HIGH COURT OF GUJARAT *(D.B.)*

GUJARAT BEEDI KARKHANA OWNERS ASSOCIATION
V/S
UNION OF INDIA

Date of Decision: 15 October 1970

Citation: 1970 LawSuit(Guj) 98

Hon'ble Judges: J B Mehta, D A Desai

Eq. Citations: 1971 GLR 690, 1972 (1) LLJ 253

Case Type: Special Civil Application

Case No: 872 of 1968

Subject: Constitution

Acts Referred:
Constitution Of India Art 39(e), Art 19(1)(g), Art 38, Art 245, Art 42
Beedi And Cigar Workers (Conditions Of Employment) Act, 1966 Sec 4(1), Sec 14, Sec 22, Sec 44, Sec 19, Sec 39, Sec 77, Sec 28, Sec 21, Sec 20, Sec 23, Sec 4(8), Sec 9, Sec 40, Sec 37, Sec 26, Sec 17, Sec 5, Sec 27, Sec 8, Sec 4(3), Sec 31, Sec 18, Sec 4, Sec 3, Sec 12

Final Decision: Petition dismissed

Advocates: K G Vakharia,K S Nanavati, G T Nanavati, M G Doshit, H M Mehta

Reference Cases:
Cases Cited in (+): **1**
Cases Referred in (+): **25**

Judgement Text:-

J B Mehta, J

[1] In these two petitions the petitioners challenge the vires of the provisions of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, hereinafter referred to as 'the Act'. Although the first petition was intended to be filed as the representative petition by the Association, no permission under O. 1 R. 8 was ultimately obtained. Therefore, both the petitions are filed by the individual employers. There is no dispute that all these employers are employing workers for the manufacture of Beedi either on their premises or they employ home workers. The existing employment in the present cases is not through contract labour but those provisions are challenged as the Act covers within its scope even the contract labour which would be getting the same conditions of employment as prescribed by the Act. In the beginning various points were sought to be raised in these petitions but ultimately the challenge on the ground that there is a violation of the guarantee of free interstate trade and commerce under Article 301 and as to the vires of sec. 3 and as to the vires of the various provisions which have extended the benefits of other Acts by a process of incorporation by reference has been given up at the time of hearing. Both the petitions, therefore, now challenge the provisions of the Act on the following three grounds :-

(1) GROUND-A :- That the Parliament has no legislative competence to enact this Act as in pith and substance the matter falls under Entry 24 in the State List II; and that the Parliament has also perpetrated a fraud on the Constitution by introducing an artificial concept of employer-employee relationship to bring that Act under Entries 22 to 24 in the Concurrent List III.

(2) GROUND-B :- That the restrictions imposed by the Act violate the freedom of trade and business guaranted under Article 19(1)(g), particularly, as the Act has been applied irrespective of the number of the 'employees and as there is artificial concept of employment which includes even contract labour and home workers and as it imposes unbearable burdens in such cases where the employer had no master and servant relationship at nil and could not effectively control the independent contractors or the home workers who had merely taken raw materials for work at their homes.

(3) GROUND-C :- That sec. 4 is hit by Articles 14 and 19(1)(g) which imposes conditions which are arbitrary, excessive, extraneous, vague and unintelligible and particularly, Rule 3(4) also suffers from the same defect of excessive delegation.

(i) Historical background and the Scheme of the Act :-

[2] Before we consider these grounds of attack, it would be proper at the outset to consider the historical background of or the circumstances prevailing in this Beedi industry to find out the mischief which was intended to be prevented and the remedy which was sought to be advanced by the Legislature for regulating the conditions of employment, in the Beedi and Cigar establishments. This historical background has been elaborately discussed in Bhikhusha Yamasha Kshatriya Private Ltd. v. Union of India, A.I.R. 1963 S.C. 1591. Their Lordships pointed out at page 1595 that in 1929 a Royal Commission of Labour in India was appointed to make a detailed investigation into labour problems. The commission investigated into the conditions in various industries including the Beedi making industry and submitted its report in June 1931 revealing the deplorable state of affairs which prevailed in this industry. As mentioned in the said report the Commission had at that time recommended enactment of a separate Act for these Beedi workers. Even the Labour Investigation Committee appointed in February 1944 to investigate conditions of employment in respect of various industries including the conditions of workmen in Beedi, Cigar and Cigarette industry found that the working conditions in the Beedi industry had remained the same. The prominent features of the Beedi and Cigar industries are long hours and insanitary conditions of work and employment of child labour. Women were also employed in large number in this industry. The Beedi and Cigar labour satisfied many of the criteria of sweated labour such as sub-contract system, long hours, insanitary working conditions, home work (in beedi), employment of women and children, irregularity of employment, low wages, and lack of bargaining power. The conditions prevailing in the Province of Bombay were summarised by saying that the conditions of these workshops, so far as sanitation, light and ventilation were concerned, beggar description. They were dark, dingy places with very few, if any, windows and the approaches were very insanitary. The workers were huddled together, men, women and in some cases children, and there was hardly any space to move. One could see bags of tobacco heaped in one corner and manufactured Beedis in another. Most of the workshops had no lavatories and where they were, they

were in a most deplorable condition. Some of the workshops had low wooden ceilings above which some workers sat and carried on their work. These were not usually reached by staircases and the workers had to go up with great difficulty. The Committee recorded its conclusion by saying that the matters requiring immediate attention in the bidi and cigar industries were the unhealthy working conditions, long hours of work, employment of women and children, deduction from wages and the sub-contract system of organisation. It was desirable to abolish the outwork system and to encourage establishment of big factories, if protective labour legislation was to be enforced with any degree of success. Their Lordships, therefore, summarized the entire position by saying that in these circumstances the application of factory legislation to protect the legitimate interest of beedi rollers was a crying necessity. It was assumed as can be seen from the two decisions by the High Court of Bombay in The State, v. Alisaheb Kasim Tamboli, A.I.R. 1955 Bom. 209 and by the High Court of Patna in Ram Chandra Prized v. State of Bihar, A.I.R. 1957 Patna 247, that the Factories Act, 1948, would cover these establishments in which Beedi making was carried on because the expression "employed" in sec. 2(1) of the Factories Act included mere engagement or occupation in a manufacturing process without any contract giving rise to a relation of master and servant. Unfortunately this assumption was found to be wrong because when the matter was finally taken up before the Supreme Court, a restricted interpretation was put on the definition of the term 'worker' in sec. 2(1) of the Factories Act. In Chintamanrao v. State ofM.P. A.I.R. 1958 S.C. 388 at page 391 it was held that even though sec. 2(1) defined a worker as a person employed "directly or through any agency", it could be given only a restrictive interpretation. The expression 'employed' was interpreted as covering that relation between 'employer' and 'employee' where the employment was under a contract of service. The contract of service was to be decided by the usual prima facie test of the power of the control of the master. In view of this common law concept of master and servant relationship as decided by that prima fade test of control which was evolved in the context of determination of tortious liability of the master for the act of the servant, the Sattedars or workers of the Sattedars were held not to be workers within the meaning of this restrictive test. Applying the same test in Birdhinchand Sharma v. First Civil Judge, A.I.R. 1961 S.C. 644, it was held by Their Lordships that the concerned workers were covered within the definition as they were working on the premises of the employer and they were not at liberty to work at their home and because the employer could exercise the power of control by rejecting the substandard Beedis. In Shankar Balaji Waje v. State of Maharashtra. A.I.R. 1960 Bom. 517, however, it was held that as there was no obligation on the employees to work on the premises of the employer, there was no control and those persons were held not

entitled to the benefit of leave with wages under the Factories Act, especially as such a benefit could never be computed in such cases where there was no control on such home workers who were not working on the employer's premises. In D. N. Sahib & Sons v. Union of U. B. Workers, A.I.R. 1966 S.C. 370, in view of the modus operand adopted the agreement with the contractor was found to be a mere camouflage, and the test of master and servant relationship, in the context of similar definition of "workman" under sec. 2(P) of the Industrial Disputes Act, 1947, was held to be satisfied. It should be noted that was also a case where the employees were required to work on the premises of the employer and, therefore, the control could be implied, especially when the contractor was only given a mere labour contract.

> From this history it is obvious that because of the restricted interpretation given to the definition of the term 'worker' in sec. 2(1) of the Factories Act, 1948, and under sec. 2(s) of the term 'workman' in the Industrial Disputes Act, 1947, the labour employed in the Beedi industries, even though it was employed in the manufacturing process, was denied these benefits of the Factories Act and of this vital piece of industrial legislation like the Industrial Disputes Act if the employment was as contract labour or as home worker. The power of control by way of rejection of sub-standard Beedis was sure to be exercised even in case of this part of the labour force working in this industry, but so long as they would not be working on the employer's premises under a contract of employment, the restricted definition came in their way from getting the same rights and benefits which their counter-parts who were employed under a direct contract of employment by the employer obtained. Even as regards the minimum wages, when revised minimum wages were fixed for workers in the Beedi industries and the notification provided an integral scheme to make the implementation of this minimum wages fixation effective by laying down the manner in which the employer should make payment for Chhant or discarded Beedis, it was held in Bidi, Bidi leaves and Tobacco Merchants 'Association v. State of Bombay, A.I.R. 1962 S.C. 486, that such a notification was ultra vires the power of the State Government, because the relevant provisions of the Minimum Wages Act did not authorise the State Government to make rules for the decision of the disputes in this connection and for the payment of minimum rates of wages on the basis of such decision. Therefore, if the employer chooses to reject the Beedis as substandard Beedis, these employees could not even get minimum wages which were sought to be secured to these workers and they

were helpless in raising any labour or industrial dispute in this connection because of the restricted definition of the term "workmen" even in the Industrial Disputes Act, 1947. In these circumstances an attempt was made by some State Governments like the State of Bombay to issue a notification under sec. 85 of the Factories Act, 1948. This gave rise to the aforesaid decision in Bhikhusha Yamasha Kshatriya Pvt. Ltd.'s case A.I.R. 1963 S. C. 1591. At page 1597 their Lordships pointed out that the Factories Act was enacted primarily with the object of protecting workers employed in factories against industrial and occupational hazards. For that purpose it seeks to impose upon the owners or the occupiers certain obligations to protect workers unwary as well as negligent and to secure for them employment in conditions conducive to their health and safety. The Act required that the workers should work in healthy and sanitary conditions and for that purpose it provided that precautions should be taken for the safety of workers and prevention of accidents. Incidental provisions were made for securing information necessary to ensure that the objects were carried out and the State Governments were empowered to appoint Inspectors, to call for reports and to inspect the prescribed registers with a view to maintain effective supervision. The duty of the employer was to secure the health and safety of workers and extended to providing adequate plant, machinery and appliances, supervision over workers, healthy and safe premises, proper system of working and it further extended to giving reasonable instructions. Detailed provisions were, therefore, made in diverse chapters of the Act imposing obligations upon the owners of the factories to maintain inspecting staff and for maintenance of health, and provisions for amenities such as lighting, drinking water etc. etc. Provisions were also made for safety of workers and their welfare, such as restrictions on working hours and on the employment of young persons and females, and grant of annual leave with wages. Their Lordships, therefore, pointed out that even though the employment in a manufacturing process was at one time regarded as a matter of contract between the employer and the employee and the State was not concerned to impose any duties upon the employer, it was, however, now recognised that the State had a vital concern in preventing exploitation of labour and in insetting upon proper safeguards for the health and safety of the workers. The Factories Act undoubtedly imposed numerous restrictions upon the employers to secure to the workers adequate safeguards for their health and physical well-being. But imposition of such

