If a non-official member—

(a) dies, or,

(b) is absent from more than two consecutive meetings of the Committee, or

(c) leaves the local area with the intention of being absent therefrom for more than two consecutive months, or,

(d) resigns, or

(e) refuses to act, or becomes incapable of acting as a member, or

(f) is removed by the Collector,

he shall cease to be a member of the committee.

6. *Casual vacancies.*—All casual vacancies of non-official members shall be filled in as soon as practicable. Any person appointed to fill a casual vacancy shall hold office only so long as the member in whose place he is appointed would have held it if the vacancy had not occurred.

7. *Business of Committee.*—(1) The Collector shall convene a meeting of the Committee at such place, on such date and at such time as he may deem fit.

(2) In the case of an adjourned meeting, at least three days' notice and in the case of any other meeting, at least a week's notice of the meeting shall be given to every member of the Committee:

Provided that failure to give notice to any member owing to the wrong address given by the member or owing to his absence from his residence shall not invalidate in any way the proceedings of the Committee.

(3) Four members of the Committee shall subject to the provisions of sub-rule 14 form a quorum:

Provided that at every meeting at least one representative of cotton growers and one representative of owners of the factories shall be present.

(4) No quorum shall be necessary for an adjourned meeting.

(5) All questions shall be decided by a majority of votes of the members present and voting, in case of equality of votes the Chairman shall have a casting vote.

(6) The proceedings of the Committee shall be recorded under the signature of the Chairman in a register which shall be open for inspection by any member of the Committee at a reasonable time.

(7) No act done by the Committee shall be questioned on the ground merely of the existence of any vacancy in the Committee, or by reason of the casual, and unforseen absence of any of the members during any stage of the proceedings thereof.

8. *Matters to be considered in fixing maximum rates for Ginning or Pressing Cotton.*—In fixing the maximum rates for ginning or pressing of cotton, the Committee shall take into consideration the following matters among other matters, namely:—

(a) The quantity of cotton to be ginned or pressed.

(b) The ginning out-turn.

(c) Labour charges including management and maintenance expenses.

(d) Cost of Fuel.

(e) Rail freight.

(f) The quantity of cotton expected to be ginned or pressed in the local area for the season or as the case may be any part of the season.

(g) The cost of stores.

(h) The type of machinery in use.

(i) The municipal and other taxes.

(j) Insurance charges.

(k) The depreciation charges for machinery and buildings.

(l) The reasonable rate of interest not exceeding 6 per cent. on the invested capital minus the accumulated depreciation fund.

(m) The rates of ginning or pressing cotton prescribed in the other local areas of the Division concerned.

9. *Publication of maximum rates.*—As soon as the maximum rates for ginning or pressing cotton in any local area are fixed by the Committee, the Collector shall communicate, by registered post, the rates so fixed to all owners of factories in the local area and also published them for the information of cotton growers of the local area in such manner as he thinks fit.

10. *Conditions of exemption under section 5B.*—The conditions on which an exemption under the proviso to sub-section (1) of section 5B is to be granted shall be the following, namely :—

(*i*) That the factory is not the only factory in the Local area carrying on the process of ginning or pressing cotton exclusively for its owner or person in charge as part of his normal trade or that all factories therein are not so carrying on the process ;

(*ii*) that an application in writing through the Collector is made not less than 2 months before the commencement of the season ;

(*iii*) that the exemption shall be limited to one season only and shall, for reasons to be recorded in writing be liable to be withdrawn at any time ;

(*iv*) that the exemption order is displayed prominently in his factory by the owner or person in charge thereof.

11. *Repeal.*—Rule 13-A of the Saurashtra Cotton Ginning and Pressing Factories Rules, 1955, is hereby repealed :

Provided that anything done or any action taken (including any rates fixed) under the rule so repealed shall, unless it is inconsistent with the provisions of these rules be deemed to have been done or taken under the corresponding provisions of these rules and until altered, repealed or amended under these rules shall continue in force accordingly.

Employees' State Insurance—Exemptions.

*Notification No. 4439L.W./LW/1A-121/57, dated 30th September, 1958.**

I

In exercise of the power conferred by section 88 of Employees' State Insurance Act, 1948 (XXXIV of 1948), the Governor is pleased to exempt, for the period from the 1st October, 1958, to the 30th September, 1959, from the operation of the said Act,—

(*a*) any person employed directly by a principal employer or through an immediate employer on loading or unloading outside the factory or on loading or unloading of goods or material going out of or coming in at the factory gates or sidings provided that if such person is employed directly by the principal employer continuously (but for breaks due to weekly or other holidays) for more than fifteen days (including weekly or other holidays), the exemption shall cease from the sixteenth day of the employment by same principal employer ;

(*b*) any person employed on work which is not ordinarily the work of the factory but is of a casual nature, that is to say, work which is not ordinarily carried on for more than fifteen days in a calendar month and was not carried on for more than sixty days in the preceding calendar year :

Provided that any employee who is generally employed on any work other than that specified in clause (a) or (b) above, shall continue to be governed by the provisions of the said Act irrespective of his temporary employment in such work :

Provided further that notwithstanding anything contained in this notification, any employee hereby exempted from the provisions of the said Act shall continue to be entitled to the benefits under the said Act for which he might have qualified on the basis of contributions made by him before the date from which he is exempted from the provisions of the said Act.

*Cal. Gaz., 16-10-'58, Pt. I, p. 3361.

II

*Notification No. 4475L.W./LW/1A-245/57, dated 3rd October, 1958.**

In exercise of the powers conferred by section 87 of the Employees' State Insurance Act, 1948 (XXXIV of 1948), the Governor has been pleased hereby to exempt from the operation of the said Act any factory—

(*a*) which is situate in any area in which Chapters IV and V of the said Act are in force; and

(*b*) which is exclusively engaged in one or more of the manufacturing processes specified in column (1) of the Table annexed hereto or any other manufacturing process which is incidental to or connected with any of the aforesaid processes, or in any other manufacturing process carried on in a seasonal factory, for a period of one year with effect from the 1st October, 1958, subject to the conditions specified in the corresponding entry in column (2) of the said Table, the requirement of section 89 of the said Act having already been complied with :—

Table

Name of the manufacturing process.	Conditions.
1	2
1. Redrying unmanufactured leaf tobacco.	
2. Rice Milling.	
3. Cold Storage.	
4. Salt Manufacture.	
5. Oil Mills.	Provided that the process of oil milling is subsidiary to any other manufacturing process which is seasonal and so long as the number of employees engaged in oil milling is less than fifty.

Revision of Minimum Wages in Oil Mills in Kerala

Notification No. D. Dis 2418/57/L & LAD., dated, Trivandrum, 15th October 1958. ‡

In exercise of the powers conferred by clause (b) of sub-section (1) of Section 3 of the Minimum Wages Act, 1948 (Central Act XI of 1948) read with sub-section (2) of section 5 of the said Act and in supersession of Government of Madras Notification No. G. O. Ms. No. 4389/Industries, Labour and Co-operation dated 30-12-1955 and Notification No. L1. 14424/53/DD dated 9-12-1954 issued by the former Travancore-Cochin Government, the Government of Kerala after considering the advice of the Minimum Wages Advisory Board constituted under Section 7 of the Act, hereby

*Cal. Gaz., 16-10-'58, Pt. I, p. 3361.
‡Ker. Gaz., 28-10-'58, Pt. I, p. 3222.

revise the rates of minimum Wages fixed by the said notifications as specified in the schedule hereto annexed which shall be payable to the employees employed in oil mills in the State, the same having been previously published as required by clause (b) of sub-section (1) of Section 5 of the said Act.

The notification shall come into force with effect from 27-10-1958.

SCHEDULE A

Category of workers.		*Daily wages.* Rs.	nP.
UNSKILLED.			
1. Yard worker	...	1	75
2. Yard Moopan	...	2	19
3. Fillers	...	1	75
4. Cutterman	...	1	75
5. Oiler	...	1	75
6. Bellowman (Blower)	...	1	75
7. Heavy Head Load workers attached to mills	...	2	00
SEMI-SKILLED.			
1. Check worker	...	1	87
2. Cutterman also during the work of carrying copra to the cutter and removing punnac	...	1	87
3. Chuck edamoopan	...	2	12
4. Cooper	...	2	12
5. Tinker, if attached to mills	...	2	00
SKILLED.			
1. Engine driver	...	2	50
2. Blacksmith	...	2	50
3. Electrician (qualified)	...	2	50
4. Latheman (turner)	...	2	50
5. Chuck moopan	...	2	31

SCHEDULE B

Guaranteed Monthly Minimum :—Workers employed on daily wage rates shall, however, be entitled to receive a guaranteed monthly minimum exclusive of leave with wages, bonus and night allowance as follows :—

Category of workers		*Guaranteed Monthly Minimum.* Rs.	nP.
SKILLED.			
1. Yard worker	...	35	00
2. Yard Moopan	...	43	75
3. Fillers	...	29	75
4. Cutterman	...	29	75
5. Oiler	...	29	75
6. Bellowman	...	29	75
7. Heavy head load workers attached to mills	...	40	00
SEMI-SKILLED.			
1. Chuck worker	...	31	87
2. Cutterman also doing the work of carrying copra to the cutter and removing punnac	...	31	87
3. Chuck edamoopan	...	36	12
4. Cooper	...	36	12
5. Tinker, if attached to mills	...	34	00

		Guaranteed Monthly Minimum Rs.	nP.
SKILLED.			
1. Engine Driver	...	42	50
2. Blacksmith	...	42	50
3. Electrician	...	42	50
4. Latheman	...	42	50
5. Chuck moopan	...	39	31

SCHEDULE C

Special Schedule of wage rates.—For certain classes of workers in mills where the Edacopra system of payment is in vogue.

1. Yard workers (unskilled) Rs. 25 per mensem (inclusive of allowance for noon day meals) plus edacopra

or

Rs. 2·25 per day subject to a guaranteed monthly minimum of Rs. 45.

2. Yard moopan (skilled) Rs. 30 per mensem (inclusive of allowances for noon day meals) plus Edacopra

or

Rs. 2·62 per day subject to a guaranteed monthly minimum of Rs 52·50.

The worker will have the option to receive the above daily wages with the guaranteed monthly minimum instead of the monthly wages plus Edacopra.

SCHEDULE D

Piece Rates.—Employers and workers will, however, be free to continue the existing system of piece rates without prejudice to the minimum time rate fixed for such employments. Such workers will also get the benefit of the guaranteed monthly minimum.

SCHEDULE E

If the existing rates for all or any of the above employment are higher than the rates notified above, the higher rates will continue to be paid.

Employees' State Insurance—Exemptions.

*Notification No. L8-18766/57/L&LAD., dated Trivandrum, 17th October, 1958.**

I

In exercise of the powers conferred by Section 87 of the Employees' State Insurance Act, 1948 (XXXIV of 1948) the Government of Kerala hereby exempt from the operation of the said Act, except Chapter V-A thereof every factory :—

(*a*) which is situated within the limits of—

(*i*) Quilon area comprising the Quilon Municipal town, the revenue villages of Eravipuram, Kilikolloor, Vadakkevila, Adichanalloor, Paravoor, Quilon, Kottarakara and Perinad of the Quilon Taluk in the Quilon District.

*Ker. Gaz., 28-10-'58, Pt. I, p. 3221.

(*ii*) Alleppey cum Sherthalai area comprising—

(*a*) the Alleppey Municipal Town and the revenue villages of South Aryad, Mararikulam South and Alleppey of Ambalapuzha Taluk and

(*b*) Sherthalai Municipal town and the revenue villages of Sherthalai North, Vayalar East, Vayalar West and Mararikulam North of the Sherthalai taluk of the Alleppey District.

(*iii*) Alwaye-Ernakulam Perumbavoor area comprising—

(*a*) Mattancherry and Ernakulam Municipal Towns and the revenue village of Rameswaram of the Cochin Kanayannoor taluk and (*b*) Alwaye and Perumbavoor Municipal towns and the revenue villages of Thrikkakara, Vazhakulam, Perumbavoor of Kunnathunad taluk and also the revenue villages of Varapuzha, Kadungallur and Chengamanad of Parur taluk of the Ernakulam District.

(*iv*) Trichur area comprising the Trichur Municipal town and the revenue villages of Ollur, Marathakara, Trichur, Koorkancherry, Aranattukara, Chiyyarom, Viyyur, Peringavu, Ayyanthol, Ponkunnam of Trichur taluk and also the revenue village of Amballoor of Mukundapuram taluk of the Trichur District and (*b*) which is exclusively engaged in the manufacturing process specified below or any other manufacturing process which is connected with the aforesaid process for a period of three months from 1-10-1958.

Name of manufacturing process—Cashew processing.

II

*Notification No. L8-57773/58/L&LAD., dated Trivandrum, 10th October, 1958.**

In exercise of the powers conferred by Section 88 of Employees' State Insurance Act, 1948 (34 of 1948), the Governor of Kerala is pleased to exempt for a period of one year from 1-10-1958 from the provisions of the said Act, except Chapter V-A—thereof.

(*a*) any person employed directly by a principal employer or through an immediate employer on loading or un-loading outside the factory or on loading or unloading of goods or material going out of or coming in at the factory gates or sidings, provided that if such person is employed directly by the principal employer continuously (but for breaks due to weekly or other holidays) for more than 15 days (including such holidays) the exemption will cease from the 16th day of the employment by the same principal employer.

(*b*) any person employed on work which is not ordinarily the work of the factory but is of a casual nature, that is to say, work which is not ordinarily carried on for more than 15 days in a calendar month and was not carried on for more than 60 days in the preceding calendar year:

Provided that any employee who is generally employed on any work other than that specified in (*a*) or (*b*) above shall continue to be covered under the Act irrespective of his temporary employment in the said work:

Provided further that notwithstanding this exemption, any employee so exempted shall continue to be entitled to such benefits under the Act to which he might have qualified on the basis of contributions paid before the date from which he gets exempted.

*Ker. Gaz., 28-10-'58, Pt. I, p. 3221.

Revision of Minimum Wages in Plantations in Kerala.

*Notification No. L1-2356/58/L & LAD, dated, Trivandrum, 14th October, 1958.**

In exercise of the powers conferred by clause (*b*) of sub-section (1) of section 3 read with sub section (2) of section 5 of the Minimum Wages Act, 1948 (Central Act XI of 1948) and after consulting the Advisory Board appointed under section 7 of the said Act, the Government of Kerala hereby make the following revision of the minimum rates of wages fixed for plantations under Notification No. L1-9632/51/DD, dated 30-6-1952, the same having been previously published as required by clause (*b*) of sub-section (1) of section 5 of the said Act, namely:—

In the said notification, the existing clause V of the schedule shall be omitted and clauses VI and VII shall be renumbered as clauses V and VI respectively.

West Bengal Industrial Disputes Rules, 1958.

*Notification No. 4771-I.R./I.R./IR-2/57 dated 15th November 1958.***

In exercise of the power conferred by section 38 of the Industrial Disputes Act, 1947 (XIV of 1947), the Governor is pleased hereby to make the following rules, the same having been previously published as required by sub-section (1) of the said section, namely:—

1. These rules may be called the West Bengal Industrial Disputes Rules, 1958.

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

(*a*) "the Act" means the Industrial Disputes Act, 1947 (XIV of 1947);

(*b*) "Chairman" means the Chairman of a Board or Court or, if the Court consists of one person only, such person and includes the Presiding Officer of a Labour Court or a Tribunal;

(*c*) "Committee" means a Works Committee constituted under sub-section (1) of section 3 of the Act;

(*d*) "form" means a form in the schedule to these rules;

(*e*) "Labour Commissioner" means the Officer designated and appointed as such by the State Government and includes an Additional or a Deputy Labour Commissioner;

(*f*) "section" means a section of the Act.

Procedure for reference of industrial disputes to Boards of Conciliation, Courts of Enquiry, Labour Courts and Industrial Tribunals.

3. *Application.*—(1) An application under sub-section (2) of section 10 for the reference of an industrial dispute to a Board, Court, Labour Court or Tribunal shall be made in Form A and shall be delivered personally or forwarded by registered post in triplicate to the Labour Commissioner and/or to the Conciliation Officer concerned. The application shall be accompanied by a statement setting forth—

*Ker. Gaz., 28-10-'58, Pt. I, p. 3222.
**Cal. Gaz., 4-12-'58, Pt. I, p. 3931.

(a) the parties to the dispute;

(b) the specific matters in dispute;

(c) the total number of workmen employed in the undertaking affected;

(d) an estimate of the number of workmen affected or likely to be affected by the dispute; and

(e) the efforts made by the parties themselves to adjust the dispute.

(2) Where the application is submitted on behalf of both the workmen and the employer whether jointly or separately, it shall state whether the employers and the majority of the workmen involved in the dispute are represented by the applicants and the applicants shall produce such evidence in support of the claims as the Labour Commissioner and/or the Conciliation Officer concerned may ask for. As soon as the Labour Commissioner and/or the Concilation Officer concerned is satisfied with regard to the representative character of the applicants, he shall immediately forward the application to the Secretary to the Government of West Bengal in the Department of Labour for reference of the dispute to a Board Court, Labour Court or Tribunal, as the case may be.

(3) Where the application has been submitted on behalf of one party only the Labour Commissioner and/or the Conciliation Officer concerned after such enquiries as may be deemed necessary by him shall forward it to the Secretary to the Government of West Bengal in the Department of Labour together with his recommendations whether the dispute should be referred to a Board, Court, Labour Court or Tribunal, whether the applicant in the case of workmen represents the majority of the party to the dispute he claims to represent, whether the opposite party has consented to abide by the decision of a Board or Court, and in the case of a recommendation for reference to a Board, Court, Labour Court or a Tribunal whether the continuance of a strike or lock-out, if one be in existence in connection with the dispute, should be prohibited.

