1993 (1) G.L.H. 686
S. B. MAJMUDAB AND M. S. PARIKH, JJ.

Gujarat Electricity Board ...Petitioner
Versus
Gujarat Electricity Employees Union ...Respondent

Special Civil Application No. 274 of 1984 (with Special Civil Application No. 5236 of 1984)* D/- 20-9-1991**

* Against the Award of the Industrial Tribunal dated 23-12-83 in Reference (IT) No. 325 of 1981.

** Only a portion of the judgment approved for reporting is published here.

(A) Constitution of India - Art. 227 - Industrial Disputes Act, 1947 - S. 10 - Challenge to the Award of Industrial Tribunal by way of petition under Art. 227 of the Constitution - Contention that reference made to the Tribunal was incompetent and Tribunal had no jurisdiction to deal with the same - Such contention not raised before the Tribunal - Such contention involving mixed question of law and facts not allowed to be raised for the first time in a petition under Art. 227 of the Constitution.

The contention that shapes out from the submission of the learned Advocate for the petitioner-Board is that neither the reference with regard to the retirement age of the workmen of the Board was competent nor Industrial Tribunal had jurisdiction to hear the reference. It was submitted that Service Regulations including Regulation 72 (providing for the age of retirement) have statutory force and hence Service Regulation 72 was by itself a pail of the statute so that the appropriate *[@page686]* Government was not competent to make a reference and the Industrial Tribunal had no jurisdiction to decide the dispute referred to it. (Para 4)

The question with regard to competence of the reference and jurisdiction of the Tribunal does not appear to have been raised before the Industrial Tribunal, both in the content and in the spirit which has been taken before the High Court. Bearing in mind the position of law as per the decisions of the Supreme Court in the case of *Sohan Singh* v. *General Manager, Ordnance Factory* (1984 (suppl.) SCC 661) and in the case of *Mohd. Yunus* v. *Mustaquim* (AIR 1984 SC 38) and decision of the Gujarat High Court in the case of G.M.D.C. v. *Presiding Officer* (27, 1986 (1) G.L.R. 410), in the facts and circumstances of the case, the question of jurisdiction which is a mixed question of law and facts cannot be entertained as it would work injustice to the other side. (Paras 5 , 6 , 9)

(B) Industrial Employment (Standing Orders) Act, 1949 - Ss. 5,13B - Electricity (Supply) Act, 1948 - S. 79(C) - Regulations framed by Gujarat Electricity Board under S. 79 (C) of the Electricity (Supply) Act relating to service conditions of the Board's employees - Such Regulations cannot have effect with regard to matters enumerated in the Schedule to the Standing Orders Act unless they are notified by the appropriate Government under S. 13B of the Standing Orders Act - In the absence of Service Regulations being so notified, the Model Standing Orders under the Standing Orders Act would prevail over the Service Regulations.

In the case of U. *P. State Electricity Board* v. *Hari Shanker* (AIR 1979 SC 65) the Supreme Court held that the Industrial Employment (Standing Orders) Act is a special law in regard to the matters enumerated in the schedule and the regulations made by the Electricity Board under the Electricity (Supply) Act with respect to any of those matters are of no effect unless such regulations are either notified by the Government under S. 13B or certified by the Certifying Officer under S. 5 of the Industrial Employment (Standing Orders) Act. In regard to matters in respect of which regulations made by the Board have not been notified by the Government or in respect of which no regulations have been made by the Board, the Industrial Employment (Standing Orders) Act continues to apply. (Paras 11 , 12 , 16)

(C) Industrial Disputes Act, 1947 - S.10(1) - Electricity (Supply) Act, 1948 - S. 79(C) - Industrial Employment (Standing Orders) Act, 1946 - S. 13B - Service Regulations of Gujarat Electricity Board providing for age of retirement of employees - Regulation not notified under S. 13B of the Standing Orders Act - Reference made to Industrial Tribunal at the instance of a body or class of workmen in respect of demand to raise the age of retirement - Reference, held, cannot be said to be incompetent - Tribunal in such a case can adjudicate in respect of demand subject-matter of which was covered by a Service Regulation when the Regulation is not notified under S. 13B of the Standing Orders Act.

The learned Advocate for the Board contended that neither the reference with regard to the retirement age of the workmen of the Board was competent nor the Industrial Tribunal had jurisdiction to hear the reference. The Board being a statutory body constituted under the Electricity (Supply) Act, 1948, framed service regulations under the powers vested to it under S. 79(c) of *[@page687]* the said Act. Service Regulation No. 72 deals with the age of retirement of the employees of the Board. The said Regulation came to be altered in 1972 so as to make the age of compulsory retirement 58 years instead of 55 years. It is an admitted position that although the Service Regulation as it stood earlier was notified under S. 13B of the Industrial Employment (Standing Orders) Act, 1946 the Service Regulation as it was amended in 1972 was not notified under S. 13B of the Industrial Employment (Standing Orders) Act, 1946 (the effect of such notifying would be that the Standing Orders Act would not apply to the establishment). (Para 4)

It was submitted that the Service Regulations including Regulation 72 have statutory force and hence Service Regulation 72 was by itself a part of the Statute so that the appropriate Government was not competent to make a reference and the Industrial Tribunal had no jurisdiction to decide the dispute referred to it. (Para 4)

There can be no dispute about the power of the authority as has been conferred under S. 79 of the Electricity (Supply) Act. However, that power would be limited by the terms of the statute itself. It can hardly be disputed that there is a crucial difference between the Act of Parliament (or State Legislature, as the case may be) and the exercise of delegated legislative power. Delegated legislation can be set aside by the Court on the ground that it exceeds the powers conferred by the parent Act. In the same manner the statutory authority having legislative power under the parent Act would be a non-sovereign law making body and its legislative power bears mark of subordination. The authority has to yield to the exercise of paramount legislative power covering the same field (Para 24)

Binding force of the service regulations to individual employee continues to hold the field. It is only when a dispute between the employees as a class and the Board is referred for adjudication by the Government to the Industrial Tribunal that the challenged Service Regulation if not covered under S. 13B of the Industrial Employment (Standing Orders) Act, has to yield to the adjudicating process. (Para 25)

In the result, it is held that the reference in respect of the retirement age of the workmen of the Board was competent and the Industrial Tribunal had jurisdiction to decide the reference on merits. (Para 27)

Cases Referred :

1. U. P. State Electricity Board v. Han Shanker Jain, AIR 1979 SC 65 (Paras 4, 11, 16, 21, 34)
2. U. P. State Electricity Board v. Labour Court, Kanpur AIR 1984 SC 1450 (Paras 4, 11)
3. Sohan Singh v. Gen. Manager, Ordnance Factory, Khamaria, 1984 (Suppl.) SCC 661 (Para 5)
4. G.M.D.C. v. Presiding Officer, 27, 1986(1) GLR 410 (Para 6)
5. Mohd. Yunus v. Mustaquim, AIR 1984 SC 38 (Para 6)
6. Bhai Lal v. Superintending Engineer, Allahabad, 1970 Lab. 1C 110 (Para 13)
7. Co-operative Central Bank v. Additional Industrial Tribunal, A. P., AIR 1970 SC 245 (Para 19)
8. Decision of Gujarat High Court in Special Civil Application No. 351 of 1976 decided on 26-4-1976 by Hon'ble Mr. Justice J. B. Mehta and Hon'ble Mr. Justice T. U. Mehta (Para 20)
9. Decision of Gujarat High Court in *[@page688]* Special Civil Application No. 185 of 1975 decided on 27-28 July, 1976 decided by Hon'ble Mr. Justice S. Obul Reddi C. J. and Hon'ble Mr. Justice P. D. Desai (Para 21)
10. Corporation of the City of Mangalore v. M. S. Giri 74 F.J.R. 389 (Para 21)

