system of organisation required immediate attention. It was desirable to abolish outworker system and to encourage establishment of big industries if protective labour legislation was to be enforced with success.

11**.** In 1946, the government of madras appointed a court of inquiry into labour conditions in beedi, cigar, snuff-curing and tanning industries. There were 90,000 workers depending on beedi industry in madras. Of these 26,500 workers were women. Employment of children in the industry was universal. 2/5th of the total workers were children. Home workers were predominant. There were full time workers but they were paid less than fair wages. Working conditions were extremely unsatisfactory from the standpoint of floor, space, sanitation, ventilation and lighting.

12**.** In 1954, the government of india appointed sri natraj, inspector of factories to assess the situation with a view to affording maximum legislative protection to the workers. The report was as follows. Although the number of workers engaged in the manufacture of beedi exceeded one lakh, only 17,544 were employed in factories. The contract and homework systems enriched proprietor at the expense of the worker and also deprived the latter of his bargaining power in regard to conditions of labour. The poverty as well as illiteracy of the workers was taken advantage of by the employers. There were long hours of work with low wages, deplorable working conditions and unrestricted employment of women and children.

13**.** The entire beedi industry was unorganised and scattered over the entire state, employing a large force of women. It called for radical reforms in the organisation. There wasreluctance of the manufacturer to provide certain amenities to the workers such as rest sheds, canteens, creches, ambulance room, etc. Under the indirect employment system conditions obtaining in the industry were still worse. The middlemen contractors did not observe any higher standards in the premises than in those under the manufacturers. The payment of wages act applied to factories, but it was difficult to detect violations of the act because the prescribed registers were not maintained. The madras maternity benefit act which applied to factories was rendered practically ineffective as far as petty industry was concerned because there was no record to prove that women were employed. The report stated that the employers succeeded in organised circumvention of all existing legislation by resorting to splitting up of their factories into smaller units run by contractors who had no knowledge in respect of social laws.

14**.** The conditions in working places were bad. The report suggested licensing of premises to fix responsibility of the employer for maintenance of minimum standards of ventilation, lighting and sanitation in working places.

15**.** The employment of women and children, wages and wage structure in the industry were all considered by the committee. The committee recommended solution of unhealthy working conditions under miserable environments, long working hours with its attendant evils, unregulated employment of women and children and deduction from wages. The contract of home-work system of employment was found to be designed solely for the promotion of trade but not the industry of which the labour forms the integral part. It was, therefore, expected that the beedi industry should carry the labour along with it as it developed and was organised in such manner that it discharged its social and moral responsibilities towards the workers.

16**.** It is in this background that the act came into existence. In ***state of madras*** **verses.** ***Rajagopalan*** this court held that the previous material in the shape of reports of commissions to review the working of the industry was admissible in evidence about the prevailing system and conditions of industry.

17**.** The beedi and cigar workers (conditions of employment) act, 1966 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 for matters connected therewith. The special feature of the industry was the manufacture of beedis through contractors and by distributing work in the private dwelling house, where the workers took raw materials given by the employers of contractors. The relationship between employers and employees was not well defined. The application of the factories act met with difficulties. The labour in the industry was unorganised and was not able to look after its own interests. The industry was highly mobile.

The attempt of some of the states to legislate in this behalf was not successful. The necessity for central legislation was felt. A bill was mooted 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, over time, annual leave with pay, distribution of raw materials etc. The anxiety was expressed by several committees to introduce some regulation in the employer-employee relationship and to obtain certain benefits to the employees which were denied to them.

18**.** The so-called contractor or the employer as styled by the employees has been a matter of some concern to the employees as well as to the state. There were certain good and bad points about the systems that were prevalent in the manufacture of beedi. The contractor was very often a man of straw. He was said to be the creation of the principal employer who put him forward on many occasions as a screen to avoid his own responsibility towards the

Employees. Another broad grievance was that there was double checking and rejection of beedis or double chhat, out of which the second chhat at the principal employer's place was invariably in the absence of the employee. This chhat was alleged to be most irrational and depending upon the whim of the employer. As far as the house-work system was concerned there was an advantage to the employee with some kind of disadvantage to the employer.