restriction was not and could not be regarded, in the context of the modern outlook on industrial relation, as unreasonable. Their Lordships further added that extension of the benefits of the Factories Act to premises and workers, not falling strictly within the purview of the Act, was intended to serve the same purpose. By authorising imposition of restriction for the benefit of workers who in view of the State stood in need of some or all the protections afforded by the Factories Act, but who were not governed by the Act, the Legislature was merely seeking to effectuate the object of the Act, i.e. it authorised extension of the benefit of the Act to persons to whom the Act, to fully effectuate the object, should have been, but as had on account of administrative or other difficulties not been extended. Their Lordships in terms pointed out that the Factories Act primarily applied to establishments in which ten or more persons were working where power was used and twenty or more persons where no power was used, thereby excluding from its operation small establishments. That was done presumably as it would impose great administrative strain upon governmental machinery, and involve hardships ordinarily not commensurate with the benefit secured thereby. Thereafter their Lordships made the pertinent observations that the Legislature, however, with a view to prevent circumvention of the provisions of the Factories Act, and to secure to the persons working in establishments where manufacturing process was carried on adequate safeguards where necessity was felt, had authorised the State Government by Notification to declare any place which did not fall within the definition of 'factory' to be a factory and to make all or any of the provisions of the Act applicable thereto. The Act was primarily intended to govern relations of persons standing as master and servant in connection with manufacturing processes in factories, and liberty of contract otherwise was not sought to be affected by the principal provisions of the Act. But exclusion from restrictions inherent in the definitions of 'factory' and 'worker' had its source not in any desire to afford special privileges to any class of owners, and, therefore, the Legislature authorised the State Governments to issue notifications extending the Act even to those establishments which were deemed to be factory and in which persons were working only with the permission or under the agreement with the owners but not as employees of the owners and were to be regarded as only deemed workers. In this context Their Lordships held that the power conferred by sec. 85 to extend the regulatory provisions of the Act was not

arbitrary power to pick and choose between establishments similarly situate. It was a power granted to extent those provisions where the necessity to regulate having regard to the circumstances was felt. It was granted with a view to secure protection of the persons engaged in industrial occupations in the light of special circumstances of a particular industry, a locality or an establishment, where circumstances justifying the extension of the protection existed. It was to carry out effectively the object underlying the Act that power had been given to the State Government to decide with reference to local conditions whether it was desirable that the provisions of the Act or any of them should be made applicable to any establishment which was not covered by the definition of 'factory' or to workers in a factory who were not entitled to the benefits of the Act because of the definition of 'employment'. That is why in this context this extension of the provisions of the Factories Act for the benefit of these deemed workers who were working in the premises which were deemed factories was regarded as not unreasonable within the meaning of Article 19(1)(g) of the Constitution. The difficulty of invoking sec. 85, which would extend benefit even to the deemed workers and even to premises which did not satisfy the test of the term factory, was that it was dependent on the notification being issued by the State Government. Therefore, unless such a notification was issued, these Beedi workers continued to remain sweated labour working under the same unhygienic conditions even though their counterparts who were employed under regular contract of service with the employer could get these benefits, provided they were employed on the premises which came within the definition of the term factory. Thus, contract labour or the deemed workers who did identical work could not get any benefit of this labour welfare measure and they continued to work in such unhygienic conditions only because of the fact that this relevant statute was interpreted in a restrictive manner to cover only such employment which was under a contract of master and servant and the test of contract of service was the common law test of the master's control which was evolved in the context of tortious liability cases. Their Lordships, however, pointed out that whenever there was an extension by definition as in the case of sec. 85 notification, the same benefits could be extended to these workers working under the permission or agreement with the employer, and thereby they could be secured same benefits of the Factories Act which were available to those regular employees. That is why the Parliament has now intervened in these

circumstances so that this sweated labour even after 18 years of our Independence could be secured the minimum decent conditions of service for such a manufacturing process and their ordinary just rights which were already given to those similarly employed under a regular contract of employment. It was to put down those practices which had grown up in this industry of disintegrated factories by carrying on the same manufacturing process on the contractor's premises or through aid of such home workers at their homes and to avoid this exploitation by discouraging such devices that the Parliament had now to intervene by enacting this comprehensive labour measure to secure just conditions of work and employment for these sweated labour which had all along remained exploited.

(ii) The Preamble, objects and reasons of the Act : That is why the Act in its preamble states that this is an Act to provide for the welfare of the workers in beedi and cigar establishments and to regulate the conditions of their work and formatters connected therewith. If we peruse the Statement of Objects and Reasons published in the Gazette of India, Extraordinary, Part II, dated December 11, 1965, a, page 1358, it is stated as under :-

1. "The working conditions prevailing in the beedi and cigar establishments are unsatisfactory. Though at present the Factories Act, 1948, applies to such establishments, there has been a tendency on the part of employers to split their concerns into smaller units and thus escape from the provisions of the said Act. A special feature of the industry is the manufacture of beedi through contractors and by distributing work in the private dwelling-houses where the workers take the raw materials given by the employers or the contractors. Employer-employee relationship not being well-defined the application of the Factories Act has met with difficulties. The labour is unorganised and not able to look after its interests.

2. One or two State Governments passed Special Acts (the reference is to the Madras Act of 1958) to regulate the conditions of work of these workers but found themselves unable to enforce the law owing to the fact that the industry is highly mobile and tended to an area where no such restrictive laws prevailed. It became necessary therefore to have Central legislation on

the subject. The Bill seeks to provide for the regulation of the contract system of work, licensing of beedi and cigar industrial premises and matters like health, hours of work, spread-over, rest periods, overtime, annual leave with pay, distribution of raw materials etc."

This Act, therefore, seeks to prevent the mischief which had arisen because of the tendency on the part of the employer to convert their concerns into smaller units so as to escape from the provisions of the Factories Act. The Act also had to be passed because of the two prominent features of this industry where the manufacture of beedi was done through contractors and by distributing work in the private dwelling houses where the workers have been given raw materials by the employers or contractors. In view of the restrictive definition of the term 'worker' in sec. 2(1) of the Factories Act. 1948, such contract labour and such home workers could not be deemed to be workers, and they were deprived of their rights under this labour welfare measure. Labour was also unorganised and unable to look after its own interest. Recourse to sec. 85 by the State Governments or even when a special Act was enacted in some States to regulate the conditions of these workers was not found to be helpful in view of the high mobility of this industry which continued to move to such areas where no such laws prevailed. That is why the Parliament had to enact this Act as a comprehensive labour welfare measure for giving just conditions of employment to these exploited workers. The Act has been extended to the whole of India except the State of Jammu and Kashmir under sec. 1(2) and it comes into force in different States when the notification in that behalf is issued by the State Government. Different States have now brought the Act into force by the notifications in this behalf. In our Gujarat State all other provisions except sec. 3 were brought into force on April 1, 1968 while sec. 3 was brought into force on May 1, 1968.

(iii) Definitions in the Act:- We will now consider four main definitions in the Act which require some explanation as they define employer-employee relationship and the premises which are covered under the Act either as mere establishments or as industrial premises. Sec. 2(f) defines an 'employee' to mean a person employed directly or through any agency, whether for wages or not, in any establishment to do any work, skilled,

unskilled, manual or clerical, and inculdes-

(i) any labour who is given raw materials by an employer or a contractor for being made into beedi or cigar or both at home (hereinafter-referred to in this Act as 'home worker',) and

(ii) any person not employed by an employer or a contractor but working with the permission of, or under agreement with, the employer or contractor;

Sec. 2 (g) defines 'employer' to mean-

(a) in relation to contract labour, the principal employer, and

(b) in relation to other labour, the person who has the ultimate control over the affairs of any establishment or who has, by reason of his advancing money, supplying goods or othewise, a substantial interest in the control of the affairs of the establishment are entrusted, whether such other person is called the managing agent, manager, superintendent or by any other name.

Sec. 2(d) defines a "contractor" to mean a person who, in relation to a manufacturing process undertakes to produce a given result by executing the work through contract labour or who engages labour for any manufacturing process in a private dwelling house and includes a subcontractor, agent, munshi, thekedar or sattedar. Sec. 2(e) defines "contract labour" to mean any person engaged or employed in any premises by or through a contractor with or without the knowledge of the employer, in any manufacturing process. From all these definitions it is obvious that sec. 2(f) not only defines an employee in a restricted manner as in sec. 2(1) of the Factories Act as a person employed directly or through any agency, but it extends the scope of this definition by including two other categories mentioned therein. Under first inclusion a "home worker" is in terms included who is given merely raw material by the employer or the contractor for being made into Beedi or cigar or both at home. Under the second inclusion, any person not employed by the employer or the contractor, working with the

permission or under an agreement with the employer or his contractor is in terms covered. From the second inclusive clause of sec. 2(f) it is abundantly clear that the substantive part of the definition of the term "employee" in sec. 2(f) is itself wide enough to cover any person employed directly or through any agency. Therefore, even where the agency is of the contractor, the contract labour he in terms covered. In addition to the contract labour, a home worker as Well as any person even through not employed by the employer or the contractor who works with the permission or the agreement with such an employer or contractor is also covered. The definition of the term "contract labour" is wide enough to cover any person employed or engaged in the premises in any manufacturing process even if the employment is by or through a contractor and with or without the knowledge of the "employer. The term "contractor" in relation to the manufacturing process covers not only the person who undertakes to produce a given result by executing work through contract labour but also one who engages labour for any manufacturing process even in any private dwelling house. It further includes sub-contractor, agent, munshi, thekedar and sattedar. In relation to all such contract labour sec. 2(g) defines the principal employer as the employer. The term 'principal employer' in sec. 2(m) means a person for whom or on whose behalf any contract labour is engaged or employed in any establishment. As regards the other labour the term "employer" in sec. 2(g) means a person who has the ultimate control over the affairs of the establishment or who has by reason of his advancing money, supplying goods or otherwise, a substantial interest in the control of the affairs of any establishment, and includes any other person to whom the affairs of the establishment are entrusted, whether such other person is called the managing agent, manager, superintendent or by any other name. Therefore, the employer-employee relationship which is envisaged under this Act under Secs. 2(f) and 2(g) is not only that of employment under a direct contract of service. The definition is wide enough to cover all cases of employment which is brought about by employer directly or through any agency in any such establishment. Even persons employed as contract labour, home-workers and those working with permission or under an agreement with the employer or the contractor are covered. That is why the term 'employer' is defined as the principal employer for whom or on whose behalf the contract labour is engaged in the establishment or the ultimate employer or the ultimate master who controls the affairs of the establishment. The legislature

has thus looked to the economic realities and has not restricted the employer-employee relationship to one merely under a contract of service, but has extended the same to cover the entire labour force, which is directly or through any agency required or allowed to work in the establishment or at home. As the employer controls the establishment as such of which the employee is-the part and parcel as a limb thereof, it is the real master who controls the affairs of the establishment that is treated as the employer, ignoring the fact that the immediate employer may be the contractor or any other agent who gets work of the establishment done through labour force by such agency. So long as the particular labourer works for the manufacture or the industry of this employer, he is regarded as the employee of such employer.

As regards the term 'premises' we have to turn to three relevant definitions in sec. 2(h), 2(i) and 2(n). These three definitions are as under :-

"2(h) "establishment" means any place or premises including the precincts thereof in which or in any part of which any manufacturing process connected with the making of beedi or cigar or both is being or is ordinarily carried on and includes an industrial premises;

"2(i) 'Industrial premises' means any place or premises (not being a private dwelling house), including the precincts thereof, in which or in any part of which any industry or manufacturing process connected with the making of beedi or cigar or both is being, or is ordinarily carried on with or without the aid of power; "2(n) 'private dwelling house' means a house in which persons engaged in the manufacture of beedi or cigar or both reside."