4. *Attestation of application.*—The application and the statement accompanying it shall be signed—

(a) in the case of an employer by the employer himself or his authorised agent;

(b) in the case of workmen, either by the President, Secretary or other officers of a registered Trade Union of the workmen concerned with the establishment or by five representatives of the workmen duly authorised in writing in this behalf by a majority of the workmen in the establishment present at a meeting held for the purpose:

Provided that where five representatives of workmen are so authorised to sign an application, a copy of the proceedings of the said meeting shall be attached with the said application.

5. *Notification of appointment of Board, Court, Labour Court or Tribunal.*—The appointment of a Board, Court, Labour Court or Tribunal, together with names of persons constituting the Board, Court, Labour Court or Tribunal shall be notified in the Official Gazette.

6. *Notice to parties to nominate representatives.*—(1) If the State Government proposes to appoint a Board, it shall send a notice in Form B to the parties requiring them to nominate within a reasonable time persons to represent them on the Board.

(2) The notice to the employer shall be sent to the employer himself or his authorised agent.

(3) The notice to the workmen shall be sent—

(a) In the case of workmen who are members of a trade union, to the President or Secretary of the trade union; and

(b) in the case of workmen who are not members of a trade union, to any one workman who has attested the application made under rule 3, and in this case a copy of the notice shall also be sent to the employer who shall display copies thereof on notice boards in a conspicuous manner at the main entrance to the permises of the establishment.

7. *Arbitration Agreement.*—An arbitration agreement for the reference of an industrial dispute to an arbitrator or arbitrators shall be made in Form C and shall be delivered personally or forwarded by registered post in triplicate to the Government of West Bengal in the Department of Labour and the Labour Commissioner and/or the Conciliation Officer concerned. The agreement shall be accompained by the consent in writing of the arbitrator or arbitrators.

8. *Attestation of Arbitration Agreement.*—The arbitration agreement shall be signed—

(a) in the case of an employer, by the employer himself or his authorised agent present at the meeting;

(b) in the case of workmen, either by the President and Secretary of a Trade Union of the workmen connected with the establishment or by five representatives of the workmen duly authorised in writing in this behalf by the majority of the workmen in the establishment present at a meeting held for the purpose.

Powers, procedure and duties of Conciliation Officer, Boards, Courts, Labour Courts, Tribunals and Arbitrators.

9. (1) *Conciliation proceedings in public utility service.*—The Conciliation Officer, on receipt of a notice of strike or lock-out given in the prescribed manner, shall forthwith arrange to interview or contact both representatives of the employer and the workmen concerned with the dispute at such places and at such times as he may deem fit and shall endeavour to bring about a settlement of the dispute in question.

(2) Where the Conciliation Officer receives any information about an existing or apprehended industrial dispute not arising out of notice of strike or lock-out, he may intervene in the dispute and may, if he deems necessary, commence conciliation proceedings.

10. *Conciliation proceedings in non-public utility service.*—Where the Conciliation Officer receives any information about an existing or apprehended industrial dispute which does not relate to a public utility service and he considers it necessary to intervene in the dispute, he shall commence conciliation proceedings.

11. The Conciliation officer may hold a meeting of the representatives of both parties jointly or of each party separately at such places and such times as he may deem fit.

12. (1) The Conciliation Officer shall conduct the proceedings expeditiously and in such manner as he may deem fit.

(2) Notice for production of documents before the Conciliation Officer shall be in Form D. Such notice shall be served either personally or by registered post.

13. *Place and time of hearing.*—The sittings of a Board, Court, Labour Court or Tribunal or of an Arbitrator shall be held at such times and at such places as the Chairman or the Presiding Officer or the Arbitrator, as the case may be, may fix and the Chairman, Presiding Officer or the Arbitrator, as the case may be, shall inform the parties of the same in such manner as he thinks fit.

14. *Quorum for Boards and Courts.*—The quorum necessary to constitute sittings of a Board or Court shall be as follows :—

(1) In the case of a Court where the number of members is not more than 2—1,

where the number of members is more than 2 but less than 5—2,

where the number of members is 5 or more—3.

(2) In the case of a Board where the number of members is 3—2,

where the number of members is 5—3.

15. *Evidence.*—A Board, Court, Labour Court or Tribunal or an Arbitrator may accept, admit or call for evidence at any stage of the proceedings before it/him and in such manner as it/he may think fit.

16. *Administration of Oath.*—Any member of a Board or Court or Presiding Officer of a Labour Court or Tribunal or an Arbitrator may administer an Oath.

17. *Summons.*—A summons issued by a Board, Court, Labour Court or Tribunal shall be in Form D1 and may require any person to produce before it any books, papers or other documents and things in the possession of or under the control of such person in any way relating to the matter under investigation or adjudication by the Board, Court, Labour Court or Tribunal which the Board, Court, Labour Court or Tribunal thinks necessary for the purposes of such investigation or adjudication.

18. *Service of Summons or notice.*—Subject to the provisions contained in rule 19 any notice, summons, process or order issued by a Board, Court, Labour Court, Tribunal or an Arbitrator empowered to issue such notice, summons, process or order may be served either personally or by registered post or in any other manner as prescribed under the Code of Civil Procedure, 1908.

19. *Manner of service in the case of numerous persons as parties to a dispute.*—(1) Where there are numerous persons as parties to any proceeding beford a Board, Court, Labour Court, Tribunal or an Arbitrator and such persons are members of any trade union or association, the service of notice on the Secretary or where there is no Secretary, on the principal officer, of the trade union or association shall be deemed to be service on such persons.

(2) Where there are numerous persons as parties to any proceeding before a Board, Court, Labour Court, Tribunal or an Arbitrator and such persons are not members of any trade union or association, the Board, Court, Labour Court, Tribunal or Arbitrator, as the case may be, shall where personal service is not practicable, cause the service of any notice to be made by affixing the same at or near the main entrance of the establishment concerned.

(3) A notice served in the manner specified in sub-rule (2) shall also be considered as sufficent in the case of such workmen as cannot be ascertained and found.

20. *Procedure at the first sitting.*—At the first sitting of a Board, Court, Labour Court or Tribunal, the Chairman or the Presiding Officer, as the case may be, shall call upon the parties in such order as he may think fit to state their case.

21. *Board, Court, Labour Court, Tribunal or Arbitrator may proceed exparte.*—If without sufficient cause being shown, any party to a proceeding before a Board, Court, Labour Court, Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal or Arbitrator may proceed as if such party had duly attended or had been represented.

22. *Procedure when both parties fail to appear.*—If without sufficient cause being shown both the parties fail to appear before a Board, Court, Labour Court, Tribunal or Arbitrator, the Board, Court, Labour Court, Tribunal or Arbitrator may submit a suitable report to the State Government and the Labour Court, Tribunal or an Arbitrator may submit an award to the State Government on the footing that the industrial dispute under reference is no longer in existence.

23. *Power of entry and inspection.*—A Board or Court or any member thereof or a Conciliation Officer, a Labour Court or Tribunal under the Act, at any time during hours of work, after he has given reasonable notice, enter any building, factory, workshop or other place or premises whatsoever, and inspect the same or any work machinery, appliance or article therein or interrogate any person therein in respect of anything situated therein or any matter relevent to the subject-matter of the investigation, enquiry or adjudication.

24. *Power of Boards, Courts, Labour Courts and Tribunals.*—In addition to the powers conferred by the Act, Boards, Courts, Labour Courts and Tribunals shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely:—

(a) discovery and inspection ;

(b) granting adjournments;

(c) reception of evidence taken on affidavit ;

and the Board, Court, Labour Court or Tribunal may summon and examine any person whose evidence appears to it to be material and shall be deemed to be a Civil Court within the meaning of sections 480 and 482 of the Code of the Criminal Procedure, 1898.

25. *Assessors.*—Where assessors are appointed to advise a Tribunal under sub-section (4) of section 7A or by the Court, Labour Court or Tribunal under sub-section (5) of section 11, the Court, Labour Court or Tribunal, as the case may be, shall, in relation to the proceedings before it, obtain the advice of such assessors, but such advice shall not be binding on it.

26. *Decision by majority.*—All questions arising for decision at any meeting of a Board or Court, save when the Court consists of one person, shall be decided by a majority of the votes of the members thereof (including the Chairman) present at the meeting. In the event of an equality of votes the Chairman shall also have a casting vote.

27. *Correction of errors.*—The Labour Court, Tribunal or Arbitrator may correct any clerical mistake or error arising from an accidental slip or omission in any award it/he issues.

28. *Right of representatives.*—The representatives of the parties appearing before a Board, Court, Labour Court, Tribunal or an Arbitrator shall have the right of examination, cross-examination, re-examination and of addressing the Board, Court, Labour Court, Tribunal or Arbitrator when an evidence has been called.

29. *Parties bound by acts of representatives.*—A party appearing by an authorised representative shall be bound by the acts of such representative.

30. *Proceedings before a Board, Court, Labour Court or Tribunal.*—The proceedings before a Board, Court, Labour Court or Tribunal shall be held in public:

Provided that the Board, Court, Labour Court or Tribunal may at any stage direct that any witness shall be examined or its proceedings shall be held in camera.

Remuneration of Arbitrators, Chairman and Members of Court, Presiding Officers of Labour Courts and Tribunals, Assessors, witness and staff.

31. *Travelling allowance.*—The Chairman or a member of a Board or Court or the Presiding Officer or an Assessor of a Labour Court or Tribunal or an Arbitrator, if a non-official, shall be entitled to draw travelling allowance and halting allowance for any journey performed by him in connection with the performance of his duties, at the rates admissible and subject to the conditions applicable to a Government servant of the first grade under the Fundamental and Subsidiary Rules.

32. *Fees.*—The Chairman and a member of a Board or Court, the Presiding Officer and an Assessor of a Labour Court or Tribunal, wherever he is not a salaried officer of Government may be granted such fees as may be sanctioned by the State Government in each case.

33. *Expenses of witnesses.*—Every person who is summoned and duly attends or otherwise appears as a witness before a Board, Court, Labour Court, Tribunal or an Arbitrator shall be entitled to an allowance for expenses in the City of Calcutta according to the scale prescribed in respect of witnesses in the High Court, and elsewhere, according to the scale prescribed in respect of witnesses in the District Court.

Notice of Change.

34. *Notice of Change.*—Any employer intending to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule shall give notice of such intention in Form E.

35. *Manner of service of notice of change.*—(1) Where there are numerous workmen affected by a notice of change and the majority of such workmen are members of any trade union or association, the notice in Form E shall be served on the Secretary or Principal officer of the trade union or association and copies of such notices shall be affixed on Notice Boards at or near the entrance or entrances of the establishment concerned. and notice shall remain so affixed for a period of twenty-one days. The notice shall be in English, Bengali and in the language understood by the majority of the workmen in the establishment concerned. The service of notice on the Secretary, or where there is no Secretary, on the Principal officer of the trade union or association shall be deemed to be service on all such workmen:

Provided that if the Secretary or the Principal officer refuses to receive the notice or that for any other reason the notice cannot be served on the Secretary or the Principal officer in the ordinary way the exhibition of the notice on the Notice Boards in the manner specified in sub-rule (2) shall be deemed to be service on all such workmen.

(2) Where there are numerous workmen affected by a notice of change and the majority of such workmen are not members of any trade union or association, the employer shall, where personal service is not practicable, cause the service of any such notice to be made by affixing the same to a Notice Board at or near the entrance or entrances of the establishment concerned and the notice shall remain so affixed for a period of twenty-one days. The notice shall be in English, Bengali and in the language understood by the majority of the workmen in the establishment concerned.

(3) Two copies of such notice shall simultaneously be forwarded by the employer to the Labour Commissioner.

Works Committee

36. *Constitution.*—Any employer to whom an order under sub-section (1) of section 3 relates shall forthwith proceed to constitute a Works Committee in the manner prescribed hereunder.

37. *Number of members.*—The number of members constituting the committee shall be fixed so as to afford representation to the various categories, groups and classes of workmen engaged in, and to the sections, shops or departments of the establishment:

Provided that the total number of members shall not exceed twenty:

Provided further that the number of representatives of the workmen shall not be less than the number of representatives of the employer.

38. *Representatives of employer.*—Subject to the provisions of these rules, the representatives of the employer shall be nominated by the employer and shall, as far as possible, be officials in direct touch with or associated with the working of the establishment.

39. *Consultation with trade unions.*—(1) Where any workmen of an establishment are members of a registered trade union, the employer shall ask the union to inform him in writing—

(a) how many of the workmen are members of the union; and

(b) how their membership is distributed among the sections, shops or departments of the establishment.

(2) Where an employer has reason to believe that the information furnished to him under sub-rule (1) by any trade union is false, he may after informing the union refer the matter to the Labour Commissioner, West Bengal, for his decision; and the Labour Commissioner after hearing the parties shall decide the matter and his decision shall be final.

40. *Groups of workmen's representatives.*—On receipt of the information called for under rule 39, the employer shall provide for the election of workmen's representatives on the committee in two groups—(1) those to be elected by the workmen of the establishment who are members of the registered trade union or unions, and (2) those to be elected by the workmen of the establishment who are not members of the registered trade union or unions, bearing the same proportion to each other as the union members in the establishment bear to the non-members:

Provided that where more than half the workmen are members of the union or any one of the unions, no such division shall be made:

Provided further that where a registered trade union neglects or fails to furnish the information called for under sub-rule (1) of rule 39 within one month of the date of the notice requiring it to furnish such information such union shall for the purpose of this rule be treated as if it did not exist:

Provided further that where any reference has been made by the employer under sub-rule (2) of rule 39, the election shall be held on receipt of the decision of the Labour Commissioner.

41. *Electoral Constituencies.*—Where under rule 40, the workmen's representatives are to be elected in two groups, the workmen entitled to vote shall be divided into two electoral constituencies, the one consisting of those who are members of a registered trade union and the other of those who are not:

Provided that the employer may, if he thinks fit, sub-divide the two electoral constituencies and direct that the workmen shall vote in either by groups, sections, shops or departments.

42. *Qualification of condidates for election.*—Any workman of not less than 19 years of age and with a service of not less than one year in the establishment may if nominated as provided in these rules be a candidate for election as a representative of the workmen on the Committee:

Provided that the service qualification shall not apply to the first election in an establishment which has been in existence for less than a year.

43. *Qualification for voters.*—All workmen, other than casual employees, who are not less than 18 years of age and who have put in not less than six months continuous service in the establishment shall be entitled to vote in the election of the representative of workmen.

44. *Procedure for election.*—(1) The employer shall fix a date as the closing date for receiving nominations from candidates for election as workmen's representatives on the committee.

(2) For holding the election, the employer shall also fix a date which shall not be earlier than three days and later than ten days after the closing date for receiving nominations.

(3) The dates so fixed shall be notified at least seven days in advance to the workmen and the registered trade union or unions concerned. Such notice shall be affixed on the notice board or given adequate publicity amongst the workmen. The notice shall specify the number of seats to be elected by the groups, sections, shops or departments and the number to be elected by the members of the registered trade union or unions and by the non-members.

(4) A copy of such notice shall be sent to the registered trade union or unions concerned.

45. *Nomination of candidates for election.*—(1) Every nomination shall be made on a nomination paper in Form F copies of which shall be supplied by the employer to the workmen requiring them.

(2) Each nomination paper shall be signed by the candidate to whom it relates and attested by at least two other voters belonging to the group, section, shop or department the candidate seeking election will represent, and shall be delivered to the employer.

46. *Scrutiny of nomination papers.*—(1) On the day following the last day fixed for filing nomination papers, the nomination papers shall be scrutinised by the employer in the presence of the candidates and the attesting persons and those which are not valid shall be rejected.

(2) For the purpose of sub-rule (1), a nomination paper shall be held to be not valid if (a) the candidate nominated is ineligible for membership under rule 42 or (b) the requirements of rule 45 have not been complied with:

Provided that where a candidate or the person attesting is unable to be present at the time of the scrutiny, he may send a duly authorised nominee for the purpose.

47. *Voting in election.*—(1) If the number of candidates who have been validly nominated is equal to the number of seats, the candidates shall be forthwith declared duly elected.

(2) If in any constituency the number of candidates is more than the number of seats allotted to it, voting shall take place on the day fixed for election.

(3) The election shall be held in such manner as may be convenient for each electoral constituency.

(4) The voting shall be conducted by the employer, and if any of the candidates belong to a union such of them as the union may nominate shall be associated with the election.

(5) Every workman entitled to vote at an electoral constituency shall have as many votes as there are seats to be filled in the constituency:

Provided that each voter shall be entitled to cast only one vote in favour of any one candidate.

48. *Arrangements for election.*—The employer shall be responsible for all arrangements in connection with the election.

49. *Officers of the Committee.*—(1) The committee shall have among its office-bearers a Chairman, a Vice-Chairman, a Secretary and a Joint Secretary. The Secretary and the Joint Secretary shall be elected every year.

(2) The Chairman shall be nominated by the employers from amongst the employers' representatives on the committee and the Vice-Chairman shall be nominated by the employees from amongst the employees' representatives on the committee. In the absence of the Chairman, the Vice-Chairman shall preside over the committee meetings:

Provided further that the posts of the Chairman and the Vice-Chairman shall not be held for two consecutive terms.

(3) The committee shall elect the Secretary and the Joint Secretary provided that where the Secretary is elected from amongst the representatives of the employers the Joint Secretary shall be elected from amongst the representatives of the workmen and *vice versa*:

Provided further that the post of the Secretary or the Joint Secretary, as the case may be, shall not be held by a representative of the employer or the workmen for two consecutive years.

50. *Term of Office.*—(1) The term of Office of a workmen's representative on the committee other than a member chosen to fill a casual vacancy shall be two years.

(2) A member chosen to fill a casual vacancy shall hold office for the unexpired term of his predecessor.

(3) A member who, without obtaining leave from the committee, fails to attend three consecutive meetings of the committee shall forfeit his membership.