Persons who could spare time in their houses but could not move out for the purpose of employment got ready employment and could supplement their income from agriculture or other sources. They were in a position to work as and when leisure was available and like a factory employee there was no rigour of attending the factory or work at stated time and for stated number of hours. It appeared that pilfering was a vice of this industry. By pilfering tobacco which is the most valuable ingredient, the employees were able to earn some income by again rolling it into beedis and selling them.

19**.** The relationship between the proprietor, middlemen and out workers came up for consideration in this court in ***chintaman rao*** **verses.** ***State of madhya pradesh*** the proprietor of a beedi factory was prosecuted under the factories act for noncompliance with the provisions of that act. The proprietor pleaded that the workers were not

Under his employment. The contention was that the sattedars who were found in the factory were independent contractors and not workers. The management issued tobacco and sometimes beedi leaves to sattedars who manufactured beedis in their own factories or by an arrangement with a third party. The sattedars collected the beedis thus made and supplied to the factories for a consideration. It was held that the sattedars were independent contractors and not the agents. The enforcement of factory and labour legislation could be rendered impossible by adopting the simple device of disintegrating what normally will be a factory. The legislature wanted to regulate the contract system. The legislation did not want to stop the contract system. The provisions in the act recognised the contractor as a part and parcel of the beedi industry. The contractor is referred to where the terms "contract labour" or "principal employer" or "employer" have been defined. Several functions which the employer has to perform are also performed by the contractor. He delivers tobacco and leaves to the home-worker and collects the rolled beedis after application of chhat. He makes payment to them. Therefore, the contractor has been retained as an integral part though the attempt is to eliminate the vices which crept into the industry.

20**.** The madras high court in ***k. Abdul azeez sahib and sons, four horse beedi manufacturers, vellore-4*** **verses.** ***Union of india*** [(1973) 2 mad lj 126] held the definitions of employer and principal employer in section 2(*g*)(*a*) and 2(*m*) of the act to be valid but held that sections 26 and 27 of the act are wholly unenforceable against the trade mark holders whether with reference to home-workers or with reference to employees working in any industrial premises. The madras high court held that since a worker in a beedi industry is not required to work regularly for any prescribed period of hours in a day or even day after day for any specified period, from the very nature of the case, the provisions in the maternity benefit act, 1961 are unworkable with regard to such home-workers, and, therefore, they will have no application to them. The madras high court held that sections 7(l)(*c*), 7(2), 26, 27, 31, and 37(3) insofar as they relate to home-workers are ultra vires and illegal and unenforceable against trade mark holders in beedis and contractors in the manufacture of beedis.

The madras high court held that sections 7(l)(*c*), 7(2), 26 and 27 are ultra vires and illegal and unenforceable against the petitioners who are manufacturers of cigar or cigar rollers.

21**.** The bombay high court in ***chetabhai purushottam patel, beedi manufacturers of bhandara* verses. *State of maharashtra by secretary, industries and labour department, sachivalaya, bombay*** [(1972) 1 lab lj 130] held that the provisions of section 2(*g*)(*a*) and 2(*m*) of the act are invalid to be in excess of the requirements of the situation because if the principal employer is fared with the proposition of bearing all the civil and criminal responsibilities of omission and commission of contractors under him the inevitable result will be that the manufacturer will give up the gharkata system and may think of some other system less onerous under the act. The bombay high court also said that the words "in relation to other labour" contained in section 2(*g*) (*b*) are to be deleted. The bombay high court further held that the provisions of sections 26 and 27 of the act will not apply to homeworkers at all.

22**.** The mysore high court in ***p. Syed saheb & sons* verses *state of mysore*** held that sections 3 and 4 of the act are constitutional and not violative of articles 14 and 19(l)(*g*) of the constitution. Section 3 of the act prohibits establishment of an industrial premises without obtaining a licence granted under the act. Section 4 of the act provides for the procedure for the issue, renewal and cancellation of a licence. The mysore high court further held that sections 26 and 27 of the act are not unreasonable restrictions and it is possible to find out whether a home-worker has qualified himself for annual leave and it is possible to make up for the lost wages. The mysore high court also held that section 31 of the act is valid and rule 29 does not impose unreasonable restriction by compelling the employer to accept beedis when they are sub-standard and the sub-standard beedis and cigars exceed 5 per cent. If the employer finds that the sub-standard beedis and cigars are above 5 per cent then he has to refer the matter to the inspector.