This last term is, therefore, defined with reference to the fact that this is a house in which such a person engaged in Beedis manufacture resides. It is a residential house where beedi manufacturing work or process is carried on. The expression "industrial premises" in sec. 2(i) bodily incorporates the entire definition of the "establishment" in sec. 2(4). Because of the exclusion of a private dwelling house from this definition, it is abundantly clear that the expression "industrial premises" is in one sense narrower than term

"establishment" as it excludes a private dwelling house. On the other hand, it is wider than the term "establishment" because it not only covers premises used for the manufacturing process connected with the making of Beedis or Cigar etc. whether with or without the aid of power but those used for the entire industry as such. The industrial activity with the co-operation of capital and labour would be in the wider sense and it would cover even other persons than those participating in the manufacturing process, as for example, clerical staff, watchmen etc. Besides, the expression "manufacturing process" in sec. 2(k) is defined as any process for, or incidental to, making, finishing or packing or otherwise treating any article or substance with a view to its use, sale, transport, delivery or disposal as beedi or cigar or both. The legislature has advisedly used the expression industry connected with the making of beedi or cigar or both and not only the manufacturing process connected therewith. The term 'establishment' in that sense is a narrower term because it has reference to those premises in which or any part of which the manufacturing process connected with the Beedi making is ordinarily carried on. That is why by an inclusive process, the "establishment" is defined so as to include all industrial premises so that expression could be conveniently used to cover mere establishments as well as 'industrial premises' in the Act. In the case of premises used for manufacturing process, it is apparent that such an establishment would be covered within the definition of "industrial premises" unless such a process is carried on in a private dwelling house. Therefore, when the mere "establishment" is to be considered as distinct from industrial premises, it is obvious that it has a reference to the term 'private dwelling house.' Similarly, industrial premises must be treated as in the widest context covering not only the manufacturing premises but all other premises used even for the industrial activity. It is in the light of these relevant definitions that the various provisions of the Act will have to be considered as the benefit of the Act are prescribed by reference either to the terra 'industrial premises' or with reference to the term 'establishment.'

(iv) The relevant Scheme in the Act and the rules : Now we shall turn to the relevant provisions of the Act to consider the entire scheme.

(a) The provisions regarding health and welfare : Secs. 8 to 16 deal with the provisions regarding health and welfare along with the relevant rules 10 to 21 of the Beedi and Cigar Workers (Conditions of Employment) (Gujarat) Rules, 1968. Sec. 8 deals with the topic of 'cleanliness." Sec. 9 deals with Ventilation. Sec. 10 deals with overcrowding, sec. 11 with drinking water, sec. 12 with latrines and urinals, sec. 13 with washing facilities in case of certain processes. Sec. 14 deals with creches, sec. 15 with first-aid and sec. 16 with canteens. These are the general provisions regarding the health and welfare which are to be found in the Factories Act and which are made applicable to industrial premises. Sec. 8 requires every industrial premises to be kept clean and free from effuvia arising from any drain, privy or other nuisance and it shall maintain such standard of cleanliness including whitewashing, colourwashing, varnishing or painting, as may be prescribed. The other provisions depend on the rules as prescribed. Under the relevant rules, elaborate details are prescribed and in the relevant cases even the number of workers employed in the premises on the basis of which these amenities are to be provided has been regulated.

(b) Conditions of employment : Sec. 17 to 25 are the provisions which alongwith the rules 22 to 25 provide for matters regarding the working hours, wages for oveitime work, interval for rest, spread-over, weekly holidays, notice for periods of work, with which working hours shall correspond, prohibition for employment of children, under 14 years and of women and young persons under 18 years during certain prescribed hours. These provisions are on the lines of the Factories Act and they apply only to industrial premises.

(c) Leave with wages : Secs. 26 and 27 and rules 24 and 25 deal with the topic of annual leave with wages. Explanation 2 to sec. 27 in terms provides that for the purpose of determining wages payable to a home worker during leave period or for the purpose of payment of maternity benefit to a woman home worker, "day" shall mean any period during which such home worker was employed, during a period of twenty four hours commencing at midnight, for making beedi or cigar or both. Ten order that no difficulty can be experienced for compilations of the "day" of such home worker, this explanation has been enacted. Under the relevant rule 24, which prescribes

the register of leave with wages in case of home workers, such register under rule 24(2) has to be maintained in Form VII and the home worker is to be given under Rule 25 a leave book like other regular worker in Form. VII. Even under Rule 33 which provides for maintenance of certain registers by way of muster roll in Form No. 13 in respect of the employees employed on the industrial premises, rule 33(2) in terms provides that in case of a home-worker a log-book in Form 14 should be provided wherein he shall keep a record of the daily work done by him, the number of beedis and cigars manufactured by him and the wages received by him in the said book. This is to be kept in duplicate so that one book remains with the home workers at all times during the period between two successive supplies of raw material by the employer. Under Rule 33(3) a home worker's employment register in Form 15 has to be maintained and has to be kept upto-date on the basis of the entries in the home-workers log-books.

(d) Extension of benefits of the other Acts ; (i) Sec. 28 extends benefit of the Payment of Wages Act, when a notification is issued in respect of the employees in the establishments or a class of establishments. This benefit is thus available to all establishments and is not restricted to industrial premises.

(ii) Sec. 31 provides for security of service by providing that no employer shall dispense with the services of an employer who has been employed for a period of six months or more, except for a reasonable cause, and without giving such employee at least one month's notice or wages in lieu of such notice. The proviso enacts that such notice shall not be necessary if the services of such employee are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an inquiry held by the employer for the purpose. Under sec. 31(2)(a) the employee so discharged, dismissed or retrenched may appeal to such authority and within such time as may be prescribed either on the ground that there was no reasonable cause for dispensing with his services or on the ground that he had not been guilty of misconduct as held by the employer or on the ground that such punishment of discharge or dismissal was severe. This appellate authority can under sec. 31 (2)(b) reinstate the employee with or without back wages or direct payment of compensation and under clause (3) the decision of the

appellate authority is final and binding on both parties and shall be given effect to within the time specified by the appellate authority. Sec. 33 provides for penalties if the order of reinstatement or compensation is not carried out. Therefore, this section confers the benefit of security of service to all employees and, therefore, it applies to all establishments.

(iii) Sec. 37(1) and (2) extends benefit of the Industrial (Standing Orders) Act, 1946. If the number of persons employed in the industrial premises is 50 or more, the benefit is available without any notification, while if the number is less, the notification of the State Government would be necessary.

(iv) Under sec. 37(3) notwithstanding anything contained in the Maternity Benefit Act, 1961, the provisions of that Act shall apply to every establishment as if such establishment were an establishment to which that Act has been applied by a notification under sub-sec. (1) of sec. 2 thereof : The proviso makes appropriate provisions for the home worker so that the home worker would get the benefit of that Act. It should be noted that Industrial Employment Standing Orders under sec. 37(1) and (2) apply to industrial premises, while extension of the Maternity Benefit Act under sec. 37(3) is to all establishments.

(v) Under sec. 38(1) safety provisions of Chapter IV of the Factories Act are made applicable to industrial premises, and sec. 85 of the Factories Act being also made applicable, it is left to the State Government to issue the relevant notification for that purpose. Under sec. 38(2) nothing in any law in this connection relating to the regulation of the conditions of work of workers in shops or commercial establishments shall apply to any establishment to which the Act applies.

(vi) Under sec. 39(1), The Industrial Disputes Act, 1947 shall apply to matters arising in respect of every industrial premises under sec. 39(2), however, it is provided that notwithstanding anything contained in sub-sec. (1), a dispute between an employer and an employee relation to-

(a) the issue by the employer of raw materials to the employees;

(b) the rejection by the employer of beedi or cigar or both made by an employee,

(c) the payment of wages for the beedi or cigar or both rejected by the employer,

shall be settled by such authority and in such summary manner as the State Government may by rules specify in this behalf. Under sec. 39(3) an appeal is provided to the appellate authority whose decision is made final. It should be noted that sec. 39(1) applies to industrial premises, but so far as the disputes mentioned in sec. 39(2) are concerned it applies to every establishment. This is to get over the difficulty which was created as pointed out in the aforesaid decision in A.I.R. 1962 S.C. 487, because such a dispute could not be resolved by issuing notification only under the Minimum Wages Act. In this connection the relevant rules are to be found at Rules 27 to 30. As regards the disputes regarding the issue of raw materials etc. they are to be decided in the first instance by the Deputy Commissioner of Labour and in appeal by the Commissioner of Labour, under Rule 27. The provision of distribution of raw material is made under rule 28. Rule 29 prescribes a limit with regard to the rejection of beedis or cigars and in sub-rule (2) it is provided that if any beedi or cigar is rejected as substandard or Chhant or otherwise on any ground other than the ground of wilful negligence of the worker, the worker shall be paid wages for the beedis or cigars so rejected at one-half of the rate at which wages are payable to him for the beedis or cigars or both which have not been so rejected. Under Rule 30 payment of wages to the home worker is to be made at his home unless the Inspector specifies some other place.

(vii) The last section in this connection is sec. 40 which only enacts that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith in any law or in the terms of any award, agreement, or contract of service whether made before or after the commencement of the Act. It is this section which would remove the difficulties in the way of implementation of

other Acts whose benefits are extended in the earlier provisions because of the wider definition of the employer-employee relations given in this Act. Notwithstanding anything in such law, the benefits of those extended Acts which are incorporated in this Act would be applicable even to the wider employee-employer relationship envisaged by this Act.

(e) Incidental provisions : Secs. 3 to 5 are the licensing provisions. Sec. 3 provides that save as otherwise provided in this Act, no employer shall use or allow to be used any place or premises as an industrial premises unless he holds a valid licence issued under this Act and no such premises shall be used except in accordance with the terms and conditions of such licence. Sec. 4 provides for the issue of licence. Sec. 5 provides for the appeals in that connection from the order of the competent authority. The competent authority in the State is Assistant Commissioner of Labour and the appellate authority is the Commissioner of Labour. The relevant rules in this connection are to be found in Chapter II licensing of industrial premises under Rules 3 to 9. The form of application under Rule 3(1) is Form No. 1. In connection with these provisions, one other provision to be noticed is sec. 29. Sec. 29(1) enacts that the State Government may permit the wetting or cutting of beedi or tobacco leaves by employees outside the industrial premises on an application made to it by the employer on behalf of such employees. Under sec. 29(2) the employer shall maintain a record of the work to be carried on outside the industrial premises. Sec. 29(3) then provides that save as otherwise provided in this section, no employer shall require or allow any manufacturing process connected with the making of beedi or cigar or both to be carried on outside the industrial premises. As this ban was created by prohibiting the employer from getting the work of the manufacturing process carried on outside the industrial premises, an exception was carved out in the proviso that nothing in this sub-section shall apply to any labour who is given raw material by an employer or a contractor for being made into beedi or cigar or both at home. Therefore, subject to this restricted exception of home worker, the manufacturing process is to be carried out on the industrial premises' except as provided in sec. 29(1).

(f) Enforcement provisions : Secs. 32 to 36 are some of the enforcement provisions along with sec. 30. Sec. 30 prescribes onus as to the proof of the

age. Sec. 32 prescribes penalty for obstructing an Inspector. Sec. 33 prescribes penalty for the offences. Sec. 34 deals with offences by the companies. Sec. 35 is usual indemnity clause for acts done in good faith. Sec. 36 provides how cognizance of the offence under the Act shall be taken.

[3] The exemption provision is to be found in sec. 41 under which the State Government can exempt subject to the conditions and restrictions laid down any class of industrial premises from all or any of the provisions of the Act or the Rules, except that in the case of women employees there shall be no power to exempt from the provisions regarding the annual leave with wages, maternity benefits, creches, wages, rejection of beedi or cigar and night work. It should be noted that there is no power to exempt in case of mere establishments which are not industrial premises. Sec. 43 in this connection is an important provision which enacts that nothing in the Act shall apply to the owner or occupier of a private dwelling house who carries on any manufacturing process in such private dwelling house with the assistance of the members of his family living with him in such dwelling house and dependent on him, provided that the owner or occupier thereof is not an employes of an employer to whom this Act applies. The explanation provides that family means the spouse and children of the owner or occupier. Therefore, the self-employed persons in private dwelling houses are exempted under sec. 43 unless such person carries on manufacturing work in such private dwelling house with the assistance of persons who are not his spouse and children or he himself is an employee of some other employer to whom the Act applies.

[4] Sec. 42 is the provision giving power to the Central Government to give directions to the State Government as to the carrying into execution of the provisions of the Act. The last provision is in sec. 44 regarding the making of the rules. We have already referred to the relevant rules. One particular rule which needs special mention is rule 31 which provides for protection against fire in the industrial premises which is a safety provision. This is the entire substance of the scheme of the Act and the Rules.