51. *Vacancies.*—In the event of the workmen's representative ceasing to be a member under sub-rule (3) of rule 50 or ceasing to be employed in the establishment or in the event of his resignation, death or otherwise his successor shall be elected in accordance with the provisions of these rules from the same group, section, shop or department to which the member vacating the seat belonged.

52. *Power to co-opt.*—The committee shall have the right to co-opt in a consultative capacity persons employed in the establishment having particular or special knowledge of a matter under discussion. Such co-opted member shall not be entitled to vote and shall be present at meetings only for the period during which the particular question is before the committee.

53. *Meetings.*—(1) The committee may meet as often as necessary but not less often than once in three months (a quarter).

(2) The employer shall, after giving not less than three days' notice, convene the first meeting of the Works Committee for selection of the office-bearers under rule 49.

54. *Facilities for meeting, etc.*—The employer shall provide accommodation for holding meetings of the committee. He shall also provide all necessary facilities to the committee and to the members thereof for carrying out the work of the committee. The committee shall ordinarily meet during the working hours of the establishment concerned on any working day and the representative of the workmen shall be deemed to be on duty while attending the meeting.

55. *Dissolution of Works Committee.*—The State Government or where the power under section 3 is delegated under section 39 to the Labour Commissioner, the Labour Commissioner may, after making such inquiry as it or he may deem fit dissolve any Works Committee at any time by an order in writing, if it or he is satisfied that the committee has not been constituted in accordance with these rules or for any other adequate reason:

Provided that where a Works Committee is dissolved under this rule, the employer may take steps to reconstitute the committee in accordance with these rules.

Miscellaneous fees for copies of awards and other documents

56. *Copies and application for copies.*—(1) Any party to an industrial dispute desiring to obtain copies of proceedings of a Board, Court, Labour Court or Tribunal shall make an application for copies to the Chairman. Copies of any number of documents on the same record may be obtained on a single application. A stranger may obtain copies of awards and, on showing sufficient reason to the satisfaction of the Tribunal or Labour Court concerned, also copies of other proceedings on making an application for copies to the Chairman. Proceedings shall include exhibits which have been put in and formally accepted as evidence by the Board, Court, Labour Court or Tribunal. But a stranger shall not be given copies of private documents except with the consent of the person by whom they were produced, or his successor-in-interest. Copies of awards shall not, however, be supplied till they are published in the "Calcutta Gazette".

(2) Every application for copy shall be presented in Form G to the Chairman between the hours of 10 a.m. and 12 noon and shall be accompanied by a fee of annas two only which shall be paid in court-fee stamps affixed on the application.

57. *Copies to be issued on stamped paper.*—(1) All copies shall be prepared on the prescribed stamped paper (i.e., the folio).

(2) If it be not possible at once to inform the applicant what court-fee stamps and folios will be required in respect of the copies applied for, the requisite information shall be communicated to the applicant as soon as may be thereafter and in any case not later than three days from the date on which the application is received, by noting on the counterfoil portion of the application form which will be taken delivery of by the applicant from the office of the Chairman within three days from the date of filing of the application.

58. *Charge to be made for copies.*—(1) The charge for copies (manuscript or typewritten, certified or uncertified) shall be according to the following rates and manner, namely:—

(a) an impressed stamped paper of four annas (i.e., folio) for copies of documents containing 150 words or less,

(b) an impressed stamp paper of four annas (i.e., folio) with an adhesive stamp of four annas affixed thereto for copies of documents containing 151 to 300 words, and

(c) for copies of documents containing more than 300 words, besides the requisites specified in clause (b), an additional impressed stamp paper or papers of four annas with an adhesive stamp of four annas affixed thereto, if necessary, according to the number of words to be typed or copied (four figures counting as one word) at the rates shown in clauses (a) and (b). The adhesive court-fee stamps required for the copies shall be affixed to the folios across the perforated line with the figure heads above the perforated line in such a way that the portion below may clearly show the value of the court-fee stamps.

(2) If any copy is to be made of a map or a plan the Chairman may get the work done by technical persons capable of doing such work and the charges thereof to be assessed by the Chairman in his discretion shall be paid to such technical persons by the applicant in cash.

(3) As soon as a copy is ready, the upper half of each stamp shall be torn off each sheet along the perforated line by the comparing clerk who shall put the serial number and the date of the copy on the back of each of the upper halves so torn off and get them destroyed on the following day in presence of the Chairman and get a certificate of destruction recorded in the "Remarks" column of the register of application for copies.

59. *Certification fee.*—In the case of certified copies the court-fee chargeable under the Court-fees Act, 1870 (VII of 1870), shall be levied by affixing the necessary stamp to the first folio of the copy or to the map or the plan as the case may be, and such court-fee stamp shall be punched with a square punch and signed across by the certifying officer.

60. *Procedure for supplying court-fees, folios, etc., by the parties.*—

(1) On receipt of the information referred to in sub-rule (2) of rule 57 the applicant shall present the requisite folios, stamps, etc., to the Chairman along with the counterfoil of his original application on which receipt of the stamps, folios, etc. filed shall be acknowledged and the date on which the copy will be ready for delivery noted. The counterfoil shall then be returned to the applitant.

(2) If the requisite folios, stamps, etc., are not filed within seven days from the date on which the information referred to in sub-rule (2) of rule 57 is communicated to the applicant, the application shall be liable to be struck off. An application once struck off shall not be revived. If necessary, a fresh application may be filed.

61. *Delivery of copy.*—The copy shall be ready for delivery to the applicant within seven days from the date of his filing the requisites in full. If the copy be not taken delivery of within two months from its being ready for delivery, the copy and the unused stamps shall be liable for destruction. When the copy together with the unused folios, etc., is delivered to the applicant the signature therefor and the date of delivery shall be taken on the back of the application. The counterfoil shall at the same time be taken back from the applicant and kept attached to the application.

62. *Register of application for copies.*—All applications for copies shall be numbered consecutively and entered in a register maintained for the purpose in Form H.

63 *Register of Court-fees.*—In order to maintain a proper account of all court-fees received, a court-fee register shall be maintained in Form I by the office of the Chairman for entering therein the court-fee application for copies. Court-fees shall be cancelled by punching in the manner laid down in section 30 of the Court-fees Act, 1870 (VII of 1870).

64. *Certificate on copies.*—(1) Each page of the copy shall be signed at the bottom by the person copying it. It shall also bear at the end signature of the clerk who examined it. Every alteration or interlineation shall also be initialled by him.

(2) All copies shall be carefully compared by a salaried comparing clerk and if certified copies are applied for, shall be certified to be true copies. Each page shall be sealed with the seal of the office of the Labour Court or Tribunal and the copy shall be signed in full at the end by the certifying officer with the designation and date.

The Head Clerk of the office of the Tribunal shall be the public officer authorised under section 76 of the Indian Evidence Act, 1872 (I of 1872), to certify all copies issued from the office of the Tribunal or Labour Court.

NOTE 1.—The Head Clerk shall append to his signature the words and figures "Authorised under section 76 of Act I of 1872". A rubber stamp may be used for the purpose except for the signature itself.

NOTE 2.—Certified copies shall not be signed "for" the authorised officer by some other officer. The authorised officer shall certify the copy as true in his own name.

(3) Uncertified copy may be converted into certified copy after comparison with the original upon application of any one producing the uncertified copy and upon his filing the necessary court-fee stamp required under the Court-fees Act, 1870, provided that he is not debarred under the rules from getting a certified copy. Copies with notes written on them, or portions marked or underlined shall not, however, be accepted for conversion into certified copies. If the original has been amended or added to or if any order has been endorsed on it after issue of the uncertified copy, the uncertified copy shall not be converted into certified copy.

(4) At the bottom of each certified copy the following particulars shall also be endorsed :—

(i) Date of application for copies:

(ii) Date when requisites were notified:

(iii) Date of supply of requisites:

(iv) Date when copy was ready for delivery:

(v) Date of delivery of the copy:

(vi) Cost of copy.

65. *Urgent copies.*—Application for urgent copies may be made at any time during the office hours. Such copies shall ordinarily be ready for delivery on the day following the date of filing of the urgent fees and other requisites. The additional fees for urgent copies shall be Re. 1 up to copies with 600 words or less. For copies exceeding 600 words an additional fee of 4 annas for every 150 words or fraction thereof is to be filed.

Such fees are to be filed by means of court-fee stamp to be fixed to the application for copy or to a separate blank sheet of paper.

66. *Copies required by public officers.*—No fees are to be demanded for copying or typing papers required by public officers for public purposes. In such cases the copies are to be prepared on plain paper.

67. *No copy of confidential documents shall be given.*—No copy shall be granted of any notes recorded by a Labour Court or Tribunal for its own use or of any exhibit or document which the Labour Court or Tribunal may consider to be confidential.

68. *Memorandum of settlement.*—(1) A settlement arrived at in the course of conciliation proceedings or otherwise shall be in Form J.

(2) The settlement shall be signed by (a) in the case of an employer by the employer himself or by his authorised agent, or when the employer is an incorporated company or other body corporate, by the agent, manager or other Principal Officer of the Corporation; (b) in the case of workmen, either by the President or Secretary of a trade union of workmen or by five representatives of the workmen duly authorised in writing in this behalf by a representative meeting of the workmen held for this purpose.

(3) Where a settlement is arrived at between an employer and his workmen otherwise than in course of conciliation proceeding before a Board or Conciliation Officer, the parties to the settlement shall jointly send a copy thereof to the State Government in the Department of Labour and the Labour Commissioner and the Conciliation Officer concerned.

69. *Complaints regarding change of conditions of service, etc.*—(1) Every complaint under section 33-A of the Act shall be presented in triplicate in Form K and shall be accompanied by as many copies of the complaint as there are opposite parties to the complaint.

(2) Every complaint under sub-rule (1) shall be verified at the foot by the workmen making it or by some other person proved to the satisfaction of the Labour Court or Tribunal to be acquainted with the facts of the case.

(3) The person verifying shall specify by referene to the numbered paragraphs of the complaint, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(4) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

70. *Application under section 33.*—(1) An employer intending to obtain the express permission in writing of the Conciliation Officer, Board, Labour Court or Tribunal, as the case may be, under sub-section (1) or sub-section (3) of section 33 shall present an application in Form L in triplicate to such Conciliation Officer, Board, Labour Court or Tribunal and shall file along with the application as many copies thereof as there are opposite parties.

(2) An employer seeking the approval of the Conciliation Officer, Board, Labour Court or Tribunal, as the case may be, of any action taken by him under clause (*a*) or clause (*b*) of sub-section (2) of section 33 shall present an application in Form M in triplicate to such Conciliation Officer, Board, Labour Court or Tribunal and shall file along with the application as many copies thereof as there are opposite parties.

(3) Every application under sub-rule (1) or sub-rule (2) shall be verified at the foot by the employer making it or by some other person proved to the satisfaction of the Conciliation Officer, Board, Labour Court or Tribunal to be acquainted with the facts of the case.

(4) The person verifying shall specify by reference to the numbered paragraphs of the application what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(5) The verification shall be signed by the person making it and shall state the date on which and the place at which it was verified.

71. *Protected workmen.*—(1) Every registered trade union connected with an industrial establishment to which the Act applies, shall communicate to the employer, before the 30th September every year, the names and addresses of such of the officers of the union who are employed in that establishment and who, in the opinion of the union, should be recognised as "protected workmen". Any change in the incumbency of any such officer shall be communicated to the employer by the union within 15 days of such change.

(2) The employer shall, subject to section 33, sub-section (4), recognise such workmen to be "protected workmen" for the purposes of sub-section (3) of the said section and communicate to the union in writing within fifteen days of the receipt of the names and addresses under sub-rule (1), the list of workmen recognised as "protected workmen".

(3) Copies of communications under sub-rules (1) and (2) shall also be sent to the Labour Commissioner and the Conciliation Officer concerned.

(4) Where the total number of names received by the employer under sub-rule (1) exceeds the maximum number of the protected workmen, admissible for the establishment, under section 33, sub-section (4), the employer shall recognise as protected workmen only such maximum number of workmen :

Provided that where there is more than one registered trade union in the establishment, the maximum number shall be so distributed by the employer among the unions that the numbers of recognised protected workmen in individual unions bear roughly the same proportion to one another as the membership figures of the unions. The employer shall in that case intimate in writing to the President or the Secretary of the union the number of protected workmen allotted to it. A copy of this letter shall also be sent to the Labour Commissioner:

Provided further that where the number of protected workmen allotted to a union under this sub-rule, falls short of the number of officers of the union seeking protection, the union shall be entitled to select the officers to be recognised as protected workmen. Such selection shall be made by the union and communicated to the employer within 5 days of the receipt of the employer's letter.

(5) When a dispute arises between an employer and any registered trade union whether a particular workman should be recognised as a "protected workman" or not, the dispute shall be referred to the Labour Commissioner whose decision thereon shall be final.

72. *Information to be kept confidential.*—All books, papers and other documents or things produced before a Board, Court, Labour Court or

Tribunal or Arbitrator whether voluntarily or in pursuance of a summons may be inspected by the Board, Court, Labour Court, Tribunal or Arbitrator and also by such parties as the Board, Court, Labour Court, Tribunal or Arbitrator allows; but the information obtained therefrom shall not, except as provided in the Act, be made public; such parts of the books, papers, documents or things as in the opinion of the Board, Court, Labour Court, Tribunal or Arbitrator do not relate to the matters at issue may be sealed up.

73. *Notice of strike or lock-out.*—All notices of strikes or lock-outs under the Act shall be given in the following manner: (1) In the case of a notice of strike, it shall be signed either by the President or the Secretary of the registered trade union of which the workmen are members or by seven workmen employed in the industrial establishment concerned, if the workmen are not members of a registered trade union. If the notice is given by a registered trade union, it shall be accompanied by a signed statement that any ballot or other steps necessary to be taken under the rules of the union have been taken before giving the notice; if the notice is given by the workmen it shall be accompanied by a signed statement that the majority of the workmen are in favour of giving notice of the strike and have authorised them to sign the notice; the notice in each case shall also be accompanied by a list of demands of the workmen and if the employer refuses to receive and acknowledge with date the receipt of the notice, it shall be forwarded by registered post with acknowledgment due to the employer. Copies of the notice similarly signed and prepared shall be given to or posted to the address of the Labour Commissioner, West Bengal, Secretary to the Government of West Bengal in the Department of Labour and the District Magistrate of the district in which the industry of the establishment is carried on. The date on which the notice has been received by the employer or the date of expiry of seven days from the date of posting of the notice, whichever be earlier, shall be deemed to be the date on which the notice has been given. The intimation referred to in sub-section (3) of section 22 or the report referred to in sub-section (6) of that section regarding notices of strike shall be sent by the employer under sub-section (3) or sub-section (6) of that section, as the case may be, to the Labour Commissioner. On receipt of the notice or of an intimation under sub-section (3) of section 22 or of a report under sub-section (6) of section 22 the Labour Commissioner after making such enquiries as may be deemed necessary by him, shall forward it to Secretary to the Government of West Bengal in the Department of Labour together with a report whether he considers that the notice has been frivolously or vexatiously given or it would be inexpedient to make a reference under clauses (*c*) or (*d*) of sub-section (1) of section 10 to a Labour Court or a Tribunal and, if so, for what reasons and whether he recommends reference of the dispute to a Board or to a Court. (2) In the case of a notice of a lock-out, it shall be signed by a Director, Manager, Secretary or an Agent representing the employer or in the case of an industry carried on by or under the authority of the State Government by the Head of the Department concerned or an authority named by him and in the case of an industry carried on by or on behalf of a local authority by the chief executive officer of that authority, it shall be accompanied by a list of changes in the conditions of labour of the workmen sought to be imposed or a statement of reasons for the lock-out and copies of the notice together with the list or the statement in English, Bengali, and in the language understood by the majority of the workmen in the establishment concerned shall be prominently displayed on the notice board of the establishment concerned and copies in English of the notice and the list or the statement shall be sent by registered post with acknowledgment due to the registered trade unions, if any, of the workmen and to the Labour Commissioner, West Bengal, the Secretary to the Government of West Bengal in the Department of Labour and the District Magistrate of the district in which the industry of the establishment is carried on. The intimation referred to in sub-section (3) of section 22 or the report referred to in sub-section (6) of that section regarding notices of lock-out shall be sent by the employer under sub-section (3) or sub-section (6) of that section, as the case may be, to the Labour Commissioner. The date of the expiry of three days from the date of the acknowledgment of the notice by the Labour Commissioner shall be deemed to be the date on which notice has been given. On receipt of the notice or of an intimation under sub-section (3) of section 22 or report under sub-section (6) of section 22 the Labour Commissioner after making enquiries as he may deem necessary, shall forward it to the Secretary to the Government of West Bengal in the Department of Labour together with a report whether he considers that the notice has been given frivolously or vexatiously or it would be inexpedient to make a reference under clauses (*c*) or (*d*) of sub-section (1) of section 10 of the Act to a Labour Court or a Tribunal and, if so, for what reasons and whether he recommends reference of the dispute to a Board or to a Court.

74. *Application for recovery of dues.*—An application under section 33C shall be delivered personally or forwarded by registered post in triplicate to the Secretary to the Government of West Bengal in the Department of Labour or to such officers to whom powers have been delegated under section 39 of the Industrial Disputes Act.

75. *Register of Settlements.*—The Conciliation Officer shall file all settlements effected under this Act in respect of disputes in the area within his jurisdiction in a register, maintained for the purpose in Form N or N1 as the case may be.

76. *Notice of lay-off.*—Whenever a workman whose name is borne on the muster-rolls of an industrial establishment is laid-off by the employer the employer shall as soon as possible report in Form O the information of such lay-off to the Labour Commissioner and the Conciliation Officer concerned.

77. *Notice of retrenchment.*—(1) Whenever an employer finds it necessary to retrench any workman, he shall, at least one month before the date of actual retrenchment, give notice thereof in Form P to the Labour Commissioner and to the Conciliation Officer concerned:

Provided that where an employer retrenches any workman with immediate effect by paying him wages in lieu of notice, such employer shall immediately after such retrenchment, give notice thereof to the Labour Commissioner and to the Conciliation Officer concerned in Form P.