11. Marina Hotel v. Their Workmen 21 FJR 46 (Para 22)
12. Dalmiya Cement (Bharat) Ltd. v. Their Workmen (1961) 21 F.J.R.1 (Para 22)
13. May & Baker (India) Ltd. v. Their Workmen 1961 (2) LL.J. 94 (Para 22)
14. Thira Venkateswami v. Coimbatore Municipality 1968(1) LL.J. 361 (Para 23)
15. Management of the Bengalore Wollen Cotton & Silk Mills Co. Ltd. v. Workmen, AIR 1968 SC 585 (Para 23)
16. State Bank of India v. S. Vijaykumar, 1990(4) SCC 481 (Para 24)
17. Calcutta Port Shramik Union v. The Calcutta River Transport Association, AIR 1968 SC 2168 (Para 26)
18. Dunlop Rubber Co. v. Workmen, AIR 1968 SC 207 (Paras 30, 31, 36)
19. Guest Keen Williams Pvt. Ltd., Calcutta v. P. J. Sterling, AIR 1959 SC 1279 (Para 31)
20. Air India v. Nargesh Meerga, 1981(4) SCC 335 (Paras 30, 32)
21. Workmen v. Bharat Petroleum Corporation 1983(4) SCC 470(Paras 30, 33)
22. Imperial Chemical Industries Pvt. Ltd. v. Workmen, AIR 1961 SC 1175 (Para 33)
23. Burmah Shell Oil Co. v. Their Workmen, AIR 1966 SC 732 (Para 33)
24. G. M. Talang v. Shaw Wallace & Co., AIR 1964 SC 1986 (Para 33)
25. Burma Shell Oil Co. v. Workmen (1970) 1 LLJ 363 (Para 33)
26. Workmen of Gujarat Electricity Board v. Gujarat Electricity Board, 1969(2) L.L.J. 791 (Paras 37, 45)
27. Workmen of British India Corporation v. British India Corporation Ltd. 1965(2) LLJ 433 (Para 38)
28. Tata Chemicals Ltd. v. Workmen 1978(3) SCC 42 (Para 39)
29. Remington Rand of India v. Its Workmen 1962(1) LLJ 287 (Para 40)
30. Woolembers of India v. Their Workmen, AIR 1973 SC 2758 (Para 41)

Appearances :

In *S.CA. No. 274/1984 :*

Mr. Adhvaryu, Advocate for Mr. K. S.. Nanavati, Advocate for the petitioner
Mr. N. R. Shahani, Advocate for respondent
Mr. H. K. Rathod, Advocate for Akhil Gujarat Kamdar Sangh

In S.CA. No. 5236 of 1984 :

Mr. N. R. Shahani, Advocate for the petitioner
Mr. H. K. Rathod, Advocate for Akhil Gujarat Kamdar Sangh
Mr. Adhvaryu, Advocate for Mr. K. S. Nanavati, Advocate for the respondent

PER M. S. PARIKH, J. :

1. The age of retirement of the workmen of the Gujarat Electricity Board (for short 'the Board') fixed at 60 years by the learned Industrial Tribunal in its award dated 23rd December 1983 in Reference (IT) No. 325 of 1981, is the subject-matter of both these petitions filed under Article 227 of the Constitution of India. The *[@page689]* petition bearing Special Civil Application No. 274 of 1984 has been preferred by the Board and the petition bearing Special Civil Application No. 5236 of 1984 has been preferred by the Gujarat Electricity Employees Union representing the workmen of the Board. Since the same award has been subject-matter of challenge in both these petitions, the same are being heard together and are being dealt with and decided accordingly.

1A. xxx xxx xxx

2. The Industrial dispute between the Board and the workmen employed under it arising from the demand of the workmen for fixing the age of retirement at 60 years with a proviso of extension upto 63 years on

production of medical certificate of fitness came to be referred for the adjudication u/S. 10 (1) (d) of the Industrial Disputes Act, 1947, by the Government of Gujarat, by the order of the Labour & Employment Department bearing No. KM/L/228/KJG/1079/ 15279/JH dated 6th May 1981. It was the case of the union before the tribunal that the age of retirement for the employees working in the various industrial and commercial establishments had been fixed at 63 years by the decisions of various tribunals which have been upheld by the Supreme Court, that the age of retirement in textile industry was fixed at 65 years, that the age of retirement in Surat Electricity Company was 58 years with an extension of further 2 years by installment of one year at a time, that the higher officers of the public and private sectors are continued beyond 60 years, that the Board itself was giving extension upto 60 years and more to some of its officers, that the norms committee appointed by the Government of Gujarat recommended age of retirement at 60 years, that the existing pattern of the standard of living has improved and the amount of gratuity and provident fund available on retirement would not be sufficient to maintain the employee and the members of his family, that the expectation of life span had increased due to health condition improved due to food and medical facilities and under such present conditions, efficiency of the workmen is not impaired till 60 years, that needs of a workman would be greater between the 50 and 60 years of his age when the question of education and marriage of children would arise and that under such circumstances, the employees of the Board should be continued upto 60 years and on production of medical certificate the superannuation should be extended upto 63 years.

2A. In its statement of claims, the Board contended that the service regulations framed u/S. 79 (c) of the Electricity Supply Act, 1948 earlier provided the age of retirement of its workmen at 55 years, but in respect of certain members of the staff, the age of retirement was to be above 55 years and they were to be continued till the relevant date which was personal to them, that the service regulations replaced the model standing orders from 1st August 1964 when the Government notified the Board's regulations under the Industrial Employment (Standing Orders) Act, 1946, that subsequently there was a settlement between the Board and two recognised unions including the party unions to the reference on 28th February 1972 with the result that the age of retirement was increased to 58 years, that the conditions of work of the employees of the Board could not be compared with other industrial undertakings, that the question of fixation of retirement age should be considered on the basis of industry-cum-region principle that a comparison could be made only with the employees of the State Government or Central Government in the region or at best with other State Electricity Boards, *[@page690]* that in the most of the State Electricity Boards the age of the retirement was fixed at 58 years and that since Board generally followed the rules and regulations of the State Government with regard to D.A., M.R.A., C.L.A., etc., the rule of the State Government with regard to the age of retirement also should be followed. The Board, therefore, urged that the demand of the unions was not justified and deserved to be rejected.

3. XXX XXX XXX

4. THE FIRST QUESTION that shapes out from the submissions of Mr. Adhvaryu learned Advocate for the Board is that neither the reference with regard to the retirement age of the workmen of the Board was competent nor the industrial tribunal had jurisdiction to hear the reference. The Board being a statutory body constituted under the Electricity (Supply) Act, 1948, framed service regulations under the powers vested to it under Section 79 (c) of the said Act.

Service Regulation No. 72 (S.R. 72' for short) deals with the age of retirement of the employees of the Board, which reads as under:

"The employees of the Board are liable to compulsory retirement on the day of their completion of 55 years of age unless specifically re employed by the Board for the specific period. Such of the staff in whose case retirement age is above 55 years provisionally to be continued to that date as personal to them."

As stated above, the aforesaid S. R. came to be altered in 1972 so as to make the age of compulsory retirement 58 years instead of 55 years. It is an admitted position that although the S. R. 72 as it stood earlier was notified u/S. 138 of the Industrial Employment (Standing Orders) Act, 1946, the S. R. as it was amended in 1972 was not notified u/S. 13B of the Industrial Employment (Standing Orders) Act, 1946. Section 13B of the Industrial Employment (Standing Orders) Act, 1946 reads as under:

"13B. Nothing in this Act shall apply to an industrial establishment in so far as the workmen employed therein are persons to whom the Fundamental and Supplementary Rules, Civil Service (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the official Gazette, Apply."

In view of the aforesaid provision, it was submitted that the Service Regulations including S. R. 72 have statutory force and hence S. R. 72 was by itself a part of the statute so that the appropriate Government was not competent to make a reference and the industrial tribunal had no jurisdiction to decide the dispute referred to it. In support of this submission reliance was placed on the decisions of the Supreme Court, namely, (1) *The UP. State Electricity Board and Another* v. *Hari Shanker Jain and Others,* A.I.R. 1979 S.C. p. 65, and (2) *The UP. State Electricity Board and* A nor. v. *The Labour Court, Kanpur,* A.I.R. 1984, S.C. p. 1450.