[5] A bare perusal of the scheme reveals that these are provisions for health, safety and welfare of these employees working in this particular industry. The provisions are made for conditions of employment as also for extension of benefits of certain Acts. If the scheme of the Act is to be appreciated from the point of its division as to the nature of the benefits applicable to the industrial premises, we would find the following provisions applicable to the industrial premises :- (i) (g) (i) Licensing scheme restrictions under

Secs. 3 to 5 read with sec. 29. (ii) The provisions of health and welfare in Secs. 8 to 16. (iii) The provision of conditions of employment in Secs. 17 to 25. (iv) The annual leave with wages in sec. 26 and 27. (v) Applicability of the Payment of Wages Act under sec. 28(1). Security of service under sec. 31. Applicability of the Industrial Employment Standing Orders Act given under sec. 37(1) and (2); Maternity Benefit Act under sec. 37(3) and extension of Chapter IV and sec. 85 of the Factories Act under sec. 38(8) along with the provisions in sec. 38(2) that nothing in this connection in the Shops and Establishments Act shall apply. Besides under sec. 39(1), Industrial Disputes Act, 1947, is made applicable and finally sec. 41 gives power to the State Government to grant exemption in cases of industrial premises. As regards those establishments which are not industrial premises but which are mere establishments, i.e. private dwelling houses which are not exempted under sec. 43, the benefits which are applicable are those to be found in the following Secs. (1) Secs. 26 and 27 Annual leave with wages. (2) Sec. 28(1) when the notification is issued regarding the applicability of the Payment of Wages Act, 1936. (3) Security of service under sec. 31. (4) Benefit of the Maternity Benefit Act under sec. 37(3); (5) under sec. 38(2) nothing contained in any law relating to the regulation of the conditions of work of workers in shops or commercial establishments shall apply to any establishment to which this Act applies, (6) Under sec. 39(2) a limited provision for resolving of the labour disputes by the prescribed authority is to be found. It should be noted that the licensing provision do not apply to a mere establishment as they apply only to industrial premises and similarly the exemption provision under sec. 41 does not apply to a mere establishment.

[6] Therefore, it is clear from the scheme that for a mere establishment as distinct from industrial premises, there is no scheme of licensing. The benefits extended to such establishments are the minimum and that is why there is no power to exempt such establishments. Except the main benefits of annual leave with wages in Secs. 26 and 27 and of security of service under sec. 31 and of the Maternity Benefit Act under sec. 37(3) and the benefits envisaged under sec. 28 when the notification for applicability of the Payment of Wages Act is issued and for resolution of the labour disputes which would arise even in case of such small establishments which are private dwelling houses under sec. 39(2), the rest of the scheme is only with reference to industrial premises, where these provisions laying down conditions of work of such industrial premises are enacted on the lines of the Factories Act. The extension of the Factories Act to such industrial premises and such deemed workers by a notification under sec. 85 of the Factories Act is now upheld in Bhikhusha Yamasha Kshatriya Pvt. Ltd. A.I.R. 1963 S.C. 1591 which we have already discussed. It is therefore, obvious that these

provisions which are enacted to meet the situation of a felt necessity to end exploitation of the sweated labour, and the so called restrictions which are really regulatory in nature would be wholly commensurate with the object which is sought to be achieved by the Parliament in enacting this Act. In the light of this scheme and the historical background of this industry, we shall now consider the three ground on which this Act has been challenged by the petitioners.

[7] Re: GROUND No. A;- Whether the Parliament has the Legislative Competence to enact the Act:- The first contention raised by the petitioners is thoroughly misconceived. The pith and substance of this legislation is obviously regulation of the conditions of employment in this beedi and cigar industry. It regulates the industrial relations or the employer-employee relationship in this sweated industry. The Act does not seek to regulate the Beedi and Cigar industry as such. It only deals with this particular subject-matter as regards these establishments, viz., regulating conditions of employment in this industry and the industrial relations therein between the employer and employees. Therefore the pith and substance test would immediately show that this is a labour welfare measure which is enacted for the benefit of the workers working in this industry. Its impact if at all on the beedi industry as such is not direct and substantial but only indirect and incidental. It is well settled that the legislative competence has always to be judged on the doctrine of pith and substance and not by the test of incidental encroachment. The entries 22 to 24 in the concurrent list III are wide enough to cover such a labour welfare measure. Entry 22 deals with trade unions and industrial and labour disputes. Entry 23 is social security, employment and unemployment; and Entry 24 is welfare of labour including conditions of work, provident funds, employer's liability, workmen's compensation, invalidity and old age pensions and maternity benefits. The other entry which was said to be in the field was Entry 24 in List II which was "industries subject to the provisions of entries 7 and 52 of List I." The pith and substance of this legislation is that it is a labour welfare measure prescribing conditions of employment in the beedi and cigar industry regulating the terms of employment and resulting in better relations by avoidance of industrial and labour disputes in this industry, providing where necessary for the employer's liability, maternity benefits etc. This legislation could never be beyond the competence of the Parliament. It is only if the legislation was in pith and substance covering entry 24 of List II that there would be any question of lack of competence. The Act no where seeks to regulate the beedi industry as such but it merely seeks to regulate the employment in this industry by providing proper conditions of work and giving other benefits so that proper industrial relations could be maintained in this industry. Therefore, on this ground, the Act cannot be attacked as incompetent.

That is why both the learned Advocates vehemently confined their attack on the second ground that this was a colourable piece of legislation by giving an artificial definition of employer-employee relationship. This measure was turned into a labour welfare measure by this ingenious device, and that was a fraud committed by the legislature on the Constitution to usurp the power to enact this legislation. There is hardly any substance in this contention. We must bear in mind the various directive principles under our Constitution in this connection. Under Article 39(e) the State shall, in particular, direct its policy towards securing that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Under Article 42 the State shall make provision for securing just and humane conditions of work and for maternity relief. Article 43 provides that the State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas Therefore, in any event these relevant Articles lay down directive principles of the State policy of our welfare State which under Article 38 shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. This welfare State could never remain wedded to the age-old worn out concept of master and servant relationship in labour welfare measure so as to deny the benefits of such measure to all other employees or workers who do not work under the direct contract of service. Whenever the worker constitutes the labour force of the industry, he is a part and parcel or a limb of the industry. The workers may work under a direct contract of service or not, it is their collaboration in the industry which results in the production, manufacture or industrial activity. Whether he is a direct employee or not, the legislature must provide for his welfare. Therefore, no labour welfare measure can ever become complete, unless it embraces in its scope the entire labour force, howsoever employed in the industry. To deny legislative competence on the basis that only employment under a direct contract of service can be regulated by the legislature in a labour welfare measure would be to deny any scope for evolution of the industrial law in this country. As Professor H. S. Kirkaldy in his lectures on "The Spirit of Industrial Relations", (1947 edition) points out in his first lecture on the Spirit of Industrial Relations at pages 4 to 7 the problems of industrial relations arise with and from the divorce of the worker from the ownership of the instruments and materials of production. In primitive industry, the

worker was the owner, not only of his labour, but also commonly of both the instruments and materials of production. He sold his product rather than his labour. Therefore, the primitive workman was the first independent producer who had not to face any problem of any industrial relations. On the introduction of commercial methods and the evolution of the factory system which gathered a larger number of workers at a common place of employment, the worker was reduced to the position of a wage earner while his employer became the owner of the instruments and the materials of production and the product. The obvious elements of a conflict of interest exist between the employer who wishes to buy labour cheaply and the worker who wishes to sell it dearly. The whole problem of industrial relations can be very shortly stated as the devising of means to reconcile that conflict of interest. The learned author points out at page 5 that the sense of deprivation which has resulted from loss of independence can be compensated only by a realisation of partnership in a greater enterprise and a greater adventure than man ever undertook in isolation. The realization of partnership is not only, or even mainly a matter of monetary reward, it is a matter of spirit; it is a question of human dignity; it is what differentiates the worker from the machine. Until the spirit of partnership becomes the spirit of industrial relations, conflict as to the division of the existing product of industry obscures the need for cooperation towards greater productivity out of which alone can come real advance in material propserity. If the origin of the problem of industrial relations lies in the divorce of the worker from the ownership of the instruments and materials of production, the solution must be sought in realization of this copartnership. That is why even the industry is defined as any organised activity where the capital and labour co-operate for production of material goods or material services essential for the community. It is this co-operation as a copartner in the joint venture which is imprinted on the product. That is the sine qua non for the success of the industrial enterprise, wherein not only the capital and labour are interested but the State as a whole and the community at large are also vitally interested. It is only by maintaining this co-operative effort which will increase productivity so that not only the employer and the labour force can reap the benefits of the large production but the State would be benefitted by a large slice of taxation, excise and other incidental benefits and the community would get cheaper goods. That is why an effort has been made to have peaceful industrial relations so that the production does not suffer and there is no class warfare which endangers production by strike, lock out, go-slow and other subversive activities. A labour welfare measure should, therefore, always seek to solve the problem of industrial relations by maintaining industrial peace between these two co-operators. In order to face the challenge of this problem, the legislation must

take within its embrace not only a small class of workers who work directly under the contract of service with the employer but the entire labour force which is the real co-operator in the industry. That is why in such a class of legislation, the employer-employee relationship can never be always restricted to the common law concept of the contract of service satisfying the prima facie test of control which the master had on the servant as regards the details of the work, which was evolved in the context of tortious liability cases. In the context of modern industrial legislations different tests would have to be evolved so that the real employer-employee problems can be faced and a proper labour legislation can be enacted in its proper modern context.

[8] It is true that the definition in the existing labour legislation had received a restricted interpretation. We have already pointed out that the definition in sec. 2(1) of the 'worker' in the Factories Act, 1948, as well as in sec. 2(s) 'workman' in the Industrial Disputes Act, 1947, had been interpreted in various binding decisions in a restricted way to cover only the case of employment which was under a contract of service which satisfied this prima facie test of the common law concept of the master on the servant's work. This test was found to be totally outdated so far as this industry was concerned. The prominent feature of this industry was that the manufacture of Beedies was done through contractors and by distributing work in the private dwelling houses where workers took raw materials given by the employer or the contractor as stated by the Parliament in the objects and reasons. To face this challenge of this particular industry, the Parliament had to extend the definition of employment by severing almost all the connections with the common law control concept and the narrow definition of the contract of service. It had to give a broader definition, if this sweated labour was not to be denied even after 16 years of Independence their just rights and if the employers were to be discouraged from adopting these practices for evading the Factories Act by disintegrating their factories and by adopting these devices of contract labour and home workers. In fact, the concept of contract labour was not a new concept. It was already recognized even as early as in 1923 when sec. 12 of the Workmen's Compensation Act, 1923, was enacted, so that the contractor's workmen also could get accident compensation provided the work was ordinarily a part of the undertaking. In the present case that qualifying phrase was not necessary to be used, because the contract labour as defined in sec. 2(e) of the Act is a person engaged or employed in any manufacturing process. Therefore, for the same manufacturing work or the industrial activity for which the employer must ordinarily engage his own labour that a contractor is interposed to recruit workers. Even the definition of a contractor in sec. 2(d) shows that he is a person who undertakes to produce a given result by executing the work through contract labour