(2) Every employer shall maintain a register called the Register of Retrenched Workmen. The Register shall contain the names, nature of work, addresses obtained from workmen and periods of service of the retrenched workmen.

78. *Re-employment of retrenched workers.*—On the occurrence of vacancies after retrenchment, when an employer proposes to take in his employ any persons, he shall arrange for the display on a Notice Board in the premises of the industrial establishment the details of the vacancies to be filled and a list prepared as far as possible in order of seniority of the retrenched workers who are eligible to be considered for those vacancies. He shall also give intimation of the vacancies in writing to these retrenched workers individually at their addresses obtained by the employer at the time of retrenchment and give them sufficient time and opportunity to offer themselves for re-employment:

Provided that in case of vacancies of a casual nature where it is not possible to wait for the retrenched workers the employer may appoint any person other than the retrenched workers as may be readily available;

Provided further that if a retrenched workman does not offer himself for re-employment in spite of having received an intimation from an employer, the employer need not intimate to him the vacancies that may be filled on any subsequent occasion.

79. *Penalties.*—Any breach of these rules shall be punishable with fine not exceeding fifty rupees.

80. *Repeal.*—The Bengal Industrial Disputes Rules, 1947, are hereby repealed:

Provided that any order made or action taken under the rules so repealed shall be deemed to have been made or taken under the corresponding provisions of these rules.

SCHEDULE

FORM A

(*See* rule 3)

Form of application for the reference of an industrial dispute to a Board of Conciliation/Court of Enquiry/Labour Court/Tribunal under section 10(2) of the Industrial Disputes Act, 1947.

Whereas an industrial dispute is apprehended/exists between........... ....and......................and it is expedient that the matters specified in the enclosed statement which are connected with or are relevant to the dispute should be referred for enquiry/investigation/adjudication by Court of Enquiry/Board of Conciliation/Labour Court/Tribunal, an application is hereby made under sub-section (2) of section 10 of the Industrial Disputes Act, 1947, that the said matters should be referred to a Court of Enquiry/Board of Conciliation/Labour Court/Tribunal.

This application is made by the undersigned who have/has been duly authorised to do so by virtue of a resolution (copy enclosed) adopted by a majority of the members present at a meeting of the......................held on the....................19......

A statement giving the particulars required under rule 3 of the West Bengal Industrial Disputes Rules, 1958, is attached.

Dated the... Signature of the applicant(s)

To

The Labour Commissioner, West Bengal.

Statement required under rule 3 of the West Bengal Industrial Disputes Rules, 1958, to accompany the form of application prescribed under sub-section (2) of section 10 of the Industrial Disputes Act, 1947.

(a) Parties to the dispute including the name and address of the establishment or undertaking involved.

(b) Specific matters in dispute.

(c) Total number of workmen employed in the undertaking affected.

(d) Estimated number of workmen affected or likely to be affected by the dispute.

(e) Efforts made by the parties themselves to adjust the dispute.

FORM B

(*See* rule 6)

Whereas an industrial dispute has arisen/is apprehended between...... ....and..............and it is expedient to refer the said dispute under section 10 of the Industrial Disputes Act, 1947, to a Board of Conciliation for the purpose of investigating the same and for promoting a settlement thereof, you are hereby required to intimate to the undersigned not later than the.........................the name(s) and address(es) of one (two) person(s) whom you wish to recommend for appointment as your representative(s) on the said Board.

If you fail to make the recommendation by the date specified above, the State Government shall select and appoint such person(s) as it thinks fit to represent you.

Jt. Secy. to the Govt. of West Bengal,
Department of Labour.

FORM C

(*See* rule 7)

Agreement

[Under section 10A of the Industrial Disputes Act, 1947.]

BETWEEN

Names of parties :
Representing employers :
Representing workmen :

It is hereby agreed between the parties to refer the following industrial dispute to the arbitration of..[here specify the name(s) and address(es) of the arbitrator(s)].

(i) Specific matters in dispute :

(ii) Details of the parties to the dispute including the name and address of the establishment or undertaking involved :

(iii) Name of the union, if any, representing the workmen in question :

(iv) Total number of workmen employed in the undertaking affected :

(v) Estimated number of workmen affected or likely to be affected by the dispute.

*We further agree that the majority decision of the arbitrators shall be binding on us.

Witnesses

(1)

(2)

Signature of the parties—
Representing employer :
Representing workmen :

Date...

I/We agree to act as Arbitrator(s) in respect of the matters specified in this agreement.

....
Signature of Arbitrator(s).

Date...

Copy to—

(1) Labour Commissioner, West Bengal

(2) Joint Secretary to the Government of West Bengal. Labour Department.

(3) Conciliation Officer.

*Where applicable.

FORM D

[*See* rule 12(2)]

Whereas an industrial dispute between......................................
.... and ....
has been taken up by me for investigation and settlement, you are hereby directed to produce on..day of................................at..................a. m./p. m. all the books, papers and other documents and things in your prossession or under your control in any way relating to the matter under investigation by me.

Dated...

Conciliation Officer.

FORM D1

(*See* rule 17)

Whereas an industrial dispute between..
and..........................has been referred to this Board of Conciliation for investigation and settlement/Court of Enquiry for investigation/Labour Court/Tribunal for adjudication under section 10 of the Industrial Disputes Act, 1947, you are hereby summoned to appear before the Board/Court Labour Court/Tribunal in person on the..
day of......................................at.........o'clock in the...................
noon to answer all material questions relating to the said dispute and you are directed to produce on the date all the books, papers and other documents and things in your possession or under your control in any way relating to the matter under investigation by this Board/Court/Cabour Court/Tribunal.

Dated...

Chairman/Secretary, Board of Conciliation/Court of Enquiry.
Or,
Presiding Officer/Secretary, Labour Court/Tribunal.

FORM E

(*See* rule 34)

Notice of change to be given by an employer.

Name of employer... Address...
Dated the... day of... 19...

To

The Secretary/Principal Officer of the Union Association.
The Workman/Workmen affected.

Dear Sir/Madam.

In accordance with section 9A of the Industrial Disputes Act, 1947, I/we beg to inform you that it is my/our intention to effect the change/changes specified in the annexure to this letter, with effect from...

Yours faithfully,

Signature...
Name...
Designation...

Annexure

(Here specify the change/changes intended to be effected. Also specify the existing conditions.)

FORM F

(*See* rule 45)

Form of Nomination Paper

Name of industrial establishment Group/Section/Shop/Department.

I nominate (here enter the name of the workmen's representative eligible for election) as a candidate for election to the Works Committee. He is eligible as a voter in the constituency for which he is nominated.

Date...

Signature of proposer.

I agree to the proposed nomination

Signature of Candidate.

Date...

Attested by: (1)

(2)

(To be signed by any two voters belonging to the electoral constituency.)

FORM G

(*See* rule 56)

Serial No.................

Form of Application for Copies

(To be preserved for one year)

To

The Chairman/Labour Court/Industrial Tribunal, Government of West Bengal.

Sir,

I require a certified/uncertified copy of the documents mentioned below, which may be supplied.

Date........................

Signature of the applicant.

Description of document of which copy is required

Description No. and year of the case of which it forms part, names of the parties, name of the Labour Court or Tribunal. Number and date of Government Order or reference, publishing an award, etc.

Report of the clerk-in-charge of the record

Folios and court-fees required.

Signature of clerk-in-charge.

Date................................

Received copy and unused folios and stamps.

Signature of the applicant.

Date..................................

Counterfoil of Application for Copies

Received application for copies being serial No.............................

Dated........................

Folios and court-fees required.

Signature of clerk-in-charge.

Date.................................

FORM H

(*See* rule 62)

Register of Application for Copies

(To be preserved for three years)

Serial No.	Date of application.	Name of applicant.	Whether certified or uncertified.	Case No.	Description of document to be copied.	Date on which number of folios and stamps required were notified.	Date on which requisites were filed.	Number of stamp sheets of 4 annas filed.	Number of adhesive stamps of 4 annas filed.	Extra fee for urgent copy filed.	Amount of court-fee for authentication filed.	Number of 4 annas sheets used.	Number of 4 annas adhesive stamps used.	Number of 4 annas stamps returned unused.	Number of 4 annas adhesive stamps returned unused.	Court-fee for certified copy used.	Extra fee for urgent copy used.	Date when copy is ready for delivery.	Date of delivery of copy and unused folios, etc.	If application rejected, why and when.	Remarks.
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22

FORM I

(*See* rule 63)

Register of Court-fees received

(To be preserved for three years)

Date.	Serial No.	Case No.	Nature of document for which filed.	Fees for affidavit	Fees for application for copies and all other fees including urgent fees on copies.	Total.	Remarks.

FORM J

(*See* rule 68)

Form for Memorandum of Settlement

Names of parties:

Representing employer (s):

Representing workmen:

Short recital of the case.
Terms of settlement.

Signature of the parties.......

Witnesses:

(1) ...

(2) ...

*Signature of Conciliation Officer/Board of Conciliation.

*In cases of settlement effected by Conciliation Officer/Board of Conciliation.

Copy to (1) Labour Commissioner, West Bengal.

(2) Joint Secretary to the Government of West Bengal, Department of Labour.

[IN THE MADRAS HIGH COURT.]

S. M. SRIRAMULU NAIDU
v.
EMPLOYEES' STATE INSURANCE CORPORATION

Basheer Ahmed Sayeed, J.

April 25, 1958.

EMPLOYEES' STATE INSURANCE ACT, 1948, SECTION 2(12)—'FACTORY', MEANING OF—FILM STUDIO HAVING SEPARATE DEPARTMENTS—EACH DEPARTMENT EMPLOYING LESS THAN 20 PERSONS—WHETHER COVERED BY ACT—'WORKER' AND 'PERSON WHO WORKS' WHETHER DIFFERENT.

The definitions of 'factory' in section 2(m) of the Factories Act, 1948, and in section 2(12) of the Employees' State Insurance Act, 1948 are not different from each other except for the use of the term 'worker' in the former and 'person who works' in the latter. A 'worker' is no other than 'a person who works', and whether he is called a worker or whether he is called 'a person who works' makes very little difference.

Where a studio for the production of cinematograph films consisted of several departments housed in separate buildings in the same precincts and less than 20 persons were employed in each department, Held, *that the entire studio could not be treated as one factory for the purposes of the Employees' State Insurance Act and as each department did not fall within the scope of the Act, the Act was not applicable to the studio.* MANAGER, GEMINI STUDIOS, MADRAS *v.* THE STATE [1952] *4 F. J. R. 329, followed.*

Appeal Against Order No. 269 of 1957.

V. C. Gopalaratnam and *L. V. Krishnaswami Aiyar* for the appellant.

Government Pleader for the respondent.

JUDGMENT

This civil miscellaneous appeal is against the order of the Court of the Employees' Insurance, Coimbatore, in proceedings No. 1 of 1956 on the file of that court. The respondent in this appeal took out an application on 21st June, 1956, under section 77, read with section 75 of the Employees' State Insurance Act, 1948, praying for a declaration that the appellant, Pakshiraja Studios, Coimbatore, is a factory and that the opposite party, namely, the appellant before me, was liable to pay the employees' special contribution and the employees' contribution in respect of all the employees employed, and to direct him to pay the same to the Corporation.

The application was heared by the learned Judge, S. Ganapatia Pillai, presiding over the Court of the Employees' Insurance, Coimbatore, and after considering both the oral and documentary evidence in the case, the learned Judge came to the conclusion that the respondent was entitled to a declaration in terms of clause (a) of paragraph 12 of the petition and issued an order directing the appellant to pay the contribution both in respect of employers' special contribution and employees' contribution as indicated in Ex. B. 12. He also directed costs to be paid by the appellant to the respondent. The opposite party, namely, the owner of the Pakshiraja Studios has preferred this appeal being aggrieved by the said order.

It is common ground between the parties that the Employees' State Insurance Act, 1948, applies to factories. "Factory" is defined under sub-clause 12 of section 2 of the Employees' State Insurance Act. That definition is in the following terms:

"'Factory' means any premises including the precincts thereof whereon twenty or more persons are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on but does not include a mine subject to the operation of the Indian Mines Act, 1923 (IV of 1923) or a railway running shed."

The definition contained in the Factories Act, 1948, Act XLIII of 1948, is in the following terms:

Clause (*m*), section 2: "Factory" means any premises including the precincts thereof—(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on—but does not include a mine subject to the operation of the Mines Act, 1952 (Act XXXV of 1952), or a railway running shed."

The question that is argued before me by the learned counsel on both sides is whether the appellant's studio is a factory within the meaning of sub-clause 12 of section 2 of the Employees' State Insurance Act, XXXIV of 1948, as modified up to the 1st May, 1955.

A study of the two definitions contained in the said Factories Act and also the Employees' State Insurance Act does not in my opinion appear to make any great difference. Between the two definitions, except for the fact that in the Employees' State Insurance Act, in order

to constitute certain premises, including its precincts, a factory, it should have 20 or more persons and there should also be power employed in the manufacturing process. Though the terms under section 2, clause (m), are somewhat different from those under sub-clause 12 of section 2 of the Employees' State Insurance Act, in substance there appears to be very little difference, except for the fact that for making any premises and its precincts a factory under the Employees' State Insurance Act there should be 20 people and there should be power with the aid of which manufacturing process should be carried on. The common feature in the definition of a factory that is perceivable between the two Acts is that in the case of a factory there should be power employed but in regard to the number of people employed there should be ten or more in the case of the Factories Act and 20 or more in the case of the Employees' State Insurance Act. There is also a slight difference in the matter of the definition of the persons employed in order to constitute any precincts into a factory. In the case of the Factories Act, the term used is "worker", and it is defined in clause (*l*) of section 2 of that Act whereas in the Employees' State Insurance Act the term used is "persons working" and it is defined in that Act. A careful reading of these two terms "persons working" and "worker" used in the two different enactments makes it clear that though the language used is somewhat different, the substance is the same, whether the term used is "worker" or "person working". Only the term "person working" has been more elaborately defined than the term "worker". But in effect the terms employed in the definition of a "factory" so far as the Employees' State Insurance Act is concerned and the terms employed in the definition of a "factory" under the Factories Act do not make much difference as to what exactly is the connotation and denotation of the terms so employed.

The learned Judge presiding over the Court of the Employees' State Insurance, Coimbatore, however, has sought to make out a difference between the terms employed in the definition of a factory in relation to the "workers" and the "person" who is working in the factory. I have carefully examined the definitions of a factory in both the enactments and I do not find there is much justification for any distinction between the terminology used in relation to a "worker" or the "person who works" in the two definitions. The terminology used has the same effect and the same implication in the two definitions contained in the two enactments. Much argument, therefore, is not capable of being built upon the so called difference in these two definitions of the term "factory" employed in the two enactments. A worker is no other than a person who works, and whether he is called a worker or whether he is called a person who works, to my mind, makes a very little difference.

The question then is whether the appellant's studio comes within the definition of the term "factory" as contained in the Employees' State Insurance Act. This question has largely to be decided upon the evidence in the case. Two witnessess have been examined for the respondent and one for the appellant. I have been taken through the depositions of all these three witnesses. First witness for the respondent, Mr. Ramachandra Rao, deposes that he found at the time he entered the factory for the purpose of inspection 6 men in camera department, 9 men in the electricity department, 6 men in the sound department which includes projection, 4 men in the carpentry department, 7 men in the laboratory, 4 men in the editing department, 6 men in the watch and ward, 9 men in the office and 3 men in the art and make-up departments. On the basis of this, it was the case of the respondent, that, as the number exceeded 20, it would constitute a factory and the studio would be a factory within the meaning of the Employees' State Insurance Act. As already observed, it is common ground that power is employed in the studio for production of films. In cross-examination, however, this witness admitted that he did not see manufacturing process being carried on at the time of his inspection. But this does not alter the case because there was a "lay-off" when this witness inspected the studio and it is enough if at the time the question arose for consideration and Pakshiraja Studio was working, though it might have been closed subsequently. Even this witness deposed that he did not find power being used in any department, but he learned from enquiry that it was so. As already observed, it is common ground that power was utilised in the running of the studio. But the significant part of the deposition of this witness is that he found all the departments, namely, Electricity, Camera, Sound, Moulding, Carpentry, Laboratory, Editing and Art and make-up and office, were all situated in separate buildings. He also stated that so far as the carpentry section of the studio of the appellant was concerned it was recognised as a factory under the Factories Act. That means that within the same premises and precincts one of the departments had been recognised as a factory under the Factories Act, whereas the other departments which were functioning for different purposes were not recognised as factories. Apparently in the carpentry department there were more than ten persons working and power was employed for the purpose of manufacturing articles. But in re-examination this witness stated that all the buildings comprising the studio formed a composite whole, because they were all situated in one compound wall and they were inter-connected. But when further examined he could not say which department building was inter-connected with which other department building.

The evidence of the second witness for the respondent is not of any great assistance on any point that arises for consideration in this appeal. On the other hand, the deposition of the manager of the defendant studio makes it clear that there are several departments situated in separate buildings and some of the departments also did not appear to be situated or located in the same building. This witness deposed that in each department at no time was there more than 20 persons working during the relevant period. Even in the non-power using departments this witness deposed that there were no more than 20 persons employed in order to attract sub-clause (12) of section 2 of the Employees' State Insurance Act. This witness further deposed that the laboratory and editing departments were situated in the same building whereas office building was separate from the watch and ward section. He also went on to say that the distance between the carpentry section, which was recognised as a factory, and the editing section was about 200 yards away and that 50 yards intervened between that section and the moulding section. In cross-examination he stated that the Art section and the office were not located in the same building. Some of the rooms he added were connected by covered pathways. This applied to blocks of rooms in which the camera section, the sound section and the electricity section were housed. He was, however, frank enough to admit that in all the departments the total strength of the persons working put together would be more than 20. In re-examination this witness deposed that the camera, sound and electricity departments were housed in buildings which were structurally separate.