5. Before we proceed to consider the question so raised, it would be appropriate to deal with preliminary objection of the union that the question of jurisdiction was neither raised in the statement of claim nor was canvassed in the arguments submitted on behalf of the Board. It was, therefore, submitted that such a question *[@page691]* cannot be entertained in the petition while exercising jurisdiction under Article 227 of the Constitution of India. Reference is made to a Supreme Court decision reported in the case of *Sohan Singh and Others* v. *General Manager, Ordnance Factory, Khamaria, Jabalpur and Others,* 1984 (Suppl.) S.C.C. p. 661. In that case parties submitted to the jurisdiction of the Labour Court to try an issue set for trial in an application u/S. 33-C (2) of the Industrial Disputes Act, 1947 the Supreme Court observed:

'The High Court seems to have taken the view that the trial of such an issue was beyond the competent of the Labour Court; but it has rightly been point out on behalf of the appellants instead of challenging the competence or the jurisdiction of the Labour Court to try issue No. 4, the respondents went to trial, submitted to its jurisdiction and when a decision was given against them by the Labour Court, they, for the first time, challenged its jurisdiction to try that issue in the High Court. On the facts of this case, therefore, we are satisfied that the High Court ought not to have entertained the point of jurisdiction urged on behalf of the respondents and set aside the order of the Labour Court on that ground alone.'

6. Reliance is also placed upon the decision of this Court in the case of *G.M.D.C.* v. *Presiding Officer* 27, 1986 (1) G.L.R. at page 410. Dealing with the nature of the jurisdiction under Article 227 of the Constitution of India, it was held, as observed in para 9 of the citation, that the plea that as per Rule 3(k) of the Service Rules the concerned workmen were not the employees as defined therein and, therefore, the service Rules did not apply to them, was a plea that was never put forward in advance by the petitioner-Corporation for the reasons best known to it and that such a plea was entirely a new plea which was sought to be raised for the first time before the High Court under Article 227 of the Constitution and that by virtue of the Supreme Court decision in the case of Mohd. Yunus v Mohd. Mustaquim, reported in AIR 1984 S.C. p. 38, that plea could not be entertained as it was not taken in the trial Court and as it should be deemed to have been waived and given up. It was observed that if such a new contention was permitted to be taken for the first time, it would obviously work grave injustice to the respondents-workmen who would be taken by utter surprise.

7. In the present case also, Mr . Shahani learned Advocate for the union submits, the Board did not raise the question as per the aforesaid content and spirit before the learned industrial tribunal. Mr. Shahani drew our attention to the following extract from the Establishment Manual of the Board appearing at page 411:

(G.E.B. Circular No. LL/LAB-18/9809 dated 25/8/1964) Exemption from the Model Standing Orders.

All the field officers hereby informed that by its Notification No. KHSH-622/IND/EMP/1961-Jh. dated 1st August 1964, which is reproduced overleaf, the Government of Gujarat has granted exemption from the operation of the Model Standing Orders applicable to some of the employees of the Board. This exemption does not extend to the employees of the Utran Undertaking who are governed by the Utran Standing Orders as settled by the Commissioner of Labour under Section 35(2) of the Bombay Industrial Relation Act, 1946 and as modified by I.C.No. 95 of 1959, and is further subject to the condition that the Gujarat Electricity Board

should not make any proposals for modifications in the Service Regulations to Government *[@page692]* in Health & Industries Department which relate, to the following matters which are specified in the Schedule appended to Industrial Employment (Standing Order) Act, 1946, unless such proposals are first placed before the Commissioner of Labour, Gujarat State, Ahmedabad and approved by him. The Board requested by the Government to see that the above condition is scrupulously observed.

Matters specified in the Schedule appended to the Industrial Employment (Standing Orders) Act, 1946.
1 xx xxx xxx
2 xx xxx xxx
3 xx xxx xxx
4 xx xxx xxx
5 xx xxx xxx
6 xx xxx xxx
7 xx xxx xxx
8 xx xxx xxx
9 xx xxx xxx
10 xx xxx xxx
11 xx xxx xxx
12 xx xxx xxx
13 Age for retirement or superannuation.
14 xx xxx xxx

8. Mr. Shahani drew our attention to the fact that admittedly to the S.R. 72 which was earlier notified u/S. 13B under the Industrial Employment (Standing Orders) Act, 1946 stood replaced by the amendment of increasing the age of superannuation from 55 to 58 years and such amendment was not notified u/S. 13B of the said Act. He finally submitted that if such a contention was raised by the Board in trial Court, the union could have placed some material before the tribunal for showing that the tribunal had jurisdiction to entertain the reference and that the appropriate Government had jurisdiction to make reference. Thus according to him, if the question of jurisdiction which could be decided from the material that might have been placed at the time of the hearing of the reference, if allowed to be raised for the first time, would prejudice the body of workmen represented by the union.

9. Mr. Adhvaryu learned Advocate for the Board has taken us to various paragraphs from the award in order to trace out the contention with regard to the jurisdiction. However, having gone through the award we find that the question with regard to competence of the reference and jurisdiction of the tribunal does not appeal to have been raised before the learned industrial tribunal both in the content and in the spirit, which has been taken before us. Bearing in mind the position of law as per the aforesaid decisions submitted by Mr. Shahani, we are of the opinion that in the facts and circumstances of this case, the question of jurisdiction which is a mixed question of law and facts cannot be entertained as it would work injustice to the other side.

10. However, since we have heard the matter at length and ascertained broad facts regarding the question of jurisdiction, we proceed to deal with and decide the same.

11. Reverting then to the question, it would be appropriate to state that the Supreme Court held in the cases of (1) U.P. State Electricity Board & Anor. v. Hari Shankar Jain & Ors. AIR 1979 S.C. (supra) and (2) U.P. State Electricity Board & Anr. v. The Labour Court, Kanpur, AIR 1983 S.C. p. 1450 (supra).

12. In the first case there was an individual reference by two workmen for their claim that they could continue to work as long as they were fit and able to discharge their duties on the strength of certified standing orders which did not prescribe any age of superannuation for the employees. The firm where the two workmen were working was purchased *[@page693]* by the U.P. State Electricity Board. The employees became the employees of the said Board. It was not in dispute that the U.P. State Electricity Board was an industrial establishment to which the Industrial Employment (Standing Orders) Act, 1946 applies. However, on 28th May 1970 the Governor of Uttar Pradesh notified, under Section 13-B of the Industrial Employment (Standing Orders) Act, 1946, a regulation made by the U.P. State Electricity Board under Section 79 (c) of the Electricity

(Supply) Act, 1948, whereby the date of compulsory retirement of an employee of the Board was fixed at attaining of the age of 58 years with certain proviso. Pursuant to this notified regulation, the two workmen were sought to be retired on their respective dates in July 1972 upon their attaining the age of 58 years. The workmen filed a writ petition in the Allahabad High Court challenging regulation made by the Board and its notification by the Government. Their contention was that Board was not competent to make regulation in respect of the matter covered by the Industrial Employment (Standing Orders) Act. The writ petition was dismissed by a Single Judge of the Allahabad High Court, and the Division Bench which heard the special appeal in the first instance made reference of the following three questions to a Full Bench:

"(1) Whether the Industrial Employment (Standing Orders) Act, 1946 applies to the industrial establishment of the State Electrically Board ?

(2) Whether the Standing Orders framed for an industrial establishment of an electrical undertaking cease to be operative on the purchase of the undertaking by the Board or on the framing of regulations under S. 79 (c) of the Electricity (Supply) Act, 1948 ?

(3) Whether S. 13-B of the Industrial Employment (Standing Orders) Act, 1946, applies only to industrial establishment of the Government or also to other industrial establishment?"