or who engages labour for any manufacturing process in a private dwelling house and includes a subcontractor, agent, munshi, thekedar or sattedar. Therefore, such persons who work as contractors are not independent businessmen themselves. They work as a part and parcel of the industrial organisation of the ultimate employers. It is the business of the ultimate employer in which the particular labour force engaged even by a contractor or a home worker also co-operates. Therefore, looking to the true economic reality as such, an extensive definition would surely be justified in the context of this industry. Whenever such extensive definition of employment had come up for interpretation, it has always been accepted as validly plugging in the labour welfare measure and, therefore as a reasonable restriction, as in the case of the regular employees. InM/s. Basti Sugar Mills v. Ram Ujagar, A.I.R. 1964 S.C. 355 at page 357 their Lordships held that the extended definition of the word 'employer' in sec. 2(i)(iv) of the 0. P. Industrial Disputes Act, 1947, would make the owner of the industry, in the circumstances mentioned in that sub-clause, the employer of the workmen engaged in the work which is done through contract. These circumstances were that the owner of the industry in the course of or for the purpose of conducting the industry contracts with any person for the execution by or under such person of the whole or any part of the work which is ordinarily a part of the industry. It should be noted that the definition of "workmen" in sec. 2(z) in that Act did not cover specifically contract labour. Still, their Lordships held that the words of the definition of "workmen" in sec. 2(z) as meaning 'any person (including an apprentice) employed in any industry to do any skilled or unskilled, manual, etc' were wide enough to bring in persons doing work in an industry, whether the employment was made by the management or by the contractor of the management. Unless the definition of the word 'employer' included the management of the industry even when the employment was by the contractor, the workmen employed by the Contractor could not get the benefit of the Act since the dispute between them and the management could not be resolved under the Act. It was with a view to remove this difficulty, in the way of workmen employed by contractors that the definition of employer has been extended by sub-clause (iv) of sec. 2(i). Their Lordships further pointed out that the interests of the general public require that the device of the engagement of a contractor for doing work which is ordinarily part of the industry should not be allowed to be availed of by owners of industry for evading the provisions of the Industrial Disputes Act. Therefore, such restrictions, if any, were reasonable restrictions in the interests of the general public on the employer's right to carry on trade or business. That being the position, the extended definition which gave benefit of the provisions of the Act to the workmen engaged under a contract or in doing work which is ordinarily part of the industry cannot but be held to be also in the interests of the general

public. Therefore, the amended section would not violate Article 19(1)(g). Even in the Standing Orders their Lordships pointed out that the definition was a wider definition of a person employed to do work of the factory whether on the premises or outside. Again, in Bhikhusha Yamasha Kshatriya Pvt. Ltd. A.I.R. 1963 S.C. 1591, the validity of extension of the Factories Act even to deemed factories and to deemed workers who were merely working with permission or agreement with the owner or occupier by a notification issued under sec. 85, was upheld by their Lordships. The ground given was that this extension was to be resorted to meet the felt necessity to prevent circumvention of this salutary labour welfare measure like the Factories Act. If the restricted definition was inapplicable these workers were denied their due rights and that is why it was held to be a reasonable restriction in the context of such Factories Act which was inherently applicable to all persons employed to do the work of the factories, These two decisions therefore clearly lay down the settled legal position that the concept of employment is inherently a very wide concept. Merely because the Courts have at one time given the restricted interpretation to that wider concept, the legislature does not lose power to extend that concept by giving the wider interpretation. These two decisions also settle the further question that if the legislature has competence to enact the Factories Act, it has equally the power to enact the extended definition of the term 'worker' and the term 'factory', if it is necessary to do so to prevent circumvention or evasion of the provisions of the Act. This is always treated as an incidental power without which benefit of the legislation could not reach the persons for whom it is intended.

[9] Further, the test to be applied for distinguishing the contract of service from contract for service are now well settled. In D. N. Sahib & Son 's case A.I.R. 1966 S.C. 370 at page 373 Their Lordships treated this test of control to find out the relation of master and servant only as a prima facie test. In Gopalrao v. Public Prosecutor, A.I.R. 1970 S.C. 66 at page 68 their Lordships pointed out that Chintamanrao 's case, A.I.R. 1958 S.C. 3 88, had only given a restricted meaning to the words "employed directly or through agency" in sec. 2(1) of the Factories Act, 1948, by laying down that there must be a contract of service and a relationship of master and servant for falling within the terms of that definition. At page 69 their Lordships pointed out that there was no abstract a priori test of the work control required for establishing a contract of service. It had reference to the right of the master "in some reasonable sense" to control the method of doing the work. As pointed out in Birdhinchand Sharma's case (A.I.R. 1961 S.C. 644) the nature and extent of control would vary in different industries and that when the operation was of such a simple nature the control could be exercised at the end of the day by the method of rejecting the beedis which did not come up to the

proper standard. Their Lordships also approved the passage in Halsbury's Laws of England, 3rd Ed. Vol. 25 page 448, Article 872 as under :

"The following have been stated to be the indicia of a contract of service, namely, (1) the master's power of selection of his servant; (2) the payment of wages or other remuneration; (3) the master's right to control the method of doing the work; and (4) the master's right of suspension or dismissal 1946 S.C. (HL) 24, at pp. 33, 34; Gould v. Minister of National Insurance (1951) 1 K.B. 731 at p. 734; (1951) All E.R. 368 at p. 371; Pauley v. Kenaldo Ltd. (1953) 1 All E.R. 226 (C. 4) at p. 228; but modern industrial conditions have so affected the freedom of the master that it may be necessary at some future time to restate the indicia; e.g. heads (1), (2) and (4) and properly also head (3), are affected by statutory provisions {Short v. J. B. Henderson Ltd. 1946 S.C. (H.L.) 24, supra at p. 34)."

It is, therefore, clear from these observations that the modern industrial conditions would require these indicia to be restated, especially as the statutory provisions could very well affect this prima facie test of right of control.]nMontrealv Montreal Locomotive Works Ltd. (1947) 1 D.L.R. 161 P.C., Lord Wright said at page 169 as under :-

"In earlier cases a single test, such as the presence or absence of control, was often relied on to determine whether the case was one of master and servant, mostly in order to decide issues of tortious liability on the part of the master or superior. In the more complex conditions of modern industry, more complicated tests have to be applied. It has been suggested that a fourfold test would in some cases be more appropriate, a complex involving (1) control; (2) ownership of the tools; (3) chance of profit; (4) risk of loss. Control in itself is not always conclusive. Thus the master of a chartered vessel is generally the employee of the ship owner though the charterer can direct the employment of the vessel. Again the law often limits the employer's right to interfere with the employee's conduct, as also do trade union regulations. In many cases the question can only be settled by examining the whole of the various elements which constitute the relationship between the parties. In (his way it is in some cases possible to decide the issue by raising as the crucial question whose business is it, or in

other words by asking whether the party is carrying on the business, in the sense of carrying it on for himself or on his own behalf and not merely for a superior."

This passage has been in terms relied upon by Cooke J. in Market Investigations Ltd. v. Minister of Social Security, 1969 (2) WLR lat page 9, while considering the settled tests to distinguish the contract of service from the contract for service. The learned Judge considered this question in the contest where the common law test of control which was a prima facie test was not to be a decisive test. In Bank voor Handel on Scheepvaart N. V. v. Slat ford, (1953) 1 Q.B. 248 at page 295 Denning LJ. had observed as under : "The test of being servant does not rest nowadays on submission to orders. It depends on whether the person is part and parcel of the organization". The learned Judge also drew inspiration from the American decision in United States v. Silk, (1946) 331 U.S. 704 (713-714) where the question was whether certain men were "employees" within the meaning of that word in the Social Security Act,1935, which specifically aimed at remedying inequalities in bargaining power in industrial controversies. The Judges of the American Supreme Court decided in the context in order to give effect to the avowed policy and purposes of the Act that test to be applied was not "power of control, whether exercised or not, over the manner of performing service to the industry, but whether the men were employees as a matter of economic reality". After relying on these three observations of Lord Wright, of Denning L. J. and of the Judges the American Supreme Court, Cooke, J. evolved the following fundamental test :-

"Is the person who has engaged himself to perform these services performing them as a person in business on his own account?"

If the answer to the question is 'yes', then the contract is a contract for service. If the answer is 'no', then the contract is a contract of service. If these modern tests which are more appropriate in the context of such modern industrial legislation and more so, in the context of such Beedi industries where contract labour and home workers' system prevail, the only proper test which the Legislature could apply was not the ordinary prima

facie test, of control, but some modern substitute as to whether a person constitutes a part and parcel of the manufacturing establishment or the industrial organization. If he was a part and parcel of this business which belonged to the ultimate employer so long as the business belonged to this employer, this necessary limb must go with the said business. It is only if the employee or the contractor was himself an independent businessman working his own business on his own account that this test may not apply as he would be merely selling the Beedis. He would be selling his product, not his labour alone. On the other hand, if the person had reduced himself to the status of a labourer by performing the work of the beedis manufacturing process or the connected industry as the person in the business establishment of the ultimate master, such an employee as matter of economic reality could always be statutorily/attached to the real master, ignoring the immediate contract of service' with intermediary, who may be a contractor, agent or such other person who brought in or engaged the labourer for the benefit the ultimate employer's business.

[10] This discussion clearly establishes that the term 'employment' had always a wider connotation. There were precedents before the framers of the Constitution of such a wider meaning being given, by including contract labour even in the Workmen's Compensation Act, 1923, or in the Bombay Industrial Relations Act, 1946. Even the judicial decisions have recognized this position. Even the settled tests which are now universally applied for finding out the contract of employment show that the prima facie test of control which was evolved in the context of tortious liability cases could never remain a decisive test in the modern industrial legislations. If therefore, the wider test is now adopted by the Legislature as hinted at by their Lordships in Gopalrao 's case, the legislation could never be said to be lacking competence as a real labour welfare measure. The provisions of the home-worker in the Act show that the ultimate master retains the right of control even by rejecting the sub-standard Beedis. The relevant Rules 27 to 29 have, therefore, been enacted to put limit to this right of rejection, to provide for supervision of the issue of raw material and for deciding disputes regarding issue of raw material by the ultimate employer or the contractor of the concerned home-worker. Therefore, the control test in this limited sense and the other test of the person being one of the labour force to produce the ultimate product of beedis or cigar manufactured in this industry would clearly show that the Legislature was regulating the real employer-employee relationship in this industry. Therefore, the legislation could

never be attacked as a colourable piece of legislation. If any further authority in this connection is needed, it is clearly supplied by the decision of the Supreme Court in Nielma Textiles Finishing Mills Ltd. v. The 2nd Punjab Tribunal, A.I.R. 1957 S.C. 329 at page 339. Their Lordships first upheld the validity of the Industrial Disputes Act, 1947, even though the industrial arbitration involved an extension of the existing agreement or the making of a new one, or in general the creation of new obligations or modification of old ones, and was not concerned with mere interpretation of existing obligations and disputes relating to existing agreements as in the case of commercial arbitration. Merely because the process adopted by the Industrial Tribunal was application of the principles of natural justice, equity and good conscience, the legislation could not be challenged on the ground that the Legislature had abdicated its functions. A contention was raised that the judicial decisions had interpreted the term industry in the wider sense covering even non-industrial concerns like hospital, education institutions and the business houses of chartered accountants, and therefore, such a labour legislation would not fall within Entry 29 of the List III of Vllth Schedule to the Government of India Act, 1935, "Trade union : industrial and labour disputes", corresponding to present Entry 22 in List III. Their Lordships first answered the question by observing that it would be no ground to hold the legislation to be ultra vires merely because the Industrial Tribunals had given an extended construction to the term 'industry', because what was to be seen was whether the definition of the term 'industry' was within the legislative competence. On a prima facie reading of the aforesaid entry, their Lordships were not prepared to hold that the same was not unwarranted or was not covered by that entry. Their Lordships thereafter gave the second answer which would appropriately apply to this case. Their Lordships in this connection relied upon the widest Entry 27 "Welfare of labour conditions of labour, provident fund, employer's liability and workmen's compensation, health, insurance, invalid pensions, old age pensions." Even if the wide definition of the term 'industry' in the Industrial Disputes Act, 1947, was not covered by the aforesaid Entry 29, it would be clearly covered under this entry 27 as a labour welfare measure. Their Lordships, therefore, pointed out that the entries in the legislative list could not be given a narrower construction. They include within their scope and ambit all ancillary matters which legitimately come within the topics mentioned therein. If, therefore, the industrial dispute legislation can be supported under this wider Entry regarding the welfare of labour, it is obvious that the present Act, which has only a limited scope of laying down conditions of employment, would surely be covered in this wide Entry including even the provision of the artificial definition of employment, whereby the Legislature seeks to prevent circumstances or evasion of the benefits of this salutary labour, welfare measure. This would be only incidental power which legitimately comes

within the Wide Entry 24 regarding the welfare of labour in general working in the industry, whether under a contract of employment strictly so called or under a contract of employment when looked upon in the widest sense by attending to the economic realities in the context of the modern industrial conditions. Therefore, the first ground of attack must fail that the Parliament had no legislative competence to enact this Act.