On the basis of the evidence of these witnesses the learned counsel for the appellant argued that the decision in *Re K. V. V. Sarma*, [1952] 4 F.J.R. 329, would apply to the facts of the case. Emphasis was laid upon the penultimate paragraph of that judgment which is to this effect:

"The further question has to be considered whether if any one of these departments is a factory as being situated within the precincts of the Gemini Studio, then it is legally possible to separate those departments from the others which cannot be styled as factories. The building where carpenters, moulders, and tinkers are carrying on their work is admittedly a factory and the rules and regulations of the Factories Act apply to those departments. Evidence is lacking as to whether the other departments can be so separated. It is permissible to separate the carpentry, moulding and tinkering departments which are really unnecessary for the production of films from the others. There is no evidence to show that the other departments are so intertwined as to be a composite one without being able to be separated. On that aspect of the case there does not seem to have been any evidence let in. In our opinion, it is possible, even if some of those departments are factories, to separate those which are not factories from those which are factories. No attention seems to have been paid to this aspect of the case also."

The learned Judge of the Employees' Insurance Court, however, has sought to distinguish this case on the ground that the definition of factory under the Factories Act could not be accepted as equivalent to the definition under the Employees' State Insurance Act and as the decision in question was under the Factories Act it cannot, therefore, be taken as a ruling on that question of the definition of a "factory" under the Employees' State Insurance Act. This argument does not appear to me to be convincing. The point that really arises for consideration here is whether on the evidence, particularly, in regard to the constitution of the various departments in which less than 20 persons are working in the studio of the appellant, the *ratio decidendi* contained in the penultimate paragraph of the decision relied upon by the appellant could not apply to the present case. So far as I could see, the evidence in this case does not warrant that the studio of the appellant could be held to be premises which could come within the definition of a "factory" as contained in the sub-clause 12 of section 2 of the Employees' State Insurance Act. The evidence beyond any doubt establishes that the various departments are located in separate buildings and that in each of the departments the requisite number of 20 persons or workers were not found by the respondent, even though power might not have been employed in each of these departments. This is a case in which it is legally possible to separate the various departments, and unless it is established that even in each of these departments the number of the persons working was 20 and more, it cannot be contended that the requirements of the definition of factory were satisfied by these departments. It is admitted that only the carpentry department satisfied the definition under the Factories Act and possibly in the definition of "factory" under the Employees' State Insurance Act, even this department of carpentry may not be a factory, because it is not proved that the number of the persons employed therein was 20 and more.

The learned Judge presiding over the Court of Employees' State Insurance relied upon two other decisions and he was of the opinion that they were direct authorities on the question that was before him for decision. The first of them is the one reported in *In Re A. M. Chinniah*, [1957] 1 M. L. J. 155. I have read through this judgment of

Ramaswami, J., and I do not think that this judgment has application to the facts of the present case when on the evidence it is established that the studio of the appellant consists of different departments which can be easily separated and that in each one of the departments the number of workers or persons employed was less than 20. The decision referred to above does not appear to have much bearing on the issue that falls to be decided in the present case. Of much less assistance is the decision in *Ramanandam* v. *King Emperor*, A.I.R. 1927 Mad. 345, relied upon by the learned Judge of the Employees' Insurance Court.

The learned Government Pleader, however, argued that all the departments, though they are interconnected and though they are situated in separate buildings and though in each one of them the number of persons actually working was less than 20, the entire studio should be taken as one composite unit or entity and should, therefore, be treated as a factory coming within the definition contained in the Employees' State Insurance Act. He further argued that the term used is that these persons should be employed in manufacturing process and that manufacturing process should not be strictly interpreted but should be taken to mean the business of manufacturing something, as in the present case, the manufacturing of films. He also laid emphasis upon the decisions relied upon by the learned Judge of the Employees' Insurance Court and in addition thereto he also read out passages from an unreported judgment of Mr. Mukerji presiding over the Court of the Employees' Insurance in Calcutta in Case No. 26 of 1957 dated 21st October, 1957. The learned Government Pleader wanted to adopt the arguments contained in that judgment for his purpose. Once again I have to observe that no doubt the persons working in the various departments all put together exceed the prescribed number of 20. But the question is whether the entire buildings could be taken as one composite unit though they are housed in different buildings which are structurally separate and in each one of which the number working is less than 20. Even conceding that the term "manufacturing process" has reference to the business carried on, still I am unable to agree with the learned Government Pleader while he seeks to distinguish the decision in *Re K. V. V. Sarma*, [1952] 4 F.J.R. 329, from the facts of the present case. The decisions in *In Re A. M. Chinniah*, [1957] 1 M. L. J. 155 and in *Ramanandam* v. *King Emperor*, A. I. R. 1927 Mad. 345, in my opinion, are not of any great significance to the learned Government Pleader. The facts in those cases seem to be different from those that obtain in the present case.

Therefore, the answer to the question as to whether the studio of the appellant is a factory coming within the meaning of the definition contained in clause 12 of section 2 of the Employees' State

Insurance Act, in my opinion, would be that it is not such a factory in the face of the evidence that has been adduced in the case.

I am, therefore, of the opinion that the order of the learned Judge of the Court of the Employees' Insurance, Coimbatore, has to be set aside and it is accordingly set aside. The respondent is not entitled to any declaration of the kind which he has prayed for in his petition as he has not established that the studio of the appellant is a "factory" within the meaning of the Employees' State Insurance Act. In the result, this appeal is allowed. In the circumstances, there will be no order as to costs throughout.

[IN THE RAJASTHAN HIGH COURT.]

PALI ELECTRICITY CO., LTD.

v.

INDUSTRIAL TRIBUNAL AND ANOTHER.

K. N. Wanchoo, C. J. and Jagat Narayan, J.

April 7, 1958.

INDUSTRIAL DISPUTES ACT, 1947, SECTION 33 (1)(A) AND 33-A—CONTRAVENTION OF SECTION 33 (1) (A)—MUST BE IN REGARD TO MATTER CONNECTED WITH DISPUTE BEFORE TRIBUNAL—DISPUTE BEFORE TRIBUNAL IN REGARD TO BONUS FOR 1953 AND 1954—COMPLAINT UNDER SECTION 33-A IN REGARD TO WAGES FOR 1956—WHETHER LIES.

A contravention of section 33 (1) (a) of the Industrial Disputes Act, 1947, in order to give rise to a complaint under section 33A of the Act, must be "in regard to any matter connected with the dispute" pending before the Industrial Tribunal. As a complaint regarding the wages for the year 1956-57 cannot in any way be connected with the bonus for the year 1953-54 or 1954-55, a complaint cannot lie under section 33A of the Act in respect of deduction from wages during 1956-57 where the dispute pending before the Industrial Tribunal is regarding the bonus for the years 1953-54 and 1954-55.

Civil Writ Case No. 28 of 1958.

Hastimal for the petitioner.

R. D. Sharma for the respondent

JUDGMENT

K. N. WANCHOO, C. J.—This is an application by the Pali Electricity Co. Ltd., under article 226 of the Constitution challenging the order of the Industrial Tribunal in connection with a dispute between the applicant and one of its employees.

The case of the applicant is briefly this. The applicant is supplying electric energy in the town of Pali. Nathuram, opposite party No. 2, is a wireman in the employ of the applicant. There was an accident to Nathuram while he was working on behalf of the company on 5th January, 1957. As a result of that accident, Nathuram was unable to work and remained in hospital from 5th January to 29th February, 1957. During that period the applicant paid him Rs. 50 by way of gratuity. The applicant also advanced Rs. 75 to him and paid him the full wages for the month of January, 1957. It appears that the Employees' State Insurance Act, 1948 (No. 34 of 1948), was brought in force in this area on 1st December, 1956. In consequence of that, the applicant had to make contributions under section 22 of that Act. It also appears that as that Act had come into force, Nathuram was paid compensation under it. Consequently, the applicant started deducting what had been paid as advance and also the wages for the month of January from the salary of Nathuram after he rejoined. Thereupon, Nathuram made an application under section 33A of the Industrial Disputes Act (No. 14 of 1947), hereinafter called the Act, to the Industrial Tribunal which was then seized of a dispute between the applicant and its employees.

Nathuram's complaint was that the applicant was not entitled to deduct what had been paid to him as he was entitled to full wages during the period he was disabled under the conditions of service prevailing in the applicant company. This application was opposed on behalf of the applicant and the first contention of the applicant was that the application did not lie under section 33A of the Act. An issue was framed in this connection by the Tribunal, which is issue No. 2, namely, whether the deductions in respect of the complainant's wages for the months of January and February, 1957, made by the company amount to alteration of conditions of service in contravention of the provisions of section 33 of the Act. The Tribunal came to the conclusion that this was so and that it had, therefore, jurisdiction to entertain the application under section 33A of the Act. There were other points raised in the application, but we do not think it necessary to set them down as we are of opinion that the case can be determined on this preliminary question of jurisdiction.

Now section 33A of the Act provides that where an employer contravenes the provisions of section 33 during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner to such Court or Tribunal and on receipt of such complaint, that Court or Tribunal shall adjudicate upon

the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit its award to the appropriate Government. It is clear, therefore, that section 33A will only apply if there is contravention of the provisions of section 33. In the present case, the contravention that is alleged is of section 33(1) (a) of the Act. The relevant portion of that section is as below:

"During the pendency of any conciliation proceedings before a conciliation officer or a board or of any proceeding before a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall—

(a) in regard to any matter connected with the dispute, alter to the prejudice of the workmen concerned, in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding".

Now section 33(1)(a) applies only in regard to any matter connected with the dispute pending before the Court or Tribunal. If the matter is not connected with the dispute pending before the Court or Tribunal, other sub-sections of section 33 apply. To give jurisdiction, therefore, to the Tribunal to entertain a complaint under section 33A, read with section 33 (1) (a), it had to be shown in this case that the matter which was brought before it on complaint by Nathuram was connected with the dispute which was pending before it. This aspect of the matter has not been considered by the Tribunal at all in its judgment and the reason seems to be that the words "in regard to any matter connected with the dispute" appeared in section 33 (1) (a) for the first time by the Amendment Act No. 36 of 1954 and perhaps that amendment was not brought to the notice of the Tribunal. It is to be found only in the latest edition of the Act and that may explain why the Tribunal overlooked it. We have, therefore, to see whether the complaint of Nathuram in this case was with regard to a matter connected with a dispute which was pending before the Tribunal. Now, the dispute which was pending before the Tribunal was this "Whether the workmen of the Pali Electricity Co., Ltd., are entitled to get bonus for the years 1953-54 and 1954-55, and if so, what should be the quantity of such bonus?" The question is whether the deduction from the wages of Nathuram by the applicant can be said to be connected in any way with the dispute which was pending before the Tribunal. It was urged by learned counsel for Nathuram that bonus is connected with wages in the sense that the quantum of bonus may depend on the quantum of wages. Even if that is so, we are of opinion, that there can be no connection between the bonus for the years 1953-54 and 1954-55 and the wages for the year 1956-57. All that could be said would be that wages for the years 1953-54 and 1954-55 might be connected in some way with the bonus for those years; but any dispute as to the wages for the year 1956-57 would, in our opinion, have no connection whatsoever with the dispute as to bonus for the years 1953-54 and 1954-55. Therefore, this complaint made by Nathuram cannot be said to be in regard to any matter connected with the dispute. It follows, therefore, that no such complaint as was made by Nathuram could be made under section 33A of the Act before the Industrial Tribunal hearing the dispute, because there was in this case no contravention of section 33 (1) (a) on account of the absence of any connection between the complaint of Nathuram and the dispute before the Tribunal. We may add that we say nothing about the merits of the dispute between Nathuram and the applicant and Nathuram may pursue his remedy, if any, before the proper authority.

We, therefore, allow the application and set aside the order of the Tribunal. In the circumstances of the case, we order parties to bear their own costs of this Court.

[IN THE CALCUTTA HIGH COURT.]

ALUMINIUM CORPORATION OF INDIA LTD.

v.

REGIONAL PROVIDENT FUND COMMISSIONER AND OTHERS.

P. B. Mukharji, J.

March 31, 1958.

EMPLOYEES' PROVIDENT FUNDS ACT, 1952, SECTION 19-A—REMOVAL OF DIFFICULTIES AND DOUBTS BY CENTRAL GOVERNMENT—ORDER DIRECTING COMPLIANCE WITH PROVISIONS OF ACT WITH RETROSPECTIVE EFFECT FOR FIVE YEARS—ORDER EXEMPTING PAYMENT OF EMPLOYEES' CONTRIBUTION—ORDER DIRECTING PAYMENT OF ADMINISTRATIVE CHARGES—VALIDITY.

EMPLOYEES' PROVIDENT FUNDS ACT, 1952, SECTION 14-B—DAMAGES FOR DEFAULT—'DEFAULT', MEANING OF—DAMAGES FOR PERIOD BEFORE REMOVAL OF DIFFICULTY BY GOVERNMENT UNDER SECTION 19-A—WHETHER JUSTIFIED.

A company producing aluminium sheets and circles and having its own provident fund scheme was held by the Central Government to be outside the purview of the Employees' Provident Funds Act, 1952, when the Scheme framed under the Act came into force. Five years later, in October 1957, the Central Government purported to issue an order under section 19-A of the Act intimating the company that the Government of India had decided *that the factory came under the purview of the Act and the Scheme framed thereunder with effect from 1st November, 1952, and directed the company to comply with the provisions of the Scheme with effect from that date. The order directed the company to pay the employer's contributions for the period 1-11-'52 to 31-10-'56 together with administrative charges on both employer's and employees' contributions. The payment of the employees' contributions was left to the employees concerned. From 1-11-'56 the company was directed to pay both the employer's and employees' contributions with the administrative charges. The order further intimated that damages would be levied under section 14-B of the Act on all related payments and directed that the past accumulations to the credit of the member employees as on 1st October, 1952, should be transferred to the Fund created under the Act. On an application by the company under article 226 of the Constitution:*

Held, *that the order of the Government of India was inconsistent with the provisions of the Act and invalid as:*

(a) section 19-A of the Act does not enable the Government to make orders inconsistent with the provisions of the Act. By giving retrospective effect to its order the Government called upon the company to replenish and refund even the moneys which had already been taken by those employees who had left service during the period;

(b) the retrospective effect of the order in respect of employees who had left service was impossible;

(c) the Government could not issue an order exempting the payment of contribution by the employees; nor could the employer recover any employees' contributions from the wages of the employees who had already left service;

(d) there cannot be retrospective operation of the provisions regarding administrative charges for a period when there was no administration;

(e) there cannot be a 'default' within the meaning of section 14-B of the Act when there is a difficulty or doubt and when the Central Government has to remove that difficulty or doubt by an express order. It is only from the date of the order removing such difficulty or doubt that the default can operate; and

(f) the order requiring the company to transfer the past accumulations to the credit of the members of its provident fund as on 1st October 1952, was also impossible of performance and further, under section 15(2) such transfer is to be effected only on the application of the Scheme to a factory and the Scheme can be said to apply only after the doubt or difficulty has been removed by the Central Government under section 19-A of the Act and not before.

The Regional Provident Fund Commissioner was, therefore, directed to forbear from enforcing the order of the Central Government.

Writ Application Matter No. 5 of 1958.

ORDER.

This is an application by the Aluminium Corporation of India Ltd., under article 226 of the Constitution. The company complains against an order of the Government, dated 23rd October, 1957, No. R—1237/WB/6983 addressed by the Regional Provident Fund Commissioner at 28, Theatre Road, Calcutta, to the Manager of the Aluminium Corporation of India Ltd. This order is purported to be made under section 19-A of the Employees' Provident Funds Act, 1952.

The material part of that order of the Government of India reads as follows;

"It has been decided by the Government of India under section 19-A of the Employees Provident Funds Act, 1952, that your factory will come under the purview of the Employees' Provident Funds Act, 1952, and the Scheme framed thereunder with effect from 1st November, 1952. You are requested to comply with all the provisions of the said Scheme with effect from that date.

As regards payment of contributions for the pre-discovery period (*i.e.*, from 1st November, 1952, to 31st October, 1956) you are required to pay the employers' share of contributions and administrative charges on both the shares (employer's and employee's) together with damages at the rate of 6 1/4 per cent. per annum to the statutory Fund.

Regarding payment of the employee's share of contributions for the aforesaid period it may be left to the employees concerned to pay the arrears, if they so desire.

You are, therefore, required to pay both employers' and employees' share of contributions from 1st November, 1956, onwards together with administrative charges thereon. It may please be noted that the damages will be levied as usual on all related payments under section 14-B of the Act.

You are also required to transfer the past accumulation to the credit of the member employees as on 31st October, 1952 positively within 30 days from the receipt of this letter as required under paragraph 28 of the Employees' Provident Funds Scheme, 1952, read with section 15 of the Act."

On behalf of the applicant this order has been challenged. Large questions have been raised by the applicant. It has been contended that the company's business or industry does not come within the meaning of the Employees' Provident Funds Act, its Schedule 1 or any of the amendments thereto. For this purpose reliance is placed on the letter of the Government of India, dated 18/19th January, 1953, to the Secretary of the Company stating:

"I am directed to say that the Corporation is not covered by the head 'Electrical, Mechanical or General Engineering Products', if it produces aluminium only as a raw material to be used in the manufacture of different articles of diverse uses and applications."

and the Regional Provident Fund Commissioner, West Bengal, in Calcutta by letter No. R-1077, dated 23rd March, 1953, committed himself by saying :

"Shri D. P. Datta, Provident Fund Inspector, West Bengal, has ascertained on enquiry that you produce aluminium sheets and circles only and do not manufacture any utensils out of aluminium. I, therefore, hold, subject to confirmation by Government, that your factory does not come within the purview of the Employees' Provident Funds Act, 1952."