Following answers were given by the Full Bench:
"(1) The Industrial Employment (Standing Orders) Act, 1946 applies to the industrial establishment of the State Electricity Board.

(2) The Standing Orders framed in an industrial establishment by an electricity undertaking do not cease to be operative on the purchase of the undertaking by the Board or on framing of the regulations under S. 79(c) of the Electricity (Supply) Act, 1948.

(3) Section 13-B of the Industrial Employment (Standing Orders) Act, 1946, applies only to the industrial establishment of the Government and to no other establishment."

The Division Bench allowed the special appeal pursuant to the above findings and issued a writ quashing the notification dated 28th May 1970 and directing the U.P. State Electricity Board not to enforce the regulation against the two workmen. In appeal before the Supreme Court, the second and third questions were agitated. After examining the nature of the two legislations, namely the Industrial Employment (Standing Orders) Act and the Electricity (Supply) Act, it was held that the Industrial Employment (Standing Orders) Act is a special Act dealing with special subject enumerating conditions of service of workmen in industrial establishments, and that the provisions of the Standing Orders Act must prevail over Section 79 (c) of the Electricity (Supply) Act, in regard to the matters to which the Standing Orders have applied. Examining then, the provision *[@page694]* contained in Section 13-B of the Industrial Employment (Standing Orders) Act, following observations were made in para 14:

"....The words 'rules and regulations' have come to acquire a special meaning when used in statutes. They are used to describe subordinate legislation made by authorities to whom the statute delegates that function. The words can have no other meaning in Sec. 13-B. Therefore, the expression "workmen... to whom... any other rules or regulations that may be notified in this behalf" means, in the context of S. 13-B, workmen enjoying a statutory status, in respect of whose conditions of service the relevant statute authorises the making of rules or regulations. The expression cannot be construed so narrowly as .to mean Government servants only; nor can it be construed so broadly as to mean workmen employed by whomsoever including private employers, so long as their conditions of service are notified by the Government under S. 13-B."

It has been, therefore, held that the Industrial Employment (Standing Orders) Act is a special law in regard to the matters enumerated in the schedule and the regulations made by the Electricity Board under the Electricity (Supply) Act with respect to any of those matters are of no effect unless such regulations are either notified by the Government u/S. 13-B or certified by the Certifying Officer u/S. 5 of the Industrial Employment (Standing Orders) Act. In regard to matters in respect of which regulations made by the Board have not been notified by

the Governor or in respect of which no regulations have been made by the Board, the Industrial Employment (Standing Orders) Act continues to apply. Consequently in the case before the Supreme Court the regulations regarding age of superannuation having been duly notified u/S. 13-B of the Industrial Employment (Standing Orders) Act was held to have the effect notwithstanding the fact that it was a matter which could be subject-matter of Standing Orders under the Industrial Employment (Standing Orders) Act.

13. In the second case, the Supreme Court relied upon the above-referred previous decision. The second case also arose from the individual reference made by the employee. The Supreme Court approved the decision of Allahabad High Court in Bhai Lal v. Superintending Engineer, Allahabad 1979 Lab 1C 110 as appearing in para 9 threrof. It also needs be reproduced here for the simple reason that the formulation of the submission of Mr. Adhvaryu in the matter before us revolves the same.

"Once the regulations framed under S. 79 of the Electricity (Supply) Act, 1948 have been notified by the State Government under S. 13-B of the Industrial Employment (Standing Orders) Act, the standing orders framed by the erstwhile licensee to the extent they concerned the subject dealt with by the regulations became ineffective and inoperative and that in respect of such matter, the right of the parties would be governed only by the regulation so notified. In the circumstances even if it be a fact that the standing orders framed by the erstwhile licensee contained a clause specifying an age higher than 58 years, as age of superannuation for its employees, the employee would none-the-less, as provided in the notified regulation, be superannuated at the age of 58 years."

14. Mr. Shahani for the union has taken us to the events that had taken place after the Board's regulations came to be notified u/S. 13-B of the Industrial *[@page695]* Employment (Standing Orders) Act, 1946. The booklet containing the xerox copy of the Service Regulations contains following preface:

"The Gujarat Electricity Board by its Resolution No. 3 dated 12-5-1960 adopted the Bombay State Electricity Board Employees' Service Regulations until such time as they may be superceded, amended or modified.

On 1-8-1964 the Government of Gujarat issued Notification No. KM-SM-622/ IND/EMP-1961-JK under Section 13-B of the Industrial Employment (Standing Orders) Act, 1946 (XX of 1946). By this notification the Government have adopted Service Regulations of the Board for the purpose of this Section. These regulations, thereby replace the Model Standing Orders under the Industrial Employment (Standing Orders) Act, 1946."

It is not in dispute that the S.R.s were so notified on 1-8-1964, and we have verified the notification. The relevant Service Regulation is S.R. 72 and it concerns the age of compulsory retirement of the employees of the Board. S.R. 72 as notified under S. 13-B of the Industrial Employment (Standing Orders) Act, 1946 as stated above, contained the age of compulsory retirement at 55 years with certain provisos. It is further an admitted position that the said S.R. came to be amended in 1972 making the age of compulsory retirement of the employees of the Board at 58 years with certain provisos. The amended S.R. may be reproduced from page 9 of the compilation of xerox copies:

"S.R. 72. The Board referred to its earlier Resolution No. 1081 dtd. 14-4-1992 (G.S.O. 218 dtd. 26-4-1972) and has decided to amend the existing S.R. 72. Accordingly S.R. 72 will now stand revised as follows :

"An employee is liable to compulsory retirement on the date of his completion of 56 years of age unless specifically re employed by the Board for a specific period."

It is important to note that admittedly the amended Service Regulation making the age of compulsory retirement as 58 years was not notified under Section 13-B of the Industrial Employment (Standing Orders) Act. It is, therefore, the submission of Mr. Shahani for the union that the protective cover of Section 13-B of the Industrial Employment (Standing Orders) Act, 1-946 for these service regulations has not only been limited, but has further not been availed of with the result that in the field of this condition of service, namely regarding the age of superannuation, the Standing Orders under the Industrial Employment (Standing Orders) Act, 1946 would xx prevail. It is not in dispute that the relevant Standing Order prescribes the age of superannuation at 60 years. According to the submission of Mr. Adhvaryu, the protective cover is neither lost

nor required to be applied again in view of the Service Regulation No. 2 which confers power upon the Board. Mr. Adhvaryu, therefore, argued that by virtue of the Service Regulation No. 2 which was notified u/S. 13-B of the Industrial Employment (Standing Orders) Act, 1946 by the aforesaid notification dated 1-8-1964, the aforesaid amendment in S.R. 72 would also stand covered by the protection u/S. 13-B of the Industrial Employment (Standing Orders) Act, 1946. The said service Regulation is reproduced below:

"Except where it is otherwise expressed or implied, these Regulations with such amendment as may be effected by the Board from time to time shall apply *[@page696]* to all employees of the Gujarat Electricity Board. The Gujarat Electricity Board shall have power to make such additions, deletions and alterations in these Regulations as may be deemed necessary from time to time."