[11] RE-GROUND No. B. Whether the Act imposes unreasonable restriction of trade or business : We have already exhaustively considered the circumstances and the background in which this legislation had to be passed to meet a crying necessity which had arisen because the employers were adopting devices of disintegrating factories and of employing contract labour and home workers so that they could wriggle out of the provisions of the Factories Act, 1948. Consequently, these employees were all along denied all the benefits either of the Factories Act or other labour legislation which a regular employee could obtain, unless there was an extension notification under sec. 85 of the Factories Act, 1948. This legislation can, therefore, be looked upon as one for putting an end to the exploitation of this sweated labour by discouraging these devices which were adopted for circumventing or evading the provisions of the labour welfare measures. It is now well-settled that the right to trade is not a right to exploit the workers. In the context of Minimum Wages Act, in Bijay Cotton Mills Ltd. v. State of Ajmer, A.I.R. 1955 S.C. 33, at page 35, it was observed by their Lordships that if the labourers are to be secured in the enjoyment of minimum wages and they are to be protected against emploitation by their employers, it is absolutely necessary that restraints should be imposed upon their freedom of contract and such restrictions cannot in any sense be said to be unreasonable. On the other hand, the employers cannot be heard to complain if they are compelled to pay minimum wages to their labourers even though the labourers, on account of their poverty and helplessness, are willing to work on lesser wages. If it is in the interest of general public that the labourers should be secured adequate living wages, the law would surely be reasonable even if some employers might find it difficult to carry on business on the basis of the minimum wages fixed under the Act. Reverting to the same question once again in Chandra Bhavan Boarding and Lodding Bangalore v. State of Mysore, 1969 (3) S.C.C. 84 at page 93, their Lordships categorically held that freedom of trade does not mean freedom to exploit. If the minimum wage rates prescribed by the authority would adversely affect the industry or even the small unit therein, then the industry or the unit, as the case may be, has no right to exist. The provisions of the Constitution are not erected as barriers to progress. They provide a plan for orderly progress towards the social order contemplated by the preamble to the Constitution. They do not permit any

kind of slavery, social, economic or political. Their Lordships pointed out that it is a fallacy to think that under our Constitution there are only rights and no duties.

> While rights conferred under Part III are fundamental, the directives given under Part IV are fundamental in the governance of the country. Their Lordships did not see any conflict on the whole between the provisions contained in Part III and Part IV. They were complimentary and supplementary to each other. The provisions of Part IV enable the Legislature and the Government to impose various duties on the citizens. The provisions therein are deliberately made elastic because the duties to be imposed on the citizens depend on the extent to which the directive/ principles are implemented. Therefore, their Lordships observed that the mandate of the Constitution is to build a welfare society in which justice social, economic and political shall inform all institutions of our national life. The hopes and aspirations aroused by the Constitution will be belied if the minimum needs of the lowest of our citizens are not met. In view of this settled legal position even the present legislation securing minimum decent conditions of work would have to be judged from the same standard. Such restrictions must be held to be merely regulatory and they must be held to be commensurate with the object of rooting out the exploitation which was found to be existing. If there is no freedom to exploit there can be no foundation for this argument of restriction of freedom of trade by invoking fundamental rights guaranteed under Article 19(1)(g) of the Constitution.

[12] Both the learned advocates no doubt attempted to make a distinction from the settled legal position on the ground that the concept of employment was sought to be extended by an artificial definition in this Act to cover this contract labour and home workers, and that is why the present restrictions were unreasonable, especially when the Act was sought to be applied without laying down any limit on number of workers which must be employed in the manufacturing process before the Act is applied to such an establishment. Even this contention is completely answered in the aforesaid decision in Bhikusha Yamasha Kshatriya Pvt. Ltd. A.I.R. 1963 S.C. 1591 which we have referred to. There also the Factories Act being inapplicable to the workers who were engaged in this industry by mere permission or agreement with the owner, notification under sec. 85 of the Factories Act was issued. The extension of the benefit of the Factories Act to the deemed factories and deemed workers by this process of extension was held to be a

reasonable restriction within the meaning of Article 19(1)(g) on the short ground that the extension of benefits of Factories Act to premises and workers not falling strictly within the Factories Act served the same purpose which was served by the Factories Act itself, which in the context of modern outlook on industrial relations could never be held to be unreasonable, because the State has a vital concern in preventing exploitation of labour and in insisting upon proper safeguards for the health, safety and well-being of the workers. Their Lordships also pointed out that the exclusion of small establishments from restriction inherent in the definitions of "factory" and "worker" had its source not in any desire to afford special privileges to any class of owners and, therefore, if the authority felt the necessity to extend these provisions to other workers and to other premises, the extension must be held to be reasonable, as it was in order to prevent circumvention of the provisions of the Factories Act and to secure to the persons working in the establishment where manufacturing process was carried on adequate safeguards whenever necessity for that purpose was felt. What may be done by a notification under sec. 85 could equally be done by enacting a comprehensive, separate Act for this purpose. Even in the other decision Basil Sugar Mills v. Ram Ujagar, A.I.R. 1964 S.C. 355, a similar extension to contract labour, of the provisions of the Industrial Disputes Act, 1947, by the U.P. Legislature had been held to be reasonable because the interests of the general public always required that the device of the engagement of the contractor for doing work which is ordinarily part of the industry should not be allowed to be availed of by the owners of the industry for evading provisions of the Industrial Disputes Act. Therefore, on these two grounds, that the minimum number has not been prescribed and that the artificial concept of employment has been given, the Act could not be said to impose any unreasonable restriction so long as it merely seeks to prevent evasion of the provisions of the salutary labour welfare measure.

[13] Thereafter it was vehemently argued that the provisions regarding home workers who work at their houses and to whom only raw materials had been supplied by the employers were wholly unreasonable. If the employer carried on his ordinary part of business of manufacturing not on his own premises but allowed the worker to carry on that work at his home, merely because he gave this liberty for his own benefit, the said worker who was a part and parcel of his labour force could never be denied the same benefits as his counter-parts. Even when this system of home workers has been recognised by enacting the proviso in sec. 29(3), which prevents an employer from requiring or allowing any manufacturing process connected with the work of Beedi or Cigar or both being carried on outside the industrial premises, the Legislature has been careful enough to see that the burden imposed in this connection is the bare minimum.

The licensing provisions, as we have pointed out, apply only when there are industrial premises. If, therefore, the employer merely supplied materials to the home workers for manufacturing Beedis at their residential houses, he is not required to take out a licence for these houses where the manufacturing process is carried on. Sec. 2(i) in terms excludes from the definition of industrial premises the private dwelling houses in which the persons engaged in Beedi or Cigar manufacturing process reside. Sec. 43 then exempts self-employed persons in private dwelling houses. We have also noticed that such private dwelling houses would fall only in the definition of mere "establishment" in sec. 2(h). In such a case only certain minimum benefits are guaranteed without any scope for exemption under sec. 41. These benefits are of annual leave with wages under Secs. 26 and 27, the security of service under sec. 31, maternity benefitunder sec. 37(3) and a resolution of dispute regarding supply of materials etc. in sec. 39(2). The Payment of Wages Act also applies if the notification is issued under sec. 28. These are the bare minimum benefits which are guaranteed to these home workers which could hardly impose any burden in the real sense. In any event, these are the minimum provisions for ending exploitation of this sweated labour. Even as regards the annual leave with wages, we have pointed out how the difficulty has been resolved for computing the benefit in the case of leave with wages and maternity benefit for such home workers. Therefore, even these provisions of home workers can never be attacked on the ground of unreasonable restrictions.

[14] The final argument was advanced in connection with contract labour. It was pointed out that even though a contractor was their employer, the ultimate employer was made liable for this contract labour, even when such contract labour was employed without the knowledge of the employer as per the definition in sec. 2(e). It was pointed out that if the contractor discharged such employee under sec. 31, the ultimate employer would be required to reinstate him and to pay back wages and compensation. For such contract labour it is this ultimate employer who would be penalised under sec. 33 for not carrying out the order of reinstatement or compensation or for contravention of any of the provisions of the Act. Such a vicarious liability in cases where the person was employed without the knowledge of the ultimate employer could hardly be considered to be unreasonable. This contention is thoroughly misconceived. The concept of vicarious liability has been evolved even in common law as a principle of social justice. The absolute liability without fault is now a settled norm in so far as the industrial or factory premises are concerned, which involved considerations of public welfare in general and labour welfare in particular. The essential nature of such provisions also must not be forgotten that they impose a quasi-criminal liability. The penal sanction seeks really to

enforce the civil rights. It is this penal sanction which in the context of such legislation secures proper enforcement and greater degree of care being exercised by the ultimate employer, who can be reasonably expected to influence and control his contractor or an agent. The whole object of this labour welfare legislation would be frustrated if the liability for compliance in such cases was imposed on these petty contractors or agents who are merely working as limbs of the ultimate employer. This ultimate employer alone is the real master of the business and who has the real control of the business, who can be properly held liable even vicariously so that he could exercise a greater degree of care in respect of his agents and contractors by seeing that the benefit of this welfare measure duly reached the exploited class of workmen. Mr. Mehta in this connection rightly relied upon the decision of the Court of Appeal in Reynolds v. G. H. Austin, 1951 (2) K. B. 135. At page 149, Devlin J. in terms referred to the moral justification behind such laws which is admirably expressed in a sentence by Dean Roscoe Pound in his book. The Spirit of 'the Common Law' at page 52. "Such statutes", he says, "are not meant to punish the vicious will but to put pressure upon the thoughtless and inefficient to do their whole duty in the interest of public health or safety or morals," Delvin J. pointed out that man may be made responsible for the acts of his servants, or even for defects in his business arrangements, because it can fairly be said that by such sanctions citizens are induced to keep themselves and their organisations upto the mark. Although, in one sense, the citizen is being punished for the sins of others, it can be said that if he had been more alert to see that the law was observed, the sin might not have been committed. But if a man is punished because of an act done by another, whom he cannot reasonably be expected to influence or control, the law is engaged, not in punishing the thoughtlessness, inefficiency, and thereby promoting the welfare of the community, but in/pouncing, on the most convenient victim. If this test is to be adopted/it is obvious that the vicarious liability in the present case has the necessary moral justification because this law also does not punish merely the most convenient victim but only the ultimate employer who is benefitted in the business by employing contract labour and who can be expected to influence and control his agents and contractors. Therefore, this real employer must keep his organisation upto the mark. If he benefits by these devices of employment of contract labour or home workers, it is he alone who should bear this salutary burden of responsibility when the Act is contravened or the contractor discharges the employees. If the (statuary relation of employment exists qua the contract labour with this ultimate employer, such statutory relation having been deemed to be terminated by the real employer, the order of reinstatement or the compensation must go only against the real employer. Mr. Mehta in this connection rightly relied upon the decision in Shivnandan v. Punjab National Bank, A.I.R. 1955 S.C.

404. In that case the cash department of the bank was in charge of treasurers. The treasurers were charged with the duty of nominating their assistants who were to be responsible in their day-to-day work to the bank which all the time had full control over them in the matter of leave of absence, as to how they should keep their cash and other valuables and as to how they should be under the general directions of the bank's manager. The bank was answerable for their bonus, provident fund, travelling allowance etc. When the question had arisen before their Lordships in the context of discharge of the employee of the treasurers and the relief of reinstatement was claimed against the bank, it was held that the treasurers were the servants of the bank and their nominees must equally be so. If the treasurers' relation to the bank was that of servants to a master, simply because the servants were authorised to appoint and dismiss the ministerial staff of the cash department would not make the employees of the cash department independent of the bank. In that situation it was held that the ultimate employer would be the bank through the agency of the treasurer. The employee in the cash department being employees of the bank, the Industrial Tribunal had the jurisdiction to order reinstatement with back wages. This doctrine of double employment is thus already recognised. When the real employment was with the bank even though the immediate employer who engaged the servant may be treasurers or the nominees, it is the bank who would be liable for reinstatement of the so called contractor's servants.