The other fundamental objection urged by the company against this order is that sections 4, 5 and 7 of the Employees' Provident Funds Act, 1952, are *ultra vires* on the ground of excessive and unreasonable delegation. It has been contended that the Central Government's power to add to Schedule 1 of the Act and to include a new industry in the Schedule, without laying down any standard or norms by the test of which such industry is to be included, gives arbitrary and uncontrolled power to the Central Government and is bad on the ground of delegation. The same argument is made with respect to sections 5 and 7 of the Act relating to the Scheme and the modifications of the Scheme under the Act.

Thirdly, it has also been contended that section 19-A of the Employees' Provident Funds Act, is *ultra vires* the Constitution because it is unreasonable and for that purpose reliance has been placed upon a decision of this Court reported as *Messrs. Bharat Board Mills Ltd.* v. *Regional Provident Fund Commissioner*, [1957] 15 F.J.R. 193. It was held there by the learned single Judge that section 19-A of this Act lacked the element of reasonableness and abridged and violated the fundamental right guaranteed by article 19 (1) (g) of the Constitution and as such was void under article 13 (2) of the Constitution. I understand an appeal is pending from that decison.

The first question about the interpretation of the statute and bearing on the question whether the particular industry of the applicant comes within the Schedule of the Act or not as well as the constitutional questions challenging the validity of the different provisions of the Employees' Provident Funds Act need not be decided by me on this application because I consider the order of 23rd October, 1957, is bad on its own terms independently of these questions. For my own part, I am of the opinion, that a case which can be disposed of without deciding

constitutional questions should be so determined without expressing an opinion on the constitutional questions raised. Unless absolutely necessary for the purpose of deciding the case, I do not think a Court should render any opinion on the Constitution, even though a constitutional question is posed by the record. If there is present on the record some other ground upon which the case may be completely disposed of then the Court will be wiser to so dispose it rather than make an unnecessary pronouncement on the Constitution. If a case can be decided on either of two grounds, one involving a constitutional question and the other questions of statutory construction or general law, then the Court should decide only the latter. See *Silver* v. *Louisville & N. R. Co.*, (1909) 213 U.S. 175 at p. 191; *Light* v. *United States*, (1911) 220 U. S. 523 at p. 538 and the observations of Brandeis, J., in *Ashwander* v. *Tennesse Valley Authority*, (1936) 297 U.S. 288 at p. 346. This principle is not a rule of constitutional law but a rule of judicial prudence. Constitution is better and more soundly developed under the inescapable need of constitutional construction than by nebulous *obiter dicta* and uncalled for generalisation. In a written constitution such as that of India this practical need of judicial restraint cannot be over-emphasised in the growing and bewildering complexity of judicial commentary on the constitution made too readily available on the slightest invitation.

The reasons why the order of 23rd October, 1957, cannot be sustained can be made plain on a bare analysis of the different parts of the order which I have already quoted.

I shall briefly summarise those reasons.

The first part of the order of 23rd October, 1957, requires the company to comply with all the provisions of the scheme under the Employees' Provident Funds Act, 1952, with effect from 1st November, 1952. Now this order was being made on 23rd October, 1957. In other words this is an order which is made retrospectively applicable to the company and the period of such retrospect is as long as 5 years.

It is distinctly stated in the applicant's letter, dated 25th January, 1957, that the retrospective implementation will lead to absurdity "inasmuch as many workers have left service in the meanwhile and the workers in service cannot be subjected to deduction of their contributions retrospectively and the employer cannot be made to pay employee's share of contribution in respect of those workers who have left service." This fact is not disputed that quite a number of employees who were employed in 1952 have since left the employment of the company.

By applying the Scheme of the Act retrospectively from 1952 the Government of India has, in my opinion, asked the company to do what is impossible and also to do something which is entirely inconsistent with the statute.

Section 19-A of the Employees' Provident Funds Act, 1952, authorises and empowers the Central Government to remove difficulties. But it is expressly laid down that while the Central Government can do so by an order, that order or its provisions or directions must not be "inconsistent with the provisions of this Act". Now, let us examine whether this retrospective operation which the Central Government has directed in this case leads to conflict with the provisions of this Act. In my opinion, it does. I shall broadly illustrate the main points of conflict.

First, the Preamble to the Act says that it is an Act "to provide for the institution of provident funds for employees in factories and other establishments". In other words the object of the Act is the provision of a provident fund for employees. It is, therefore, inapplicable in respect of those employees who have left the service by taking away their own provident fund moneys because the company itself has its own provident fund scheme. In the letter of 25th January, 1957, which I have cited elsewhere, the company expressly informed the Government: "We have however got a Provident Fund Scheme in our industry since 1st October, 1944. Subject to removal of difficulties as enumerated above, we require exemption under section 17 of the Employees' Provident Funds Act. We are, however, applying for such exemption without prejudice to our contention as above."

It is, therefore, entirely against the purposes and object of the Act to apply a scheme retrospectively to the company for a period of five years within which time some of the employees have already left and presumably left by taking their provident fund accumulations. The Government by calling up the company to replenish and refund even those moneys is doing something illegal and against the Preamble and object of the Act, because no beneficiaries are there any more to avail of that fund for whom alone the Government can secure such fund from the employer.

Secondly, paragraph 26 of the Scheme itself which has been applied to the company retrospectively by the order of 23rd October, 1957, provides that:

"Every employee, employed in a factory to which this Scheme applies...... shall be required to become a member of the Fund from the date on which the Scheme comes into force, etc."

Now it is impossible to satisfy this requirement in respect of employees who have already left service within these five years. There are also obvious difficulties to satisfy this requirement even in respect of the employees who are still continuing because they had not been required to become a member of the Fund in the last five years.

Thirdly, paragraph 29 of the Scheme again enjoins that the contribution payable by the employee under the Scheme shall be equal to the contribution payable by the employer. It is also expressly provided by section 6 of the Act. Section 6 of the Employees' Provident Funds Act *inter alia* makes it mandatory that, "the employees' contribution shall be equal to the contribution payable by the employer in respect of him etc."

Now, by the order of 23rd October, 1957, the Government of India seems to have exempted the employees, by giving them an option. The order on the point is:

"Regarding payment of the employees' share of contribution for the aforesaid period it may be left to the employees concerned to pay the arrears, if they so desire."

This is clearly against the statutory mandate of section 6 and paragraph 29 of the Scheme. Neither section 6 nor paragraph 29 of the Scheme permits this option to pay or not to pay. They insist that "the employees' contribution shall be equal" to the employer's contribution. I have no hesitation in holding that the Government of India cannot suspend the operation of this Act in this matter as against the employees. That is inconsistent with the provisions of the Act and, therefore, bad under express terms of section 19-A of the Act.

Besides, by paragraph 32 of the Scheme it is provided that "the amount of a member's contribution paid by the employer shall, notwithstanding the provisions in this Scheme or any law for the time being in force or any contract to the contrary be recoverable by means of deduction from the wages of the member and not otherwise". That means the only method of recovery of a member's share of contribution paid by the employer is by means of deduction from the wages of the member and by no other. Now, how is that going to apply to cases of those employees who have left the employer's service during the last five years? Obviously, that provision cannot be applied. Therefore, the order of 23rd October, 1957, of the Government of India by which the company was required to comply with all the provisions of the said Scheme with effect from "the 1st November, 1952" is against the Scheme itself, and is impossible of performance. It is inconsistent with the Scheme; it is inconsistent with the Act. It is, therefore, bad on the express terms of section 19-A of the Act.

In fact, retrospective application of many other provisions of the Scheme relating to the contribution cards and returns is quite impossible.

Fourthly, the order of 23rd October, 1957, requiring the company to pay not merely the employer's share of contribution but also the administrative charges is clearly illegal and inconsistent with the Act. Now, the only provision for claiming administrative charges is to be found in Schedule 2 of the Employees' Provident Funds Act. By rule 3 of Schedule II it is provided:

"The payment by the employer of such sums of money as may be necessary to meet the cost of administering the Fund and the rate at which and the manner in which the payment shall be made."

Provisions have been made for such administrative charges in the Scheme. Paragraph 39 of the Scheme says:

"The Central Government may, in consultation with the Central Board and having regard to the resources of the Fund available for meeting its normal administrative expenses, fix the percentage of administrative charges payable under sub-paragraph (1) of paragraph 38".

Now paragraph 38 of the Scheme provides that "the employer shall, before paying the member his wages in respect of any period or part of the period for which contributions are payable, deduct the employee's contribution from his wages which together with his own contribution as well as an adminstrative charge of such percentage of the total employer's and employee's contributions as may be fixed by the Central Government, he shall within fifteen days of the close of every month pay to the Fund by separate Bank drafts or cheques on account of contributions and adminstrative charge".

On the face of this language, it seems that it is impossible to comply with these provisions retrospectively. Deduction from wages is clearly impossible in respect of employees who have left service in the last five years. The time for deduction is long past and the possibility of deduction has vanished. The relevant paragraph in the Scheme indicates as well as rule 3 of Schedule II of the Act expressly says that the administrative clauses are intended "to meet the cost of administering the fund". For five years retrospectively there was in fact no cost of administration. I, therefore, cannot see how administrative charges can be required to be paid by an applicant when there is no administration in respect of the fund and no expenses incurred on the ground of such administration. Paragraph 38 of the Scheme expressly says that the employer shall before paying the member his wages deduct the employee's contribution. How can an employee retrospectively make such deduction in respect of a period already over and in respect of which the employee's wages have already been paid and more so when in some cases some of these employees have already gone out of the employment of the applicant. I am satisfied that in any event there cannot be retrospective administrative charges when there was no administration and when *ex hypothesi* there could be no administration. I shall only refer here to one more paragraph in the Scheme, that is paragraph 54 which bears on the question of expenses of administration. Paragraph 54(2) of the Scheme indicates that these administrative charges are intended for "the expenses of the administration". When there was no administration there cannot be any expenses in connection therewith. The order, therefore, in so far as it directs the applicant to pay these administrative charges retrospectively is, in my view, clearly and plainly inconsistent with both the statute as well as the Scheme framed thereunder.

Fifthly, the order of 23rd October, 1957, has also required the applicant to pay damages at the rate of 6 1/4 per cent. per annum to the statutory fund. That is a strange order. It is stranger still in the context of the facts of the case and specially in the context of the Government's own attitude in the matter. Now section 14-B of the Employees' Provident Funds Act provides:

"Where an employer makes default in the payment of any contribution to the Fund or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 or in the payment of any charges payable under any other provision of this Act or of any Scheme or under any of the conditions specified under section 17, the appropriate Government may recover from the employer such damages, not exceeding twenty-five per cent. of the amount of arrears, as it may think fit to impose."

Now this power to recover damages is confined only to the cases of "default". The question of liability for damages of the employer only arises when the employer makes default. I do not think that on the facts of this case the employer can be said to have committed a default. The employer wrote to the Government. The Government writes back in answer that the Act will not apply. I have already quoted that correspondence. In fact the Government in this case availed of an inspection by their own inspectors under express provision of the Act. By section 13 of the Act the Government may appoint persons fit to be inspectors for the purposes of the Act or of any Scheme and the inspector is given powers which are enumerated in the section. On the Inspector's report it was expressly stated and admitted by the Regional Provident Fund Commissioner, West Bengal, by his letter No. R-1077 dated 23rd March, 1953, that the applicant's factory did not come within the purview of the Employees' Provident Funds Act, 1952. In such a case as this I find it a little difficult to see how the employer makes a default, when the Government formally tells him that the Act did not apply to him. It is a little odd to find that when the Government by its own order under section 19-A of the Act has to remove a difficulty, how there is default by the employer. Obviously, there was a difficulty in applying the Act to this particular factory. Until that difficulty is removed, there cannot, in my opinion, be any question of default. That difficulty is removed only by the order of 23rd October, 1957. Therefore, on 23rd October, 1957, the difficulty whether the establishment was a factory engaged in the industry specified in Schedule 1 of the Employees' Provident Funds Act was removed by the order of the Central Government. Prior to that date, there cannot, in my opinion, be a default within the meaning of section 14-B of Employees' Provident Funds Act, 1952, so as to make the employer liable retrospectively for damages. This part of the order is again plainly inconsistent and is in conflict with the statute. The language of section 19-A of the Employees' Provident Funds Act is important. It expressly says:

"If any difficulty arises in giving effect to the provisions of this Act, and in particular if any doubt arises as to—

(i) whether an establishment which is a factory, is engaged in any industry specified in Schedule 1; etc.

the Central Government may, by order, make such provision or give such direction, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for the removal of the doubt or difficulty; and the order of the Central Government, in such cases, shall be final."

The order of the Central Government is final only on the point decided as to whether the Act is to be applied to the factory or not, But when the Government wants to apply that order retrospectively. then it acts in a manner "inconsistent with the provisions of this Act." Power to recover damages under section 14-B is expressly given only in the case "where an employer makes default," etc. An employer cannot make a default when there is a difficulty or doubt and when the Central Government has to remove that difficulty or doubt by an express order. It is only from the date of the order removing such difficulty or doubt that the default can operate. In other words, there can be no retrospective or constructive default in the present context of facts and law.

Sixthly, the order of 23rd October, 1957, requires the applicant to pay both employer's and employees' share of contributions from 1st November, 1956, again together with administrative charges thereon and also with damages. That part of the order is equally bad for the same reasons already given by me.

Seventhly, the order of 23rd October, 1957, requires the applicant "to transfer the past accumulation to the credit of the member

employees as on 31st October, 1952". This, again, is impossible to perform, and I think it is illegal to perform such a condition and such an order. Obviously, the provident fund moneys of those employees who have gone out of employment after taking their provident fund moneys within the last few years from 1952 to 1957, could not now be transferred. Yet the order says "as on 31st October, 1952". Since 31st October, 1952 and up to 23rd October, 1957, when the Government was making this order under section 19-A of the Act, many employees have left after taking their provident fund moneys. Why should those moneys be again credited to the State fund retrospectively? For whose benefit is the State entitled to call for those funds? The purpose of the Act is to provide a fund for the employees. If the relevant employees have taken out their provident fund moneys, I do not think Government has any right to claim them back from the employers by virtue of the order "as on 31st October, 1952."

The transfer from existing funds is a subject of special provision in section 15 of the Employees' Provident Funds Act, 1952. Section 15(1) of the Act entitles the employees to the benefits of any existing provident fund pending the application of the Act and the Scheme thereunder. Section 15 (2) of the Act provides that "On the application of any Scheme to an establishment, the accumulations in any provident fund of the establishment standing to the credit of the employees who become members of the Fund established under the Scheme shall, notwithstanding anything to the contrary contained in any law for the time being in force or in any deed or other instrument establishing the provident fund but subject to the provisions, if any, contained in the Scheme, be transferred to the Fund established under the Scheme, and shall be credited to the accounts of the employees entitled thereto in the Fund". The language of section 19-A of the Act is such that it does not lend itself easily to retrospective application. It gives power to the Central Government to remove difficulty or doubt. Until the doubt or difficulty is removed, there is little scope for putting such order in retrospective operation. The language of section 15 (2) is quite clear also. It begins with the words "on the application of any Scheme". Now, the scheme can only apply after the doubt or the difficulty has been removed by an order under section 19-A of the Act, and not before. It is only then that the Scheme applies and not otherwise. It is only then that the employees can again be said to "become members of the Fund" under section 15(2) of the Act. Therefore, this part of the order also which requires the applicant to transfer the past accumulation to the credit of the member employees "as on

31st October, 1952" is inconsistent with the Act and the Scheme and, therefore, cannot be sustained.

On the question of jurisdiction there was some objection on behalf of the Government at the beginning on the ground that no *certiorari* would lie against the Union of India, because the Union of India could not be said to reside within the jurisdiction of this Court. This is not a point which is relevant in this case, first because the claim for *certiorari* has been given up by the applicant. The applicant is content to rely on its prayer for *mandamus*. The order of 23rd October, 1957, is an order of the Regional Provident Fund Commissioner of West Bengal in Calcutta within the jurisdiction of this Court. It is true he is executing the order of the Central Provident Fund Commissioner in New Delhi, but that is immaterial. The Regional Committees are very important organs under the Scheme. It is the Regional Provident Fund Commissioner in West Bengal who alone has actually required the applicant by the order of 23rd October, 1957, to do certain things which the applicant contends to be illegal. This requisition is also signed by the Regional Provident Fund Commissioner who is within the jurisdiction of this Court. I have set out that order fully elsewhere in this judgment. I do not see why a *mandamus* cannot lie against him, within the jurisdiction of this Court, asking him to forbear from giving effect to the order and requisition dated 23rd October, 1957, made by him. This Court has jurisdiction to issue a writ of *mandamus* against a responsible officer within the jurisdiction of this Court who is alleged to be executing the illegal order or making the illegal requisition. This view which I am taking is supported by the decision of the Supreme Court in *A. Thangal Kunju Musaliar* v. *M. Venkatchalam Potti*, [1955] 2 S.C.R. 1196, specially at pages 1207 and 1212. Mr. Kar, appearing for the Government, referred to an unreported decision of an *ex tempore* judgment of Chief Justice Chagla in *Chhaganlal Textile Mills (Private), Ltd., Bhopal* v. *P. A. Bhaskar*, A. No. 109 of 1956 in Misc. Appln. No. 289 of 1956. But then that decision is of no assistance to him because there the Government of India was not even a party. Here the Union of India is a respondent, and is appearing through the same counsel as the Regional Commissioner of West Bengal. In any event I think the Supreme Court has, in my view, laid down the principles sufficiently clearly in the case that I have quoted which supports the applicant's claim for a writ of *mandamus* against a responsible and high officer who is working within the jurisdiction of this Court.