15. We are unable to accept the submission of Mr. Adhvaryu for the simple reason that the power of the Board of framing service regulations is recognised by the parent statute, namely the Electricity (Supply) Act, 1948 as per its provision contains in Section 79(c). Section 79 with clause (c) reads as under:

"The Board may by notification in the official Gazette, make regulations not inconsistent with this Act and the rules made thereunder to provide for all or any of the following matters, namely:

(a) & (b) xx xx xx
(c) the duties of (officers and other employees) of the Board, and their salaries, allowances and other conditions of service;
(d) to (k) xx xx xx

If the argument of Mr. Adhvaryu is accepted, it would amount to impliedly accepting the authority of the Board (Subordinate law making body) to notify for all times to come all future amendments to the regulations, under Section 13-B of the Industrial Employment (Standing Orders) Act, 1946. It is to be noted that such authority is vested only with the Governor. Regulation No.2 as notified u/S. 13-B in 1964 only recognises power of the Board to amend notified regulations future and the binding nature of such amendments. It runs parallel to Section 79(c) of the Electricity (Supply) Act. It does not and cannot go any further. It cannot be held to be giving a blanket power to the Board to get such future amendments to regulations covered by the 1964 notification u/S. 13-B of the Standing Orders Act without submitting such future amendments for the scrutiny of and application of mind by the Governor for the purpose of Section 13-B. In this connection Mr. Adhvaryu had shown to us letter No. IND/KMP-1961/85420-JH dated 9-1-1965 addressed by the Under Secretary to the Government of Gujarat to the Secretary of the Board on the subject of formal changes in the service regulations of the Board. The letter reads :

'I am directed to refer to your D.O. letter No. ENT/III/14424 dated the 7th December 1964, addressed to the Commissioner of Labour, Ahmedabad and copy endorsed to this Department on the subject noted above and to state that once the approval of Commissioner of Labour to the proposed changes in the Service Regulations of the Board is obtained, it is not necessary to obtain the approval of Government in Education & Labour Department.'

On the strength of this letter Mr. Adhvaryu submitted that it was not necessary for the Board to get notified the change in S.R. 72 making the age of compulsory retirement at 58 years from 55 years and it should be treated as having been notified or covered by the earlier notification. In the alternative, he also submitted that what was necessary was the approval of Commissioner of Labour to the proposed changes in the Service Regulations of the Board. We find that ' there is no force in these submissions for the simple reason that what was conveyed by the letter was with regard to formal changes in Service Regulations. Even in the matter regarding contents of the letter, the facts regarding approval of the Commissioner of Labour ought to have been placed on the record before the learned Tribunal by raising an appropriate contention as has been raised before us. That apart, in our view the letter reproduced above has no *[@page697]* consequence upon the question under consideration.

16. The importance of notifying particular regulation or for that matter a regulation with regard to a particular condition of service u/S. 13-B of the Industrial Employment (Standing Orders) Act is also highlighted in the

first decision of the Supreme Court (AIR 1979 S.C. P. 65). The Supreme Court there has held that the Industrial Employment (Standing Orders) Act is a special law in regard to the matters enumerated in the schedule and the regulations made by the Electricity Board with respect to any of those matters are of no effect unless such regulations are either notified by the Government u/S. 13-B or certified by the Certifying Officer u/S. 5 of the Industrial Employment (Standing Orders) Act. It was, therefore, further held that to the matter for which regulations made by the Board had not been notified by the Government or in respect of which no regulations had been made by the Board, the Industrial. Employment (Standing Orders) Act should continue to apply. In that case, it was because the particular regulations was notified by the Government u/S. 13-B of the Industrial Employment (Standing Orders) Act that the Supreme Court held that such regulation would have effect notwithstanding the fact that it was a matter which could be the subject-matter of the Standing Orders under the said Act. The workmen were, therefore, held" to have been properly retired when they attained the age of 58 years. In para 16 following observations of the Supreme Court appear and deserve careful note at this stage:

"In our view the only reasonable construction that we can put upon the language of S. 13-B is that a *rule or regulation,* if notified by the Government, will exclude the applicability of the Act to the extent that the rule or regulation covers the field. To that extent and to that extent only 'nothing in the Act shall apply'. To understand S. 13-B in any other manner will lead to unjust and uncomtemplated results."

In the second decision (AIR 1984 S.C., p. 1450) also the aforesaid first decision was relied upon and the importance of notifying regulations made u/S. 79(c) of the Electricity (Supply) Act u/S. 13-B of the Industrial Employment (Standing Orders) Act was highlighted.

17. The fact that both the aforesaid authorities relied upon by Mr. Adhvaryu rule that the Industrial Employment (Standing Orders) Act is a special law in regard to the matters enumerated in the schedule and the regulations made by the Electricity Board under Electricity (Supply) Act with respect to any of those matters are of no effect unless such regulations are notified by the Government u/S. 13-B assumes a great deal of importance in so far as the present petitions are concerned. Following observations appearing at para. 4-A of the first decision (AIR 1979 S.C. p. 65) should be borne in mind:

"Before examining the rival contentions, we remind ourselves that the Constitution has expressed a deep concern for the welfare of workers and has provided in Art.42 that the State shall make provision for securing just and humane conditions of work and in Art.43 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, etc.

These are among the "Directive Principles of State Policy". The mandate *[@page698]* of Art. 37 of the Constitution is that while the Directive principle of State Policy shall not be enforceable by any Court, the principles are 'nevertheless fundamental in the governance of the country" and 'it shall be the duty of the State to apply these principle in making laws.' Addressed to Courts, what the injunction means is that while Courts are not free to direct the making of legislation, Courts are bound to evolve, affirm and adopt principle of interpretation which will further and not hinder the goals set out in the Directive Principles of the State Policy. This command of the Constitution must be ever present in the minds of Judges when interpreting statutes which concern themselves directly or indirectly with matters set out in the Directive Principles of State Policy."

Dealing with the Electricity (Supply) Act, it has been held by the Supreme Court in that case that the primary object of that Act is to provide for the co-ordinated, efficient and economic development of electricity in India on a regional basis consistent with the needs of the entire region including semi-urban and rural areas. The power u/S. 79 of the said Act has been held to be an ordinary general power which every employer is invested with to regulate conditions of service of his employees. It is further held to be ancillary or incidental power of every employer and that the Electricity (Supply) Act does not presume to be an Act for service conditions of the employees of the State Electricity Board. It is an Act which regulates co-ordination and development of the electricity. It is a Special Act in regard to the subject of development of electricity, whereas Industrial Employment (Standing Orders) Act is a special Act with regard to conditions of service of workmen in industrial establishments.

18. Is then the Industrial Disputes Act, 1947 not a special statute in respect of industrial adjudication of the disputes between the employer on one side and the employees as a class on the other side? Mr. Shahani learned Advocate for the union submitted to us a few authorities which, in our opinion, answer the question in quite clear terms.

19. He in the first instance referred to the decision of the Supreme Court contained in the case of *Co-operative Central Bank Limited* v. *Additional Industrial Tribunal, Andhra Pradesh, Hyderabad,* reported in AIR 1970 S.C. p. 245. Following observations in para 10 are pressed into service:

"In a number of cases, conditions of service for industries are laid down by Standing Orders certified under the Industrial Employment (Standing Orders) Act, 1946, and it has been held that, though such Standing Orders are binding between the employer and employees of the industries governed by these Standing Orders they do not have such force of law as to be binding to Industrial Tribunal adjudicating an industrial dispute. The jurisdiction which is granted to the Industrial Tribunal by the Industrial Disputes Act is not the jurisdiction of merely administering the existing laws and enforcing existing contracts. Industrial Tribunals have right even to vary the contract of service between the employer and the employees...."

It is no doubt true that the Supreme Court was concerned with the bye-laws framed in pursuance of Andhra Pradesh Co-operative Societies Act (No.7) of 1964 by the concerned co-operative society. At the same time the true field of the Industrial Disputes Act had also been highlighted by the Supreme Court.