> In Rutherford Food Corporation v. Me Comb, (1946) 331 U. S. 722, where the definition of the term "to comply" was broad enough to include "to suffer or permit to work" in the Fair Labour Standards Act, 1938, it was held that where the work done in its essence followed the usual path of an employee, putting on an independent contractor's label would not take the worker from the protection of the Act. Therefore, it is well-settled that looking to the economic realities in such cases of contract labour engaged in the work which is ordinarily a part of the real employer's business, the real employer could be statutorily made liable for implementing the provisions of such welfare labour measures. Such a provision of vicarious liability even when it involved penal sanction could never be said to be unreasonable when it is only an application of this recognised principle of social justice in the context of such a labour welfare measure. The learned Advocates had, however, vehemently relied upon the decision in M/s. Orissa Cement Ltd. v. Union of India, A.I.R. 1962 S.C. 1402, where before the present amendment the original, provisions of the Employees Provident Fund Act, 1952, in their application to contract labour had been held to be discriminatory. Their

Lordships relied upon the main fact that the whole intention of the Act was to make employer liable for the moiety of the provident fund contribution as laid down in sec. 6(1) of the Act, while the scheme had provided the entire contribution in case of a contract labour being paid by the employer. This provision, therefore, operated unfairly and harshly on the employer, employing the contract labour and resulted in discrimination between those who employ contract labour and those who employ direct labour. There was also no right given to the principal employer to deduct from the wages of the employee the amount paid by the employer towards the provident fund on that account. It is in these circumstances that the legislation was held to be discriminatory. That decision could have no application here. There is no discrimination whatever in the present case. The legislature only looks upon the real master for implementing the provisions of the Act when for the benefit of his business the contractor is required by him to employ labour. Even if labour is employed by the contractor, the legislature looks upon the ultimate real employer for implementation of the Act. We have already considered the moral justification of such provision of vicarious liability and found the provision to be a reasonable one in the present context. Therefore, the aforesaid decision could not help the petitioner to make out any case of unreasonable discrimination. Thereafter the Gold Control case in Harakhchand v. Union of India, A.I.R. 1970 S.C. 1453 at pages 1466-67 was vehemently relied upon by the petitioners. Their Lordships found that the doctrine of vicarious liability was extended in that case beyond reasonable limits and, therefore, it imposed an unreasonable restriction on the fundamental rights of the petitioner and was unconstitutional. Their Lordships pointed out that the rational basis in law for the imposition of vicarious liability was that the person made responsible may prevent commission of the crime and may help to bring the actual offender to book. In one sense the dealer is punishable for the sins committed by his employee. It may perhaps be said that if the dealer had been more alert to see that the law was observed the sin might pot have been committed. That is why their Lordships made the pertinent observations that the dealer could be made liable for any act done by his employee in the course of employment as he could reasonably be expected to influence or control the employee. It was, however, evident that the dealer could not be reasonably made liable for the past misconduct of the employee. This decision, therefore, could never apply to the facts of the present case. It is only the

real master who could reasonably be expected to influence or control the contractor engaged by him for the benefit of his business. It is immaterial whether the real master knows or does not know of the employment of any particular labourer by the contractor. Once, however, he gives a contract to the contractor, the real master must always exercise proper care to see that ultimately he does not incur any liability in law for the sins committed by his contractor. If the real master could always influence or control the contractor, it is he alone who could be made vicariously liable as laid down in this decision.

[15] Finally, one last argument was attempted in this context by giving a hypothetical illustration. Mr. K. S. Nanavati pointed out that the Act ropes in a contractor by making contract labour employees of the principal employer. Mr. K. S. Nanavati, therefore, argued that the contractor might be working for four or five business houses and all his employees might be turning out Beedis manufacturing work in his premises. Such a hypothetical illustration can hardly help Mr. K. S. Nanavati in support of his contention that the Act imposes unreasonable restriction. The example given by him is not of a simple contractor working for one master. If the contractor himself becomes an independent businessman doing work for a number of business houses, it is he who is the real employer who could be required to implement the Act by taking out the licence in his own name for running his industrial premises. Even in the extreme illustration given by Mr. K. S. Nanavati that when the home worker system was permitted by the Act, the home worker might not work but might engage a number of servants. Mr. K. S. Nanavati ignores the fact that a private dwelling house is excluded from the definition of an industrial premises, only if the home worker resides in that premises where he carries on the manufacturing process. Therefore, those premises where the home worker in turn engages other employees would surely be industrial premises. Any employer who engages a home worker must take care to see that the home worker is given only so much raw material which provides work for that home worker. An employer can never show ignorance after providing raw materials for such home worker who could engage such large number of employees. If the legislature does not exclude from the definition of industrial premises such home workers' premises there would be nothing unreasonable in the context. The definition of industrial premises only excludes from its embrace private dwelling houses where the worker himself resides and carries on his work. Therefore, these extreme illustrations could never help us to pronounce on the constitutionality of these provisions. The Act in substance only extends the definition

of the term 'employment' by taking within its fold contract labour and home worker so that this exploited class could get their legitimate dues and the employers may be discouraged from adopting these devices with the sole purpose of evading the provisions of the Act. In such a case the mode of employment of such labour would hardly be material and the legislature could rightly fasten liability on the real employer by considering true economic realities of the case. Therefore, no ground whatever has been made out which would justify the attack on these provisions of the Act on the ground of unreasonable restrictions so as to violate the guarantee under Article 19(1)(g) of the Constitution.

[16] RE: GROUND NO. C :- Vires of sec. 4: While considering this third ground we should bear in mind the scheme disclosed by Secs. 3, 4 and 5 when read with Secs. 29 and 43. Sec. 3 in terms provides that save as otherwise provided in this Act, no employer shall use or allow to be used any place or premises as an industrial premises unless he holds a valid licence issued under this Act and no such premises shall be used except in accordance with the terms and conditions of such licence. Sec. 4(1) provides that any person who intends to use or allows to be used any place or premises as industrial premises shall make an application in writing to the competent authority, in such form and on payment of such fees as may be prescribed, for a licence to use, or allow to be used, such premises as an industrial premises. Sec. 5 provides for appeals against the decision of the competent authority. Sec. 29(1) provides for permission of the State Government for wetting or cutting of beedi or tobacco leaves by the employees outside the industrial premises on an application made to it by the employer on behalf of such employees. Under sec. 29(2) the employer has to maintain the prescribed record of such work. Sec. 29(3) enacts the bar that save as otherwise provided in sec. 29(1), no employer shall require or allow any manufacturing process connected with the making of beedi or cigar or both to be carried on outside the industrial premises. The proviso carves out an exception in case of home worker who is given raw material by the employer or contractor for being made into beedi or cigar or both at home. Sec. 43 exempts self employed persons working in the private dwelling houses with the assistance of spouse or children. This exception would not be available if the owner in such a case was himself employee of the employer to whom the Act applies. Therefore, the entire scheme of licensing is applicable only to industrial premises whose definition in terms excludes a private dwelling house. Sec. 29(3) even though it imposes an embargo on the employer requiring a manufacturing process work to be carried on outside the industrial premises, permits the same in the proviso to be done by the home worker. The private .dwelling house is only covered within the term

'establishment' for which no license is required and to employees in such establishments only minimum benefits are given. Therefore, the entire scheme imposes reasonable restrictions keeping in mind the need of continuing such home workers system or working in such private dwelling houses, where only the minimum benefits would have to be secured. The licensing provisions are, however, made applicable only to industrial premises. It was vehemently argued that even though a liability was imposed on the employer under sec. 3 not to use or allow to be used the i-idustrial premises without a licence, sec. 4(1) requires any person who intends to use or allows the use of premises as industrial premises to take out a licence. Mr. K. S. Nanavati, therefore, argued that even the owner of the premises who gives out premises on lease to a beedi factory would be , required to take out a licence Mr. K. S. Nanavati ignores the fact that the embargo having been put only on the employer under sec. 3, sec. 4 would have the same coverage notwithstanding the fact that the term "any person" has been used. The term 'any person' may have been advisedly used because it covers even any stage before the employment starts and the intending employer must obtain licence for the intended industrial premises. Even the contractor who in the hypothetical illustration of Mr. K. S. Nanavati works as an independent businessman by taking a number of contracts of different business houses would be an independent employer and might be covered by this term 'any person' because in any such case he himself is the real employer. Therefore, there is nothing in sec. 4(1) which requires a licence to be taken out by the employer which makes the scheme unreasonable. Such a labour welfare measure providing conditions of work and employment can only be worked out by reasonable licensing scheme. Both the learned Advocates, therefore, vehemently attacked the provisions of sec. 4(3) by urging that there are no guide lines and the competent authority is conferred arbitrary power in that sub-section. Sec. 4(3) provides that the competent authority shall in deciding whether to grant or refuse a licence have regard to the conditions mentioned therein in sub-Secs. (a), (b), (c), (d) and (e). Sec. 4(3), therefore, in terms prescribes guide lines or norms in the exercise of discretion of the competent authority who is to give reasons under sec. 4(8) and against whose decision an appeal lies under sec. 5. When the legislature has itself laid down the guide lines or norms it could never be urged that the section confers arbitrary powers on the competent authority to grant or refuse a licence. Sec. 4(3) in terms provides as to what matters it shall pay regard. It, therefore, lays down the perspective and the considerations which, are to be made. After the decision of the Supreme Court in Amritsar Municipality v. State of Punjab, A.I.R. 1969 S.C. 1101, at page 1103, it is well settled that the rule adopted by American Courts that a vague statute violates the very essence of the due process (causes has no application in [four country. It has been

definitely ruled in our country that this doctrine of due process of law has no application in our constitutional system. Therefore., the Act and the legislation could not be struck down on the assumption that its validity could be attacked on the test of due process of law. Therefore, merely because the legislation is vague, on that ground it could not be struck down if the legislature has the legislative competence. The decision in Harakhchand v. Union of India, A.I.R. 1970 S.C. 1452 at page 1465, was vehemently relied upon. This decision on the Gold Control Act could have hardly any application because in that case the power of regulation granted to the administration under sec. 5(2)(b)(e) amounted to excessive delegation of the executive power and, therefore, it was held to be constitutionally invalid. In the present case, once we find that the Legislature has laid down the norms or guide lines for the exercise of the discretion, the conferment of power on the authority could never be challenged as arbitrary and uncanalised, even though it may be that in any particular case the exercise of that power may have to be struck down when it is in excess of the relevant statutory power. That would not be a case of lack of power but only of an ultra vires exercise of power. Professor Willis's observations in his Constitutional law at page 586-587 in this context would be quite instructive in this context:-

> "Perhaps the best view on the subject is that "due process" and 'equality' are not violated by the mere conference of unguided power, but only by its arbitrary exercise by those upon whom conferred. If this is the correct position, the only question that would then arise would be the delegation of legislative power. If a statute declares a definite policy there is a sufficiently definite standard for the rule against the delegation of legislative power, and also for equality if the standard is reasonable. If no standard is set up to avoid the violation of equality, those exercising the power must act as though they were administering a valid standard."

> This is why in Chandra Bhavan Boarding & Lodging House decision, 1969 (3) S.C.C. 84 at page 90 their Lordships pointed out that where the power was conferred on the State Government and not on the petty official, it could be trusted to exercise that power to further the purposes of the Act. Their Lordships also laid down that it is not the law that the guidance in the exercise of the power should be gatherable from one of the provisions of the Act. It can be gathered from the circumstances that led to the enactment of the law in question i. e. the mischief that was intended to be remedied, the

preamble to the Act or even from the scheme of the Act. Therefore, unless the learned Advocates can succeed in showing that the norms which are prescribed by the legislature are no norms at all, the attack on sec. 4 on the ground that it confers arbitrary power would be wholly misconceived merely because in a particular case the competent authority may pass an ultra vires order. That is why a safeguard of the reasoned order is provided in sec. 4(8) and a further right of appeal is provided in sec. 5.