For these reasons, I set aside the order of 23rd October, 1957, and make the Rule for *mandamus* absolute by restraining the Regional

Provident Fund Commissioner, West-Bengal, Calcutta, within the jurisdiction of this Court, and calling upon him to forbear from giving effect to the order and requisition dated 23rd October, 1957, made by him. This application is disposed of on the terms of this order under section 19-A of the Employees' Provident Funds Act without deciding the question whether the Employees' Provident Funds Act is unconstitutional on the ground of excessive delegation and without deciding the question whether section 19-A of the Act is *ultra vires* and whether this particular industry at all comes within Schedule I of the Act. There will be no order as to costs.

[IN THE SUPREME COURT OF INDIA]

KAYS CONSTRUCTION CO. (PRIVATE) LTD.

v.

ITS WORKMEN

T. L. Venkatarama Aiyar, P. B. Gajendragadkar and A. K. Sarkar, JJ.

October 8, 1958.

INDUSTRIAL TRIBUNAL—ADJUDICATION OF INDUSTRIAL DISPUTES—SCOPE OF—ADJUDICATION ON MERITS OF EACH CASE—ACADEMIC PROPOSITIONS OF LAW—HOW FAR RELEVANT—CHANGE OF MANAGEMENT OF ESTABLISHMENT—RELATIONSHIP BETWEEN WORKMEN OF OLD MANAGEMENT AND THE NEW MANAGEMENT—FINDING OF TRIBUNAL THAT THERE WAS NO BONA FIDE CLOSURE OF OLD MANAGEMENT—WHETHER JUSTIFIED.

INDUSTRIAL ADJUDICATION—PRACTICE—OBJECTION AS TO JURISDICTION OF TRIBUNAL—MUST BE RAISED BEFORE TRIBUNAL ITSELF—CANNOT BE RAISED BEFORE SUPREME COURT IN SPECIAL LEAVE APPEAL.

In dealing with industrial disputes, Industrial Tribunals should not be unduly influenced by academic questions of law and they should make an attempt to deal with the merits of each case according to its facts and circumstances. The decisions of the Tribunals in such cases should not be interfered with on abstract points of law as to the rights and liabilities of the parties: WORKMEN OF DAHINGEAPAR TEA ESTATE *v.* DAHINGEAPAR TEA ESTATE *[1958] 15 F.J.R. 77 followed.*

Where the management of an industrial establishment was converted to a private limited company and made fresh appointments not taking into consideration the claims of the workmen who had been previously employed and there was evidence before the Industrial Tribunal to show that there was not in fact a real closure of the previous management, a finding of the *'ribunal in favour of the workmen that there had been no proper retrenchment ut only an uncalled for lock-out and that the workmen continued to be 'orkmen of the new management should not be interfered with by the Courts.*

A contention that an 'industrial dispute' referred to an Industrial 'ribunal under section 10 of the Industrial Disputes Act, 1947, was not an idustrial dispute as the workmen mentioned in the order of reference were ot workmen of the management, affects the jurisdiction of the Tribunal and hould be taken in the first instance before the Industrial Tribunal itself and annot be raised in an appeal by special leave before the Supreme Court.

Civil Appeal No. 362 of 1958.

A. V. Viswanatha Sastri, Din Dayal Kapur, Ratanbai, K. R. Sharma nd *K. R. Choudhry* for the appellant.

C. B. Agarwala, A. N. Goyal and *T. S. Venkataraman* for the espondents.

JUDGMENT

The following Judgment of the Court was delivered by

GAJENDRAGADKAR, J.—This appeal by special leave arises out of a spute between the appellant, Kays Construction Co. (Private) Ltd., llahabad, and Messrs. Kays Construction Co., Allahabad, by its sole oprietor, Mr. H. M. Khosla, respondent 2, on the one hand, and the orkmen originally employed by respondent 2 through the Secretary, ays Construction Mazdoor Sabha, Allahabad, respondent 1, on the her. The appellant is a private limited company having its registered fice at 14, Stephen House, Calcutta, and carries on the business of nstructing railway coaches at Allahabad against the orders received om the railway administration. The appellant was incorporated on ne 23, 1956, and after its incorporation it submitted two tenders on bruary 2 and December 15, 1956, in response to advertisements blished by the North-Eastern Railway calling for tenders for construc- on of railway coaches. These tenders were accepted by the railway thorities and their acceptance was communicated to the appellant at e end of March, 1957. It appears that the Chief Mechanical Engineer, orth-Eastern Railway, Gorakhpur, wrote to respondent 2 on April 1, 57, that the siding at Allahabad which had been given in the posses- on of respondent 2 should be handed over to the appellant. On pril 10, 1957, the appellant entered into an agreement with Mr. H. M. osla for the purchase of machinery and tools, furniture and fittings longing to respondent 2 for Rs. 55,125. By the end of April 1957, the pellant advertised that it wanted to employ workmen for the purpose constructing coaches for the railway administration. In response to the said advertisements several persons applied and were employed by the appellant; among them were some of the workmen of respondent 2 Respondent 2 had been carrying on the work of constructing railway coaches under orders received from the railway administration; but it is alleged that respondent 2 decided to close its business owing to financial difficulties and to terminate the services of its employees. Meanwhile, a dispute had arisen between respondent 2 and its workmen which was referred to the Industrial Tribunal (General), Allahabad for its decision (Case No. 12 of 1957). This dispute ended in a compromise and it was agreed by respondent 2 that bonus would be paid by it to its workmen for the entire period of its existence.

Respondent 1 did not accept respondent 2's allegation that it had closed its business and the contention of respondent 1 was that the plea of closure of business had been adopted by respondent 2 as a device to deprive its workmen of their legitimate rights. In fact the workmen claimed that notwithstanding the change of the name of the concern the appellant was bound to employ, and continue the employment of, all the workmen of respondent 2 on the same terms and conditions of service These allegations were not admitted either by the appellant or respon dent 2 and that has raised the present dispute.

By the notification dated October 5, 1957, the Labour Commis- sioner, U. P., referred this dispute to the Industrial Tribunal (Sugar), Allahabad, for adjudication. The dispute thus referred to adjudication is " whether the management of Messrs. Kays Construction Co. (Private Ltd., Allahabad, are required to reinstate the old workmen given in the annexure of Messrs. Kays Construction Co., Allahabad; if so, with what details."

Before the Tribunal respondent 1 urged that there was no genuine closure of respondent 2, that workmen's services had never been properly or validly terminated, that the appellant was the continuer and succes- sor of respondent 2 and as such was bound to continue the workmen in employment, that the refusal of work on February 18, 1957, February 23, 1957, and March 13, 1957, and other dates was a *mala fide* act of the employers and amounted to an illegal lock-out and that the workmen were entitled to be reinstated by the appellant and to be paid full wages for the period of the lock-out.

The appellant resisted this claim and its case was that it had not taken over the assets and liabilities of respondent 2 nor was there any transfer of its business. The appellant started its business after its incorporation as a private limited company. According to the appellant " there was complete hiatus between the management of respondent 2 and the appellant " and there was no link to connect the two managements except that the business done by respondent 2 and the business now being carried on by the appellant are similar. The appellant urged that since the persons whose names had been given in the annexure to the reference were not its employees, no industrial dispute arose in the present case.

Respondent 2 substantially supported the case of the appellant. It was urged on its behalf that its business had been closed and that it had no connection with the business carried on by the appellant. Before the closure of its business the services of its employees had been duly terminated by respondent 2; in fact, according to its case, respondent 2 used to engage employees on an *ad hoc* basis for each individual job, and so the claim made by the workmen for reinstatement against the appellant was not valid in law.

On these contentions the Tribunal framed some additional issues for decision. Two of these issues which are relevant for our purpose are "whether there was no genuine closure of the concern called Messrs. Kays Construction Co., Ram Baug, Allahabad; and, whether the Kays Construction Co. (Private) Ltd., is the continuer of, and successor to, the Kays Construction Co., Ram Baug, Allahabad; if so, with what effect?". Before the Tribunal parties led evidence both oral and documentary. In the end the Tribunal accepted the case made out by respondent 1 and held that the appellant was required to reinstate the old workmen given in the annexure of respondent 2, Kays Construction Co., Ram Baug, Allahabad. The award further directed that "these workmen will be restored in their old or equivalent jobs and given continuity of service". The Tribunal has further added that in view of the somewhat peculiar features of the case and in the larger interest of the industry the Tribunal would order that the workmen be paid only 50% of their back wages for the period they were forcibly kept out of employment. It is against this award that the present appeal has been filed.

Before dealing with the points which have been raised before us by Mr. Viswanatha Sastri, for the appellant, it is necessary to set out clearly the facts found by the tribunal. It cannot be disputed that the findings of fact recorded by the tribunal cannot be successfully challenged before us in an appeal under Art. 136 of the Constitution. In its award, the tribunal has discussed the legal position in regard to the closure and lockout in the light of judicial dicisions and then it has observed that "the crux of the matter lies in whether there was a full and real closure or not, whether it was genuine or bona fide or mala fide, whether there was effective retrenchment or the case was otherwise, and lastly whether there was only lockout of the workmen". These

questions have been examined by the Tribunal in great detail.

The case for respondent 2 was that Mr. H. M. Khosla its sole proprietor had been doing the work of constructing railway coaches in the past in partnership with other persons. These partnerships were eventually dissolved and Mr. Khosla became the sole proprietor in June 1954. Mr. Khosla stated before the Tribunal that though he was carrying out the orders received from the railway administration, he found that the work on the whole did not bring much profit and so he decided to close his concern. Mr. Khosla also suggested that the employment of his workmen was on an ad-hoc basis, job by job. Both these pleas have been rejected by the Tribunal after considering the relevant evidence. According to the Tribunal, the truth was that Mr. Khosla could not reconcile himself to the formation of the union of his workmen and so he took "an unwarranted decision to continue his business under a changed name". Mr. Khosla had not produced the balance-sheet or the profit and loss account of respondent 2 for the relevant years and there was no reliable material on the record to show that considerations of financial difficulty really justified the alleged closure of the business of respondent 2. In fact, in the dispute raised by workmen as regards bonus, Mr. Khosla had agreed to pay them bonus to the tune of Rs. 10,000. The conclusion of the Tribunal, therefore, was that the financial reason put forward by Mr. Khosla was not the real reason for closing down the business nor were there any other good reasons such as economy, rationalisation or installation of labour-saving devices which could justify the said alleged closure.

The Tribunal then examined the plea that the appellant was a new and independent company. It held that this plea was also not proved. It referred to the letters written by the appellant while offering its tender for contract to the railway administration (Ex. E. 43 and E. 44) and held that the irresistible impression that these letters create is that the new company is speaking in the language of the old company. The Tribunal also commented on the fact that of the five directors of the appellant, Mr. Khosla, his wife and his previous manager Mr. Malik were there and that Mr. Khosla had admitted that he and his wife owned interest to the extent of 30% in the said concern. The Tribunal then referred to the fact that Mr. Khosla, the managing director of the appellant did not consider it necessary to file the articles of association of the new company nor did he produce any documentary evidence to show the extent of interest, if any, of the various directors in the new venture. The Tribunal was, therefore, inclined to take the view that though the appellant and respondent 2 have to be taken as two separate legal entities, "yet, from all accepted canons of social justice, the workmen must be deemed to be continuing in the same business which was only given a different name in order to defeat their rights already accrued or in the process of formation". In this connection, the Tribunal examined the conduct and management of the appellant's affairs. The appellant had used the office, the premises, the telephones and the telegraphic address of respondent 2; not only was the goodwill of respondent 2 made use of by the appellant in connection with the submission of its tenders but the name of respondent 2 has also been substantially retained by the appellant. Even the electric connections of the two companies remained the same; and it was not shown that respondent 2 received any rent or other charges from the appellant in that behalf. The sale agreement between the appellant and respondent 2 showed that the consideration of Rs. 55,125 was not paid at the time of the agreement but had to be paid by December 31, 1957. The Tribunal felt impressed by the argument of respondent 1 that if the muster rolls had been produced they would have shown the falsity of the plea that respondent 2 had closed its business and that the appellant had started its new business independently of respondent 2. The workmen had worked in the business of respondent 2 for a number of years and the Tribunal felt no doubt that there had been no full or real closure of respondent's business and that in fact its old business continued much the same as before under the same style.

The Tribunal also considered in detail the conduct of Mr. Khosla in regard to the termination of such of his employees as took part in the affairs of their union. It has also referred to the negotiations carried on between the workmen on the one hand and the appellant and respondent 2 on the other and has stated that these negotiations ended in a gentlemen's agreement on June 10, 1957. During these negotiations the appellant was represented by Mr. Khosla and Mr. Malik and they agreed that the workmen who were not then taken up in their employment would be taken up by instalments so spread over that by August 15, 1957, all of them would be absorbed. It was also agreed at this time that "the employment forms which the workers would sign would be applicable to that extent to which it is certified by the appropriate authorities". Thus, having considered the whole of the evidence adduced before it, the Tribunal observed that "enough has been said to show that there is neither full nor genuine closure of Messrs. Kays Construction Co., Ram Baug, Allahabad, nor a proper retrenchment but only an uncalled for lockout of the workmen. The workmen continued to be workmen". It is in the light of these findings that the Tribunal made its final award.

On behalf of the appellant it has been urged before us by Mr. Sastri

that the findings made by the Tribunal disclose confusion of thought. He contends that the appellant has been incorporated as a private limited company and must be regarded in law and in fact as an entity separate from and independent of respondent 2. According to him, three different points have been mixed up by the Tribunal in reaching its final decision. The Tribunal seems to have assumed that though the appellant had been formally incorporated, its incorporation was only in name and in form and that in fact the appellant had no independent existence from Mr. Khosla. It also seems to have taken the view that if the appellant was an independent entity it must have acted as a benamidar for Mr. Khosla when it offered its tender to the railway administration and obtained the order for the construction of railway coaches. In some parts of its judgment the Tribunal also seems to accept the view that even if the appellant was a successor of respondent 2's running concern and had taken up the work of the construction of coaches on its own, under the principles of industrial adjudication the appellant was bound by the obligations incurred by respondent 2 *qua* its workmen. Mr. Sastri's contention is that these three different concepts should not be confused and the merits of each of them should be separately and clearly considered. At one stage of his arguments Mr. Sastri suggested that, if necessary, in the interest of justice, appropriate issues should be framed corresponding to these concepts and an opportunity should be given to the parties to lead evidence on them. There may be some force in this contention and if it had become necessary for us to decide the points of law raised by Mr. Sastri we would have sympathetically considered his request for a remand; but we do not think it necessary to examine the merits of the interesting points of law raised by Mr. Sastri because, in our opinion, the present appeal is governed by a decision of the Constitution Bench of this Court in *Workmen of Dahingeapar Tea Estate* v. *Dahingeapar Tea Estate*, [1958] 15 F.J.R. 77.

In this appeal also the larger question about the liability of the successor qua the workmen in the employment of his predecessor under the principles of industrial adjudication was raised; but the learned Judges thought that it was not necessary to decide the said abstract question of law. Nevertheless, they examined the merits of the rival contentions between the parties and held that the decision of the Tribunal directing reinstatement of certain workmen was right and the contrary view taken by the Labour Appellate Tribunal was not justified. It appears that the respondent in the said case was the purchaser of the tea estate in question. By cl. 9 of the agreement of sale the purchaser had been expressly given the option of taking such members of the staff of the tea estate as it shall in its absolute discretion consider useful and efficient for running the tea estate. This agreement was made on November 7, 1953 but had to come into force on January 1, 1954. On December 22, 1953, the respondent gave notice to certain employees. On December 30, 1953, the vendor purported to terminate the services of its employees with effect from December 31, 1953. It appeared that the respondent had employed all labourers and three of the clerks who were in the employment of the vendor. Sixteen clerks were, however, not employed by him. The respondent's employees thereupon raised an industrial dispute in regard to the non-employment of the said sixteen clerks. The tribunal had ordered their reinstatement but the Labour Appellate Tribunal had reversed the award of the Tribunal on the ground that the respondent as purchaser of the tea estate was not bound to reinstate them. This Court set aside the order of the Labour Appellate Tribunal and restored the award of the Tribunal for the reinstatement of the clerks in question.

The decision in this appeal has emphasized that in dealing with industrial disputes the Tribunals should not be unduly influenced by academic questions of law and that they should make an attempt to deal with the merits of each case according to its facts and circumstances. As pointed out in *Niemla Textile Finishing Mills Ltd.* v. *The 2nd Punjab Industrial Tribunal*, [1957] 11 F.J.R. 481, the functions of industrial tribunals while adjudicating upon disputes referred to them for adjudication are quite different from those of arbitration tribunals that deal in matters of commercial dispute. This Court then held that an industrial dispute did arise between the respondent purchaser and the appellants and that the Labour Appellate Tribunal was in error in reversing the award principally on the consideration of the abstract point of law as to the rights and liabilities of the successor like the respondent.