20. Mr. Shahani also relied upon two *[@page699]* decisions of this Court. First one is in Special Civil Application No. 351 of 1976 decided on 26-4-1976 by the Division Bench consisting of J. B. Mehta & T. U. Mehta, JJ. In that case petitioner -Savarkundla Municipality challenged the award of Industrial Tribunal as regards Harijan-Safai Kamdars in respect of certain demands which were allowed by the Tribunal. The award was challenged *inter alia* on the ground of want of jurisdiction on the part of the Tribunal to make such an award in excess of the demand and in view of provisions of Section 271 of the Gujarat Municipalities Act, 1963. Section 271 of the Act provides that Municipality shall make rules not inconsistent with the Act and the rules or orders made by the State Government under that Act and may from time to time alter or rescind them. The proviso to Section 272 of the said Act enacts that no rule shall have effect unless and until it has been approved by the State Government. Section 273 (2) provides that notwithstanding anything contained in clause (a) of the proviso to Section 271 or in sub-section (1) of this Section, a municipality shall have power to make without sanction a rule under clause (d) of Section 271 in respect of various matters enumerated therein. The argument was that because of such statutory provisions the Industrial Tribunal did not have jurisdiction to make an award in excess of the demand and in view of the provisions of Section 271 of the Gujarat Municipalities Act, 1963. The Division Bench laid down the following principle:

"These provisions of the Municipal Act operate in a totally different field when the Municipality as an employer unilaterally wants to lay down the service conditions of its employee. Those provisions would have no operation where the industrial adjudication arises under a reference made by the Government under the Industrial Disputes Act, 1947, where on such an industrial dispute the Tribunal has jurisdiction to revise the old service conditions, *statutory or otherwise,* and to make new service contracts for the benefits of the employees in so far as it is just and proper for the industry and it must resolve such an industrial dispute. *Therefore, the industrial adjudication always operates in this special field* and accordingly, when such service conditions are altered by a legal industrial settlement or award, in those cases the provision of the Municipal Act which provide for a voluntary fixation or alteration of the service conditions at the instance of the employer would not be applicable. That is why when the Government published such an industrial award, it becomes binding on the Municipality under Section 17(A) and it would never be a defence to the Municipality that it will not implement such a binding legal award, once it has been duly published and has become enforceable under the Industrial Disputes Act. It is only because the employer is not willing to alter his service rules that an industrial adjudication intervenes and settles this question on a properly raised industrial dispute between the two parties - employer and the workmen. *Therefore, in this field of industrial adjudication it is the industrial award which would be legally binding and the employer could not contend that it has its difficulties under the Municipal law, which would only apply where the Municipality on its own without any industrial settlement or*

adjudication by the Tribunal unilaterally wants to change its service conditions by framing proper rules under that law." (Emphasis supplied.)

21. The second one is Special Civil Application No. 1856 of 1975 decided on July 27-28, 1976. In that case the Division Bench consisting of S. Obul Reddi, C.J. *[@page700]* and P. D. Desai, J., examining the scheme of the State Bank of India Act, 1955, particularly of the provision contained in Section 50 thereof and after stating the history of the adjudication of the industrial disputes, proceeded to consider the preliminary contentions urged on behalf of the employer against the maintainability of an application u/S. 33-C of the Industrial Disputes Act, 1947. The second preliminary objection was thus stated: the principal question which fell for the determination was whether the statutory regulation which defines the expression "substantive salary" or the relevant terms of the agreement dated March 31, 1967 prevailed in the matter of calculation of pension and that such a dispute could not possibly be resolved in a proceeding u/S. 33-C (2) of the Industrial Disputes Act. Following observations appearing at pages 24 and 25 will be useful for the purpose of considering the broad submission canvassed by Mr. Shahani:

"The further question, namely, whether the binding agreement would prevail or the statutory regulation would prevail is also an incidental question and that too the Labour Court will have to decide as an incidental question. If the statutory regulation amended after the agreement dated March 31, 1976 flies in the face of the said agreement, the said statutory regulation would be unenforceable and would be in a sense a nullity."

It was, therefore, held that such a question would always be decided by Labour Court in a proceeding under Section 33-C (2) of the Industrial Disputes Act. In the above connection Mr. Adhvaryu learned Advocate for the Board relied upon the decision of Karnataka High Court in the case of the *Corporation of the City of Mangalore and Another* v. *M. S. Giri and Another* reported in 76 F.J.R. at page 389. In that case the workmen of the Mangalore City Municipality raised an industrial dispute for raising the age of superannuation from 55 to 58 years. Agreement was entered into between the workmen represented by their union and the management of the Municipality represented by its Commissioner. The dispute was referred to the sole Arbitrator u/S. 10 A of the Industrial Disputes Act. The Municipality, then the Corporation, contested that matter and challenged the resultant award raising the retirement age from 55 to 58 years. It has been held by the Karnataka High Court that as the age of retirement was fixed at 55 years under Rule 14 of the Municipal rules framed under the then Madras District Municipalities Act, the reference was not competent and that the statutory rule could not be modified by an award of an Arbitrator since the statutory provisions operated as a bar for the invocation of the Industrial Disputes Act. We have gone through the various decisions which were pressed into service for coming to the aforesaid conclusion. However, distinction between the special legislation and a general legislation as has been highlighted in the case of U.P. State Electricity Board v. Hari Shankar (supra) itself would clinch the issue and from that point of view the authorities relied upon by the Karnataka High Court would not be applicable. In fact the aforesaid view of the Karnataka High Court runs counter to the view expressed by the Supreme Court in the case of U.P. State Electricity Board v. Hari Shankar (supra). With respect, we are unable to agree with the view of the Karnataka High Court and find that the contrary view of this Court in the aforesaid two decisions rightly holds the field being based on settled legal position flowing from the relevant decision of the Supreme Court on the point, it should be borne in mind that the basic distinction is between the individual dispute in the face of a statutory regulation governing the workman *[@page701]* individually and a general dispute raised by the body of the workmen and ultimately through the statutory process referred for adjudication.

22. It would be appropriate to note that Karnataka High Court placed reliance on Marina Hotel v. Their Workmen, 21 F.J.R. p. 46 where the Supreme Court considered the relevant provision of the Shops and Establishments Act providing a maximum of twelve days' total leave for sickness-cum-casual leave with full wages per year and found that it would not be open to an Industrial Tribunal to award a total leave of 15 days' sickness-cum-casual leave per year. Earlier decision in Dalmiya Cement (Bharat) Ltd. v. Their Workmen (1961) 21 F.J.R. 1 was applied. That question was also for consideration in the case between May and Baker (India) Ltd., and Their Workmen 1961 (2) L.L.J., 94, where it was held that in the case of employees governed by the provisions of Delhi Shops and Establishments Act (VII of 1954), it was not open to the Industrial Tribunal adjudicating the dispute relating to leave facilities to allow accumulation of the privilege leave for a period exceeding the one mentioned in S. 22(1)(b)(i) of the Act. The vital point of distinction is that the

jurisdiction of Industrial Tribunal was circumscribed by the legislature itself (Delhi Shops & Establishments Act) and it was held not open to the Tribunal to disregard the peremptory direction of the legislature. In the present case there is no such situation. On the contrary, as held by the Supreme Court in the case of UP. State Electricity Board v. Hari Shankar (supra), in absence of notification under Section 13-B of the Industrial Employment (Standing Orders) Act, regulations under Section 79(c) of the Electricity (Supply) Act will have to yield to Model Standing Orders. It is open to and in fact obligatory for the tribunal to byepass such regulations of the Board and apply Model Standing Orders or any of the suitable yardstick to meet with the situations

23. The Madras High Court had an occasion to deal with the provisions of District Municipalities Act and the Industrial Employment (Standing Orders) Acct. 1946 in *thiru Venkatswami* v. *Coimbatore Municipality,* 1968 (1) L.L.J. p. 36. It has been held that District Municipalities Act is a State general enactment dealing with the administration of Municipalities, whereas the Industrial Employment (Standing Orders) Act, 1946 is a special enactment and that the District Municipalities Act cannot override the Industrial Employment (Standing Orders) Act and the Model Standing Orders framed thereunder. Then coming to the Industrial Disputes Act, 1947, the Supreme Court in the case of *Management of the Bangalore Woollen, Cotton & Silk Mills Co. Ltd.* v. *Workmen and Another* AIR 1968 S.C. p. 585 has held that the jurisdiction of Industrial Tribunal to adjudicate upon the matters covered by Standing Orders is not abridged or taken away by Standing Orders Act. It is, therefore, plain to find that even as between Industrial Disputes Act and Standing Orders Act, the Industrial Disputes Act is a special law in the field of industrial adjudication.