[17] RE: GROUND NO. C :- Vires of sec. 4: While considering this third ground we should bear in mind the scheme disclosed by Secs. 3, 4 and 5 when read with Secs. 29 and 43. Sec. 3 in terms provides that save as otherwise provided in this Act, no employer shall use or allow to be used any place or premises as an industrial premises unless he holds a valid licence issued under this Act and no such premises shall be used except in accordance with the terms and conditions of such licence. Sec. 4(1) provides that any person who intends to use or allows to be used any place or premises as industrial premises shall make an application in writing to the competent authority, in such form and on payment of such fees as may be prescribed, for a licence to use, or allow to be used, such premises as an industrial premises. Sec. 5 provides for appeals against the decision of the competent authority. Sec. 29(1) provides for permission of the State Government for wetting or cutting of beedi or tobacco leaves by the employees outside the industrial premises on an application made to it by the employer on behalf of such employees. Under sec. 29(2) the employer has to maintain the prescribed record of such work. Sec. 29(3) enacts the bar that save as otherwise provided in sec. 29(1), no employer shall require or allow any manufacturing process connected with the making of beedi or cigar or both to be carried on outside the industrial premises. The proviso carves out an exception in case of home worker who is given raw material by the employer or contractor for being made into beedi or cigar or both at home. Sec. 43 exempts self employed persons working in the private dwelling houses with the assistance of spouse or children. This exception would not be available if the owner in such a case was himself employee of the employer to whom the Act applies. Therefore, the entire scheme of licensing is applicable only to industrial premises whose definition in terms excludes a private dwelling house. Sec. 29(3) even though it imposes an embargo on the employer requiring a manufacturing process work to be carried on outside the industrial premises, permits the same in the proviso to be done by the home worker. The private .dwelling house is only covered within the term 'establishment' for which no license is required and to employees in such

establishments only minimum benefits are given. Therefore, the entire scheme imposes reasonable restrictions keeping in mind the need of continuing such home workers system or working in such private dwelling houses, where only the minimum benefits would have to be secured. The licensing provisions are, however, made applicable only to industrial premises. It was vehemently argued that even though a liability was imposed on the employer under sec. 3 not to use or allow to be used the i-idustrial premises without a licence, sec. 4(1) requires any person who intends to use or allows the use of premises as industrial premises to take out a licence. Mr. K. S. Nanavati, therefore, argued that even the owner of the premises who gives out premises on lease to a beedi factory would be , required to take out a licence Mr. K. S. Nanavati ignores the fact that the embargo having been put only on the employer under sec. 3, sec. 4 would have the same coverage notwithstanding the fact that the term "any person" has been used. The term 'any person' may have been advisedly used because it covers even any stage before the employment starts and the intending employer must obtain licence for the intended industrial premises. Even the contractor who in the hypothetical illustration of Mr. K. S. Nanavati works as an independent businessman by taking a number of contracts of different business houses would be an independent employer and might be covered by this term 'any person' because in any such case he himself is the real employer. Therefore, there is nothing in sec. 4(1) which requires a licence to be taken out by the employer which makes the scheme unreasonable. Such a labour welfare measure providing conditions of work and employment can only be worked out by reasonable licensing scheme. Both the learned Advocates, therefore, vehemently attacked the provisions of sec. 4(3) by urging that there are no guide lines and the competent authority is conferred arbitrary power in that sub-section. Sec. 4(3) provides that the competent authority shall in deciding whether to grant or refuse a licence have regard to the conditions mentioned therein in sub-Secs. (a), (b), (c), (d) and (e). Sec. 4(3), therefore, in terms prescribes guide lines or norms in the exercise of discretion of the competent authority who is to give reasons under sec. 4(8) and against whose decision an appeal lies under sec. 5. When the legislature has itself laid down the guide lines or norms it could never be urged that the section confers arbitrary powers on the competent authority to grant or refuse a licence. Sec. 4(3) in terms provides as to what matters it shall pay regard. It, therefore, lays down the perspective and the considerations which, are to be made. After the decision of the Supreme Court in Amritsar Municipality v. State of Punjab, A.I.R. 1969 S.C. 1101, at page 1103, it is well settled that the rule adopted by American Courts that a vague statute violates the very essence of the due process (causes has no application in [four country. It has been definitely ruled in our country that this doctrine of due process of law has no application

in our constitutional system. Therefore., the Act and the legislation could not be struck down on the assumption that its validity could be attacked on the test of due process of law. Therefore, merely because the legislation is vague, on that ground it could not be struck down if the legislature has the legislative competence. The decision in Harakhchand v. Union of India, A.I.R. 1970 S.C. 1452 at page 1465, was vehemently relied upon. This decision on the Gold Control Act could according to the circumstances of the case. If a particular applicant has no experience in the line because he is a new entrant, this item could never apply in his case. The expression "previous experience of the applicant" in sec. 4(3)(b) is capable in this context of the meaning "previous experience of the applicant, if any". It is a well settled principle of construction that when an expression in a statute is capable of two meanings, it is that meaning which must be given to it which would make the section valid and not the other one which would make it invalid. The other interpretation would put a complete embargo on new entrants and such an unreasonable restriction could never have been intended by the legislature. If, therefore, this expression is given its proper meaning, it can only mean that the previous experience of the applicant has to be taken into account if there is any such previous experience but absence of previous experience would not exclude a new entrant from his application being taken into account. In cases where there is previous experience, the authorities could always look into the fact as to how he had implemented the Act and how he would be in a position to implement this Act. Therefore, this is a relevant consideration in cases where it applies. As regards the third item of financial resources of the applicant including his financial capacity to meet the demands arising out of the provisions of the laws for the time being in force relating to welfare of labour, this is the most relevant consideration. The Legislature had ample experience how this sweated labour was deprived of these benefits by various devices which were being adopted from time to time. Therefore, even at the stage of licensing the Legislature has required the authority to bear in mind this material question as to whether the financial resources of the applicant are such that he can meet the demands arising out of these labour welfare measures. Both the learned Advocates argued that the expression "financial resources" is used in the widest context and the consideration of meeting demands of labour is only one of the inclusive aspects of the item. Howsoever wide may be the scope of this item, when the authority is acting within the perspective of the statute and within its four corners looking to the salutary policy underlying this important provision to prevent exploitation of the sweated labour, the norms would not be vague norms. That is why even the relevant form No. 1 prescribes the details about the financial resources of the employer with particulars of his property, with bank references etc. and whether

he has trade market and the value of beedis manufactured in the previous year. These are all relevant considerations if we look to the present licensing scheme in the context of this sweated labour. That is why, the other requirement in clause (d) as to whether the application is made bona fide on behalf of the applicant himself or is benami is also reasonable as the authority must find out the real employer who can be trusted to implement this Act. Unless the real employer is known and his means are estimated, the authority could never discharge the function of judging the ability of that employer. The last item is the consideration of the welfare of the labour in the locality, the interest of the public generally and such other matters as maybe prescribed.

Such other matters would be interpreted as ejusdem generous. The licence is in the context of labour welfare measure. If the authority is in this context required to keep m rained the public interest, it could hardly be said that there would be no norm at all. The employer cannot seek to affect general interest of the public by carrying on his business in a way which would give out such noxious smell etc. so as to affect general public. Therefore, all these items which are mentioned in sec. 4(3) are relevant norms and, therefore, the power conferred on the competent authority could never be said to be arbitrary and uncanalised power when the whole discretion is limited by looking to these relevant considerations. The statute lays down a perspective and the authority is functioning within the four corners of the Act as per the avowed policy laid down for its guidance. Such a licensing provision could never be held to constitute unreasonable restriction or as conferring any arbitrary power so as to violate the constitutional guarantee. In this context Rule 3(4) was vehemently attacked which provided that before granting a licence, the competent authority shall also take into consideration whether the site of any industrial premises is proposed to be altered or whether any industrial premises had been closed by the applicant during the period of twelve months immediately preceding the date of the application with a view to causing prejudice to the interests of the labour. It is difficult to appreciate the attack on Rule 3(4) on the ground of arbitrary, unreasonable restriction. This would be the most relevant consideration for the authority when the employer acted by causing prejudice to the interest of the labour within the last twelve months. These were the very devices which were sought to be discouraged. If, therefore, the Act was to be honestly implemented by seeing that the benefits secured for these sweated workers actually reach them, such a power ought to be conferred on the licensing

authority to take into account these relevant considerations. Rule 3(4) is clearly within the scope of sec. 4(3)(e) as one of the ejusdem matters. In fact, all the requirements in Form No. 1 are from the same limited angle so that the authority could properly discharge its functions.

[18] Thereafter sec. 4(4)(c) was attacked on the ground that the competent authority is required to have regard to the same matters specified in sec. 4(3), both at the time of initially granting and at the time of renewal of a licence. Therefore, the same considerations are applicable even in the case of renewal of the licence. On this ground it cannot be said to be an onerous restriction. If we keep in mind the present context, the same matters must have relevant consideration even at the stage of renewal. In the context of the considerations which we have already discussed, it could never be said that this amounts to unreasonable restriction. In the present context, in any event, there are further safeguards by way of reasons for the order and right of appeal to the aggrieved party whose application has been refused.

[19] Thereafter sec. 4(5) was challenged which provides that the competent authority would not grant or renew a licence unless it was satisfied that the provisions of this Act and rules made there under have been substantially complied with. Both the learned Advocates argued that any breach might result in a penalty of refusal of the licence. Both the learned Advocates ignore the fact that sec. 4(5) only contemplates substantial compliance. If the industrial premises were to be licensed they must comply with the terms of the Act before any licence can be issued or renewed. The rationality of this section can hardly be attacked.

[20] Finally, the whole attack was concentrated on sec. 4(8) which runs as under :-

> "Subject to the foregoing provisions of this section, the competent authority may grant or renew licenses under this Act on such terms and conditions as it may determine and where the competent authority refuses to grant or renew any licence, it shall do so by an order communicated to the applicant, giving the reasons in writing for such refusal."

Both the learned Advocates argued that the licensing authority under sec. 4(8) could first determine its terms and conditions and then impose them on the applicant. The choice of the terms and conditions is left to its absolute discretion and any arbitrary term can be incorporated by it in the licence.

When such terms are incorporated in the licence sec. 3 creates an embargo on the employer not to use the premises except in accordance with this term. It was, therefore, argued that this conferment of arbitrary power to choose the terms and impose them in the licence constitutes an unreasonable restriction on the trade. Both the learned Advocates while advancing this argument have ignored the opening words of sec. 4(8). It starts with the clause 'subject to the foregoing provisions of this section.' Therefore, whatever terms and conditions the competent authority can determine and incorporate in the licence are only those which are subject to the provisions of sec. 4, If sec. 4(3) has laid down the guide lines for the consideration of the authority and if the order of grant or renewal of the licence has to be on the basis of these relevant considerations, the terms and conditions which can be incorporated in such a licence after holding that these requirements were fulfilled would be only those incidental to these functions. Therefore, the competent authority has not any arbitrary power to impose any arbitrary terms and conditions. It can only impose such terms and conditions which would carry out the functions which are laid down within the narrow perspective envisaged in, sec 4(3) so that the Act would be properly implemented and would not be evaded. Therefore, no ground whatever has been made out which would justify any attack on sec. 4 on the ground that it imposes arbitrary unreasonable restrictions violating Arts. 14 or 19(1)(g) of the Constitution.

[21] In the result, no ground whatever has been made out which would justify any attack on the relevant provisions of the Act and both the petitions must fail and the rule is, therefore, discharged in each case. There shall be no order as to costs in circumstances of case in each case.

[22] The learned Advocates had, however, made an oral request for certificate for appeal to the Supreme Court. We are satisfied that the first two questions would fall under Article 132(1) and the third question is also of wide public importance so as to fall under Article 133(1)(c). We, therefore, order the certificate to issue in the both the cases under article 132(1) and under Article 133(1) (c) of the Constitution.

Petitions dismissed: Leave to appeal granted.