Mr. Sastri fairly conceded that if the facts found by the Tribunal in the present case are accepted as correct then the present case would be substantially similar to the case of *Dahingeapar Tea Estate* (*supra*). He, however, contends that there is one material point on which the present case can be distinguished. In the present case, according to Mr. Sastri, no industrial dispute really arose between the appellant and respondent 1. His argument is that the employees, the claim for whose reinstatement has raised the present dispute, are not workmen of the appellant and he suggests that it is not shown that respondent 1 union has on its register any of the appellant's workmen. Mr. Sastri concedes that it is well settled that a dispute which validly gives rise to a reference under the Industrial Disputes Act need not necessarily be a dispute directly

between an employer and his workmen. The definition of the expression 'industrial dispute' is wide enough to cover a dispute raised by the employer's workmen in regard to the non-employment of others who may not be his workmen at the material time. He, however, contends that none of the appellant's workmen has taken up the present dispute and so an industrial dispute cannot be said to arise between the appellant and respondent 1 and that makes the reference invalid. There is no doubt that one of the points made by respondent 1 was that the appellant is the continuer of, and successor to, respondent 2 and that respondent 1 had taken up the cause of the employees mentioned in the annexure who had not been employed by the appellant. If the appellant's case was that respondent 1 could not raise an industrial dispute in this matter since none of the workmen of the appellant was its member, it should have taken this plea before the Tribunal. No doubt it does appear that the appellant desired that persons who wanted employment under it should discontinue their connection with the union and Mr. Sastri wanted to refer to the evidence of Dr. Trivedi, the President of the Union, in support of his argument that such of the workmen whom the appellant has employed can be safely taken to have resigned their connection with the union. We do not think that it is open to Mr. Sastri to take such a plea at this stage. The statements made by Dr. Trivedi to which Mr. Sastri has referred clearly show that Dr. Trivedi was not prepared to issue the requisite certificates to the workmen who wanted employment with the appellant that they had ceased to be the members of the union. All that Dr. Trivedi asked the General Secretary of the Union to do was to issue statements of the outstanding dues of the workmen in question so that they might produce the said certificates to the management of the appellant in their effort to satisfy the management that they were not members of the union because they had not cleared off their dues. The workmen apparently adopted this device to obtain employment from the appellant; but that cannot assist Mr. Sastri's argument because the record shows that most of them, after obtaining employment, wrote back to the union that they continued to be the members of the union; apart from this consideration, however, the plea sought to be raised by Mr. Sastri is a plea of fact which affected the Tribunal's jurisdiction and having regard to the case specifically set out by respondent 1 against the appellant it was clearly necessary for the appellant to have made out this plea in clear terms. Evidence could then have been led on the point to enable the Tribunal to decide whether respondent 1 was entitled to raise the present dispute with the appellant as an industrial dispute under the Industrial Disputes Act and whether the reference to it was valid. On the record as it stands there would be no justification for assuming that respondent 1 which has raised the present dispute cannot do so because none of the appellant's employees is its member and so it cannot claim to represent them.

Thus the only ground on which Mr. Sastri attempted to distinguish the present case from the case of the *Workmen of Dahingeapar Tea Estate* (*supra*) fails and so we must hold that the view taken by this Court in the said case governs the decision of the present appeal. A valid reference was made to the Tribunal in regard to an industrial dispute between the appellant and respondent 1 and the Tribunal, having considered the relevant facts, has come to the conclusion that the workmen in question have been improperly locked out and are entitled to reinstatement. Having regard to the material findings of fact recorded by the Tribunal in the present case, we do not think that the validity of the award can be challenged by the appellant on abstract legal grounds sought to be raised by Mr. Sastri before us.

In the result, the appeal fails and must be dismissed with costs.

[IN THE BOMBAY HIGH COURT.]

R. S. REKCHAND GOPALDAS MOHTA AND ANOTHER

v.

STATE INDUSTRIAL COURT AND OTHERS

Mudholkar and Kotval, JJ.

September 11, 1957.

C. P. AND BERAR INDUSTRIAL DISPUTES SETTLEMENT ACT, 1947, SECTION 22(4)—ASSESSORS—WHETHER INDUSTRIAL COURT CAN PROCEED IN ABSENCE OF ASSESSORS—PRESIDENT OF TRADE UNION WHICH IS PARTY TO PROCEEDINGS—WHETHER PRECLUDED FROM ACTING AS ASSESSOR.

The assessors referred to in section 22(4) of the C. P. and Berar Industrial Disputes Settlement Act, 1947, must join in all the proceedings before the State Industrial Court and it is not open to the Court to proceed in the absence of the assessors.

The fact that one of the assessors was the President of a trade union which was a party to the industrial dispute would not ipso facto *preclude him from being an assessor under the section.*

Special Civil Application No. 146 of 1957.

N. L. Abhyankar for the petitioners.

S. W. Dhabe for the respondents

JUDGMENT

S. P. KOTVAL, J.—This petition is directed against interlocutory orders of the State Industrial Court in a proceeding under section 38-A of the Central Provinces and Berar Industrial Disputes Settlement Act commenced by the respondent No. 2 against the petitioners.

Only two questions arise in this petition. The first is whether the assessors referred to in section 22(4) of the Act must join in all the proceedings before the State Industrial Court or whether that Court could undertake any of these proceedings in the absence of the assessors. The other question raised is whether one of the assessors, *viz.* Mr. Sonkamle, respondent No. 3, who was the President of the Akola Mazdoor Sangh, which was the applicant before the State Industrial Court, could be an assessor when he was himself a party to the proceedings.

So far as the first question is concerned it is concluded by a decision of a Division Bench of this Court reported in *Provincial Transport Services* v. *N. H. Muzumdar, State Industrial Court, Nagpur*, [1957] N.L.J. 405, wherein it was held that under section 22(4) of the C.P. and Berar Industrial Disputes Settlement Act, where a question of an increase or a decrease of wages is before the State Industrial Court the assessors have to associate with it during the enquiry into such question. Some argument was advanced as to whether this meant that at every stage of the enquiry the assessors should be associated with the Court. In our opinion, the section itself requires and the ruling also makes it clear that the assessors should be associated at every stage of the enquiry on the merits of an industrial dispute or an industrial matter before the Court.

As to the second question raised, no doubt, it is a principle of natural justice that a party must not be a Judge in its own cause. That is a rule, however which is applicable to judicial proceedings strictly so called. But in the case of industrial disputes, the element of judicial adjudication is not the only element. There is more often involved an element of conciliation, arbitration or collective bargaining. This is clear if we consider the nature of the functions it has to perform. The nature of its functions is well put by Ludwig Teller in his book on *Labour Disputes and Collective Bargaining*, Vol. 1, at page 534 as follows:

"The kernel of the distinction between commercial and industrial arbitration is said to be found in the fact that commercial arbitration is an aspect of the administration of justice, and, more particularly, a substitute for the judicial process, while the arbitration of labour disputes is more often an extension of the process of collective bargaining."

And at page 536, the point is further elucidated as follows:

"Again, industrial arbitration is more usually spoken of in connection with the adjustment of existing labour controversies, while commercial arbitration is said more often to include the disposition of controversies which may arise in the future out of agreements between the parties. Then too, industrial arbitration may involve the extension of an existing agreement, or the making of a new one, or in general the creation of new obbigations or modifications of old ones, while commercial arbitration generally concerns itself with interpretation of existing obligations and disputes relating to existing agreements......Compromise by contending advocates rather than justice by impartial men is thus the purpose of the procedure adopted under such statutes"

And the learned author adds—

"Hence, partisan arbitrators, condemned in connection with commercial arbitrations, are commonly found sitting in judgment upon the merits of respective contentions of the parties to a labour dispute."

We are in agreement with these views and, in our opinion, the mere fact that the third respondent was the President of the Akola Mazdoor Sangh, which was also an applicant before the State Industrial Court, would not *ipso facto* preclude him from being an assessor under section 22(4) of the Act.

We therefore partly allow the petition and quash the order of the State Industrial Court holding that it can proceed with the proceedings in the absence of the assessors. As to its order holding that the third respondent Mr. Sonkamle could validly continue to act as an assessor, it is upheld. In the circumstances there shall be no order as to costs.

There was a third question raised in the petition as to the scope of the reference, a question disposed of by the first respondent by its order dated 27th March, 1957. Counsel on both sides agree that the question need not be decided here and should be left open for being agitated in further proceedings.

[IN THE BOMBAY HIGH COURT.]

NAGPUR GLASS WORKS LTD., NAGPUR

v.

REGIONAL PROVIDENT FUND COMMISSIONER, BOMBAY.

Mudholkar and Tambe, JJ.

March 7, 1957.

EMPLOYEES' PROVIDENT FUNDS ACT, 1952, SECTION 1(3), SCHEDULE I—"ELECTRICAL, MECHANICAL AND GENERAL ENGINEERING PRODUCTS"—MEANING OF—WHETHER INCLUDES MANUFACTURE OF METAL BURNERS FOR GLASS LAMPS—MANUFACTURE OF PRODUCTS COVERED BY ACT AS ALSO PRODUCTS NOT SO COVERED—WHETHER ACT CAN BE APPLIED TO ALL THE WORKMEN EMPLOYED.

The expression "Electrical, mechanical and general engineering products" in Schedule I of the Employees' Provident Funds Act, 1952, means engineering products relating to or connected with electricity, or engineering products acting or worked or produced by a machine or mechanism, or products produced by a craftsman employing certain design or invention. The explanation of the expression contained in the Schedule is only by way of illustration and does not exhaust the products which are covered by the expression.

Where an industry to which the Employees' Provident Funds Act, 1952, applies is carried on in a factory which produces also articles which are not covered by the Act, the Act should not be applied to the entire factory but only to that section engaged in the industry to which the Act applies.

Where a manufacturer of glass (to which the Act was not then applicable) was also making metal burners for glass lamps and the authorities under the Act proposed to apply the Act to the entire factory, Held *that the manufacture of metal burners was covered by Schedule I of the Act and that the Act could be applied only to those workmen who were employed in the manufacture of products covered by the Act.*

Miscellaneous Petition No. 122 of 1956.

M. R. Bobde for the petitioner.

M. Adhikari for the respondent.

JUDGMENT.

MUDHOLKAR, J.— This is a petition under article 226 of the Constitution for the issue of a writ of prohibition or any other writ to the respondent prohibiting him from enforcing the provisions of the Employees' Provident Funds Act, 1952, against the petitioner.

The relevant facts are as follows: The principal business of the petitioner is the manufacture of glass. It is also engaged in the business of manufacture of burners and metal lamps (consisting of glass oil containers and globes and metal burners and reflectors). In the year 1952, the Employees' Provident Funds Act was passed. Sub-section (3) of section 1 of the Act applies to all factories engaged in any industry specified in Schedule I of the Act provided that they employ fifty or more workers in that industry. The Schedule to the Act however does not include a 'glass industry'.

By Act 37 of 1953, this Act was amended and an Explanation was added in Schedule I. This Explanation gives a list of industries which are covered by the expression "Electrical, mechanical or general engineering products" used in the Schedule. Neither the 'glass industry' nor burners and metal lamps are included in the aforesaid Explanation. This Explanation also added an entry "hurricane lanterns" as included in the expression "Electrical, mechanical or general engineering products."

According to the petitioner, burners and metal lamps produced by it are not parts and accessories of hurricane lanterns. This fact is however denied by the respondent.

On 16th March, 1955, the petitioner received a letter from the Regional Provident Fund Commissioner, M. P., Nagpur, stating that out of the total strength of 420 workers working in the petitioner's industry only 187 workers were employed in the section manufacturing metal lamps, burners and hurricane lanterns which are included under the term "Electrical, Mechanical or general engineering products" and that as such the Act was applicable not only to this section of the factory but to the whole factory.

The petitioner protested against this interpretation without any avail. It apprehends that the Regional Provident Commissioner will now proceed to recover the amount due from it under the provisions of section 8 of the Act and has therefore come up to this Court under article 226 of the Constitution.

The question is whether the expression "Electrical, mechanical or general engineering products" includes metal lamps or burners. We assume for the purposes of this case that they are not fit for being used in hurricane lanterns. Now, the expression "Electrical, mechanical or general engineering products" is a very wide one, and even though metal lamps and burners are not included in the explanation to the Schedule, it would seem that they would fall within the general expression. The only limitation that would be placed on the 'product' is that it must be an engineering product. The adjective 'electrical' means, according to the *Shorter Oxford Dictionary*, 'relating to or connected with electricity';

while the adjective 'mechanical' means, in this context, according to that Dictionary, 'acting, worked, or produced by a machine or mechanism'. Thus, the expression "Electrical, mechanical or general engineering products" means engineering products relating to or connected with electricity, or engineering products acting or worked or produced by a machine or mechanism, or products produced by a craftsman employing a certain design or invention. Burners and metal lamps will thus fall within the expression inasmuch as they are engineering products and could be produced by a machine or mechanism and could also be produced by a craftsman employing a certain design or invention. In our opinion, therefore, the section of the petitioner's factory which is solely devoted to the production and marketing of these products would fall within the Schedule.

Sri Bobde, who appeared for the petitioner, then argued that the expression "Electrical, mechanical or general engineering products" has, by virtue of the explanation added thereto by Act 37 of 1953, become limited to the products expressly specified therein and that as metal lamps and burners are not included within the explanation they did not fall within the expression "Electrical, mechanical or general engineering products". The period for which the demand for returns and contribution is made is between 1st November, 1952 and 31st March, 1955. The explanatton was thus in force during a considerable portion of this period. Now, by enacting this explanation the Legislature has provided that without prejudice to the ordinary meaning of the expressions used in the Schedule, the expression "Electrical, mechanical or general engineering products" would include products specified in the 25 items set out in the explanation. Clearly, therefore, it could not be the intention of the Legislature to cut down the generality of the expression "Electrical, mechanical or general engineering products". Curiously, however, the Legislature has made a specific mention in the explanation of electric lamps and hurricane lanterns, but not of lamps of any other kind. It is because of this that Sri Bobde argued that lamps of other kinds or parts and accessories of such lamps were intended to be excluded. But for the fact that the Legislature has clearly said that the specification of the items in the explanation was without prejudice to the ordinary meaning of the expression "Electrical, mechanical or general engineering products" and the further fact that the items cover a wide range of products, from 'ships' to 'bolts, nuts and rivets', we would have accepted the contention of the learned counsel. The fact that the products cover a very wide range shows that their specification in the explanation is by way of illustration. Thus, though 'electric lamps' and 'hurricane lanterns' are specified in the explanation, it would not be right to say that lamps of other kinds were intended to be excluded. On the other hand, the proper interpretation would be to say that by specifying two kinds of lamps the Legislature intended to include every kind of lamp. Any other interpretation would render the opening words of the explanation nugatory and defeat the clearly expressed intention of the Legislature.

An apparent difficulty is no doubt created by the exclusion of certain products in certain items, such as, glass bulbs from item (3) "Electrical lamps", and electric machinery and machine tools, from item (7) "Machinery used in industry". But this difficulty is not real. It is evident that despite the wide scope of the expression "Electrical, mechanical or general engineering products" the Legislature deliberately intended to exclude from its compass these particular articles. That is all.

It was however contended on the strength of the decision of Mehrotra, J., in *Great Eastern Electroplaters Ltd.* v. *Regional Provident Fund Commissioner, U. P.*, [1956] 11 F.J.R. 191, that the expression "Electrical, mechanical and general engineering products" has to be interpreted in a different way. In that case the learned Judge observed:

"From the nature of the articles mentioned in the amended Schedule, it will be clear that the scope of the words 'electrical and mechanical products' is not to cover all products which are made by means of mechanical or electrical process but it means products which are utilised for purposes of producing electricity or implements and other apparatus and machinery or goods like fans, radio and battery cells."

In that case, it may be mentioned, the learned Judge observed that a torch case is only an article for purposes of keeping batteries and not for purposes of generating electricity and the unit which produced this article did not fall within the Schedule. The learned Judge has not stated why in his opinion the products which are made by means of electrical and mechanical process are excluded from the expression "Electrical, mechanical or general engineering products". With utmost respect to the learned Judge we find it difficult to agree with the interpretation placed by him on the expression. In our opinion, as already stated, the words 'electrical, mechanical and general' have reference to the process of manufacture and not to the use to which the articles produced could be put.

We are, however, of the opinion that the Act cannot apply to the whole factory inasmuch as at the relevant date 'glass' was not included in the Schedule. It applies only to the section producing 'burners and metal lamps'. These products are final products manufactured for sale and their production is an industry in itself. Therefore, while provident fund contribution cannot be demanded in respect of all the 420 workers it can be demanded in respect of 187 workers engaged in the particular section manufacturing burners and metal lamps.

It was finally argued on behalf of the petitioner that no steps could be taken against it by the respondent without resorting to the provisions of section 19-A of the Act. Section 19-A reads as follows:

"*Power to remove difficulties*: If any difficulty arises in giving effect to the provisions of this Act, and in particular, if any doubt arises as to—

(i) whether a factory is engaged in any industry specified in Schedule I; or

(ii) whether fifty or more persons are employed in a factory; or

(iii) whether three years have elapsed from the establishment of a factory; or

(iv) whether the total quantum of benefits to which an employee is entitled has been reduced by the employer,

the Central Government may, by order, make such provision or give such direction, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for the removal of the doubt or difficulty; and the order of the Central Government, in such cases, shall be final."

It is argued that since there is a dispute regarding the question as to whether the petitioner's section was engaged in an industry prescribed in section 1, it was incumbent upon the respondent to refer the matter to the Central Government for its decision and that he had no right to make any demand from the petitioner without complying with this provision. As we read the provision, it was not obligatory upon the respondent to do so though it may have been desirable for him to refer a matter of this kind to the Central Government for its decision. Again, this provision does not apply to every case where an interpretation put upon any entry in the Schedule is disputed, but applies only where the Central Government or the Regional Provident Fund Commissioner finds that there is a difficulty in regard to the interpretation to be placed upon the Schedule.

The omission of the Regional Commissioner to move the Central Government is this regard does not, in any way, affect his powers under the Act to realise the amount.

However, in respect of one matter the petition is well founded. The respondent wants the petitioner to submit returns and make contribution in respect of the employees engaged in the entire glass industry that is, including the employees who are engaged in the manufacture of articles other than burners and metal lamps. That is clearly wrong. As already pointed out, the Act does not apply to the glass industry. Upon the view we have taken it does not apply to that section which is engaged in the manufacture of burners and metal lamps inasmuch as these articles are manufactured for sale. No doubt, this section is a part of the Nagpur Glass Works. But merely because that is so, it cannot be said that all the employees of the Glass Works are employed in the "factory" (*i.e.*, the section) engaged in the manufacture of burners and metal lamps. We are, therefore, clear that the liability of the petitioner to comply with the demands made upon it by the respondent must be confined to the section engaged in the manufacture of burners and metal lamps.

In this view, we allow the petition in part and direct that a writ be issued to the respondent restraining him from enforcing compliance by the petitioner with the provisions of the Act except with respect to 187 workers engaged in the section manufacturing burners and metal lamps.

Costs shall be borne as incurred. The amount of security deposited by the petitioner will be refunded to it.