24. Reference was made on behalf of the Board to the case of *State Bank of India* v. *S. Vijaykumar,* 1990 (4) S.S.C. p. 481. The question there was whether the regulations made u/S. 50(2)(a) of the State Bank of India Act could be made retrospective or not. It was held that the regulations could be amended with retrospective effect in case the authority competent to make regulations had been given a right to make regulations with retrospective effect. It has been observed on page 492 that the prohibition, if any, *[@page702]* to alter the terms and conditions can be found only under the Constitution of India and in case power of the rule or law making authority is not circumscribed or limited by any constitutional mandate, then it has power to amend such terms and conditions of service unilaterally without the consent of the employee. There can be no dispute about the power of the authority as has been conferred u/S. 79 of the Electricity (Supply) Act. However, that power would be limited by the nature of the statute itself. The nature of this power has been dealt with in case of U.P. State Electricity Board v. Hari Shankar (supra) itself.

It can hardly be disputed that there is a crucial difference between the Act of Parliament (or State Legislature as the case may be) and the exercise of delegated legislative power. Delegated legislation can be set aside by the Court on the ground that it exceeds the powers conferred by the parent Act. In the same manner the statutory authority having legislative power under the parent Act would be a non-sovereign law-making body and its legislative power bears mark of subordination. The authority has to yield to the exercise of paramount legislative power covering the same field. This proposition holds good in the context of what has been held by the Supreme Court in various decisions noted above.

25. Finally, Mr. Adhvaryu's alternative submission was that the employees cannot be permitted to adopt 'pick and choose' method in challenging service regulations of the Board. They can either challenge all service regulations or none. From the point of view of the Board, benefit of the procedure to change 'model standing orders' available to a private employer would not be available to the Board. We are unable to accept the submission as the same is apparently misconceived. Binding force of the service regulations to individual employee continues to hold the field. It is only when a dispute between the employees as a class and the Board is referred for adjudication by the Government to the Industrial Tribunal that the challenged service regulation if not covered under Section 13-B of the Industrial Employment (Standing Orders) Act, has to yield to the adjudicating process.

26. The object of enacting the Industrial Disputes Act, .1947 and of making provision therein to refer disputes to tribunals for settlement is to bring about industrial peace. Wherever a reference is made by a Government to an Industrial Tribunal, it has to be presumed ordinarily that there is a genuine industrial dispute between the parties which requires to be resolved by adjudication. In all such cases an attempt should be made by Courts

exercising powers of judicial review to sustain as far as possible the awards made by Industrial Tribunals instead of picking holes here and there in the awards on trivial points and ultimately frustrating the entire adjudicating process before the tribunals by striking down awards on hypertechnical grounds. This is what has been ruled in Calcutta Port Shramik Union v. The Calcutta River Transport Association and others, AIR 1988 S.C. 2168 referred to by learned Advocate Mr. Shahani.

27. In the result, it is held that the reference in respect of the retirement age of the workmen of the Board was competent and the Industrial Tribunal had jurisdiction to decide the reference on merits.

28. THE SECOND QUESTION relates to the decision of the Tribunal on the very dispute. In the submission of Mr. Adhvaryu learned Advocate for the petitioner, the Tribunal has erred in not considering the principle of industry-cum-region *[@page703]* basis while dealing with the evidence placed on record before the Tribunal. Mr. Adhvaryu referred to the statement showing the age of superannuation in various Boards/ Corporations - Annexure-E.

29. In so far as the various State Electricity Boards are concerned, the following provisions of the age of compulsory retirement of the workmen may be noticed:

Sr. No,	Name of the Board	Class-I	Class -II	Class -III	Class-IV
1	2	3	4	5	6
1. M.P.E.E.	Technical	58	58	58	60
	Non-Tech.	58	58	58	60
2. W B.E .B.	Tech.	58	58	58	58
	Non-Tech				
3. B.E.B.(BIHAR)	Tech.	58	58	60	60
	Non-Tech.	58	58	60	60
4. Assam E.B.	Tech.	58	58	58	58
	Non-Tech.	58	58	58	58

Remarks:
The Chairman is however authorised by the Board to extend the age of superannuation in respect of grade IV employees keeping in view of the policy of State Government only for a year at a time in individual cases on merit upto 60 years subject to good record of service and medical fitness on compassionate grounds.

5. U.P.S.E.B.	Tech	58	58	58	60
	Non-Tech.	58	58	58	60
6. Tamilnadu E.B.	Tech.	55	55*I	58	58*II
	Non-Tech	55	55*I	58	58*II

Remarks:
* I 55 years of age in respect of employees not covered by the Industrial Employment (Standing Orders) Act, 1946 and 58 years in respect of these covered by the said Act. *II 58 years of age except daffadar office Helper (Peon) etc. for whom age of retirement is 60 years.

7. M.S.E.B	Tech.	58	58	58	60
	Non-Tech	58	58	58	60
8. R.S.E.B.	Tech.	55	58	58	58
	Non-Tech	55	58	58	58
9. Kerala S.E.B.	Tech	55	55	55	55
	Non-Tech	55	55	55	55

10. Orissa E.B.	Tech	58	58	58	60
	Non-Tech	58	58	58	60

In so far as the various Corporation in the State of Gujarat are concerned, the age of compulsory retirement can be seen from the following table : *[@page704]*

1. Gujarat Small Industries Corporation Ltd.	Tech.	58	58	58	58
	Non-Tech	58	58	58	58
2. G.S.F.C. Ltd.	Tech	60	60	60	60
	Non-Tech	60	60	60	60
3. Gujarat Export	Tech	60	60	60	60
	Non-Tech	60	60	60	60
4. Gujarat Industrial	Tech	58	58	58	58
	Non-Tech	58	58	58	58
5. Gujarat State Road Transport Corporation	Tech.	58	58	58	58
	Non-Tech	58	58	58	58

In the submission of Mr. Adhvaryu on a reference to various State Electricity Boards, in most of cases the age of compulsory retirement is 58 years, in some cases it is 55 years and with regard to certain classes, in some cases it is 60 years. With regard to the various Corporation the age of retirement in the two of the Corporations is 60 years, whereas in rest of the 3 Corporations, it is 58 years. In his submission the only comparable instance is that of Gujarat State Road Transport Corporation if the region basis is borne in mind. The Gujarat State Road Transport Corporation has a spread out network throughout the State of Gujarat just as the petitioners Board has. Consequently, although the industry is quite different, in the absence of any comparable instance in the State (Region) the only guiding instance is that of the Gujarat State Road Transport Corporation. He further tried to substantiate his submission that the Electricity Board and the Transport Corporation are interconnected inasmuch as in Bombay Best (Bombay Electricity Supply & Transport Undertakings) undertakes both activities, namely, supply of electricity and of making available transport facility in the city of Bombay. In order to substantiate his submission, he relied upon various authorities which deal with the principle of industry-cum-region basis while dealing with the industrial disputes. He, however, fairly conceded that in most of those cases the dispute related to wages or dearness allowance or some such other monetary benefits.

30. Dealing with the age of retirement are the cases of (1) Dunlop Rubber Company v. Workmen, AIR 1960 S.C. 207, (2) Air India v. Nargesh Meerza and others, 1981. (3) S.C.C. 335 and (3) Workmen v. Bharat Petroleum Corporation Ltd., 1983 (4) S.C.C. 470.

31. In Dunlop Rubber Company's case there were two questions, namely, first with regard to retirement age and second with regard to gratuity. With regard to the age of retirement, referring to the decision of the Supreme Court in Guest, Keen, Williams (Private) Limited, Calcutta v. P. J. Sterling 1959 S.C. 1279, the Supreme Court held that where the age of superannuation of employees in service before the Standing Orders came into force, in that concern, was fixed at 60 years, if the Tribunal thought that it would be fair to fix 60 years as the age of retirement for clerical staff, it cannot be said that the Tribunal's order was not in accordance with the prevailing *[@page705]* conditions in many concerns in that region.

32. In Air India's case, it has been held that there can be no cut and dried formula for fixing age of retirement. It is to be decided by the authorities concerned after taking into consideration various factors such as the nature of work, the prevailing conditions, the practice prevalent in other establishments and the like. But the factors to be considered must be relevant and should bear a close nexus to the nature of the organisation and the duties of the employees.

33. Bharat Petroleum Corporation's case is the law of the three cases. In this case an industrial dispute was raised regarding retirement age of clerical staff employees of the Refining Division of the B.P.L. Bombay. The Industrial Tribunal held that the retirement age should be raised at least to 58 years which is the retirement age

of the clerical staff of the marketing division of the Corporation. In the appeal before the Supreme Court, the workmen maintained their claim for raising their retirement age to 60 years. The Supreme Court held that on the
material available it must be held that the retirement age in the case of clerical staff of the refinery division should be raised to 60 years. Following authorities were noted while considering factors and considerations which would assume importance.

(i) Imperial Chemical Industries Pvt. Ltd. v. Workmen, AIR 1961 S.C. 1175: Existence or otherwise of fair and reasonable pension scheme would be an important consideration.

(ii) Burmah-Shell Oil Company v. Their Workmen, AIR 1966 S.C. 732: The Court expressed that there has been general improvement in the standard of health in the country and the life expectation has also increased. Fixation of retirement age at 60 years was observed to be quite reasonable in the circumstances.

(iii) G. M. Talang v. Shaw Wallace Add Co. AIR 1964 S.C. 1886: Report of the Norms Committee on which employees and employers of Bombay Region placed reliance said: "After taking into consideration the views of the earlier committees and commissions including these of the Second Pay Commission, the report of which has been released recently, we feel that the retirement age for workmen, in all industries, should be fixed at 60 years. Accordingly the norm for retirement is fixed at 60." AND the Supreme Court observed: "This considered opinion of a Committee on which both employers and employees were represented, emphasised the fact that in the Bombay region at least there is general agreement that the age of retirement should be fixed at 60."

(iv) Burmah-Shell Oil Company's case (1970) 1 L.L.J. 363: 1. In fixing the age of superannuation the most important factor that has to be taken into consideration is the trend in a particular area. Following observations of the Supreme Court should be borne in mind:

"As we said earlier in the matter of fixing the age of superannuation the trend in a particular area is the most important factor, though in the matter of determining other conditions of .service of workmen, the principle of region-cum-industry is by and large the determinative factor."

2. Under modern conditions, the efficiency of workmen is not impaired till about 60 years. The needs of a workmen are likely to be greater between the age of 50 to 60 years as during that period he has to educate his children, get them married, in addition to maintaining his family. *[@page706]*

3. If one looks at the word 'trend' it is obvious that the age of superannuation is gradually pushed up.

4. Judicial trend.

34. Having gone through the award of the learned Industrial Tribunal, we find that the above factors and considerations have been dealt with at length while appreciating the evidence placed on the record.

35. Reverting then to the applicability of industry-cum-region principle to the question of fixation of age of compulsory retirement, reference may now be made in two authorities cited by Mr. Adhvaryu for the Board.

36. In Dunlop Rubber Company's case (supra) the Supreme Court, dealing with advisability of uniform conditions of service in an all-India concern throughout India, has observed that it cannot be forgotten that industrial adjudication is based, in this country at least, on what is known as industry-cum-region basis and cases may arise where it may be necessary in following this principle to make changes even where the conditions of service of an all-India concern are uniform. For the question of retirement age, the decision has been dealt with above.

37. In Workmen of Gujarat Electricity Board v. Gujarat Electricity Board, 1969 (2) L.L.J. 791, it was held that the Tribunal was in error in comparing the State Electricity Board with other State Electricity Boards contrary to industry-cum-region principle, still the award was valid as it was found by the Tribunal that almost all

employees accepted the existing rates of dearness allowance on the basis of settlements and that the appellant did not establish that the demand was restricted to bring the wages upto the level of minimum wages.

38. In Workmen of British India Corporation Ltd. v. British India Corporation Ltd., 1965 (2) L.L.J. 433 and Workmen of New Egerton Woollen Mills v. New Egerton Woollen Mills and Others, 1969 (2) L.L.J. 782, industry-cum-region formula was considered in respect of dispute regarding revision of wages.

39. In Tata Chemicals Limited v. Workmen, 1978 (3) S.C.C. 42 also industry-cum-region formula has been dealt with in connection with the dispute regarding dearness allowance. It has however, been observed that it cannot also be lost sight of that with the march of the narrow concept of industry-cum-region is fast changing and too much importance cannot be attached to region.

40. Remington Rand of India v. Its Workmen 1962 (1) L.L.J. 287, is one more case of dearness allowance.

41. Industry-cum-region formula was explained by the Supreme Court in the case of Woolcombers of India v. Their Workmen Union in AIR 1973 S.C. 2758. Reference may be made to paras 10, 11, and 12 of the citation. It can thus be seen that the industry-cum-region principle is applied to cases of revision of wages, dearness allowance and other such benefits. In the case of dispute regarding age of retirement, appropriate rule is of trend in the area amongst other considerations noted above.

42 Even if the industry-cum-region principle is considered in this case, the learned Industrial Tribunal has dealt with various instances in its award.

43. It is, however, true that the comparability of the instance of G.S.R.T.C. has not been dealt with at length from the standpoint of its network in the State of Gujarat; but then, *[@page707]* admittedly the matter fall short of such submissions before the Tribunal. G.S.R.T.C. remained only as one of the instances cited in the schedule reproduced 'herein above. It also fell short of evidence for comparison with other Corporations in the State and figuring in the schedule.

44. In any case the Annexure (the statement filed by the Board at Exh. 25) has been considered by the Tribunal in the discussion appearing in para 13 of the award. The trend in various industries in the region (State of Gujarat) to which model standing orders speaking of age of retirement at 60 years, the age of retirement at 60 years in the Board itself prior to 1964, when model standing order was applicable to the Board, and the age of retirement at 60 years in the former Saurashtra Electricity Board are some of he remain factors which came to be dealt with in paras 14 to 16 of the award. The Tribunal has noticed the difference in age of retirement amongst the employees in the Board itself. We agree with the observation of the Tribunal in this respect that uniformity is desirable to avoid discontent.

45. Mr. Adhvaryu learned Advocate for the Board submitted that the award is erroneous to the extent that reliance is placed upon the instances of Ahmedabad Electricity Company and Surat Electricity Company. For that purpose he placed reliance upon the decision of the Supreme Court in the case of *Workmen of Gujarat Electricity Board* v. *Gujarat Electricity Board,* 1969 (2) L.L.J. p. 791, where the Supreme Court has observed that the Ahmedabad Electricity Supply Company Limited and Viramgam Electricity Supply Company Limited could not be compared with the Gujarat Electricity Board in the matter of dearness allowance. Apart from the fact that the case related to the question of payment of dearness allowance to the employees of the Board, the Tribunal here while considering the dispute with regard to age of superannuation has dealt with the instances of smaller units like Ahmedabad Electricity Supply Company Limited and Surat Electricity Company while dealing with the trend in the area. It cannot be, therefore, said that the Tribunal committed any error which can be taken cognizance of in a petition under Article 227 of the Constitution of India. Having examined the matter at length from the point of view of various submissions canvassed by the learned Advocates for the parties and having gone through the entire award, we find that it cannot for a moment be said that the ultimate conclusions reached to by the learned Industrial Tribunal are in any way unreasonable and not sustainable. It cannot be said that the award is based on irrational or illogical or tainted factors, considerations or reasoning. The obvious result is that the Board's petition cannot be accepted.

46 to 51. XXX XXX XXX

(RPV) Petitions dismissed.