23**.** The kerala high court in ***chirukandeth chandrasekharan* verses *union of india*** held that the provisions of sections 2(*g*)(*a*)*,* 2(*m*), 3*,* 4, 21, 26 and 27 of the act impose unreasonable restrictions on business or trade and are violative of article 19(1)(*g*) of the constitution. The kerala high court held that the words "in relation to other labour" occurring in section 2(*g*)(*b*) have also be deleted. The kerala high court held sections 3 and 4 to be valid. The kerala high court held that sections 26 and 27 will not apply to home-workers. The kerala high court struck down rule 29 of the kerala rules on the ground that the imposition of 5 per cent on the maximum amount of rejection is an arbitrary percentage. Kerala rule 29 stated that no employer shall ordinarily reject more than 2.5 per cent. The proviso states that there can be rejection up to 5 per cent for reasons recorded in writing. This imposition of 5 per cent limit in the proviso was construed by the kerala high court to be unreasonable inasmuch as the quality of beedis would go down if the workers are assured that more than 5 per cent will not be rejected.

24**.** The andhra pradesh high court in civil appeals nos. 1972 to 1988 of 1971, held that sections 3 and 4 of the act offend articles 14 and 19(l)(*g*) of the constitution and are, therefore, void. The andhra pradesh high court came to the conclusion that the provisions contained in sections 3 to 27 of the act do not apply to home-workers. The high court held that the act is applicable to an independent contractor where he is employing labour for and on his own behalf. There he is the principal employer. No artificial relationship of master and servant arises as a result of the operation of the definitions in sections 2(*g*)(*a*)(*b*) and 2(*m*) of the act. The gujarat high court, in civil appeal no. 585 of 1971, upheld the provisions of the act to be constitutional.

25**.** The first contention on behalf of the petitioners and the appellants is that the act of 1966 is invalid on the ground of lack of legislative competence. The high courts of madras, kerala, gujarat, mysore and andhra pradesh have rightly held the act to have constitutional competence. Counsel on behalf of the petitioners contended that entry 24 in list ii is the only legislative entry for the piece of legislation. Entry 24 speaks of industries subject to the provisions of entries 7 and 52 of list i. Entry 7 in list i speaks of industries declared by parliament by law to be necessary for the purpose of defence or for the prosecution of war. Entry 52 in list i speaks of industries the control of which by the union is declared by parliament by law to be expedient in the public interest. The legislation in the present case does not fall within entry 24 in list ii or entries 7 and 52 in list i. Entry 24 in list iii

speaks of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits. The act is for welfare of labour. It is not an act for industries. The true nature and character of the legislation shows that it is for enforcing better conditions of labour amongst those who are engaged in the manufacture of beedis and cigars.

26**.** The scheme of the act relates to provisions regarding health and welfare, conditions of employment, leave with wages, extension of benefits by applying other acts to labour. To illustrate section 28 of the act extends benefits of the payment of wages act to industrial premises, section 31 of the act provides for security of service, section 37 of the act extends the benefit of industrial standing orders act, 1946. Again, section 37(3) of the act makes provisions of the maternity benefit act applicable to every establishment. Section 38(1) of the act applies the safety provisions contained in chapter iv of the factories act to industrial premises. Section 39(1) of the act makes the industrial disputes act, 1947 applicable to matters arising in respect of every industrial premises. Section 39(2) of the act provides that disputes between an employee and an employer in relation to issue of raw materials, rejection

Of beedis and cigars, payment of wages for the beedis and cigars rejected by the employer, shall be settled by such authority as the state government may specify. An appeal is provided to the appellate authority whose decision is final. Section 39(1) of the act applies to industrial premises. Section 39(2) of the act applies to every establishment.

27**.** The act speaks of licensing of industrial premises. The benefits under the act are extended to both industrial premises and establishments. Establishments mean also places where home-workers work.

28**.** The pith and substance of this act is regulation of conditions of employment in the beedi and cigar industry. The act deals with particular subject-matter as regards the establishments and industrial premises. These matters are regulation of conditions of employment in the industry and the industrial relations between the employer and the employee. Entries 22 to 24 in list iii are wide enough to cover this piece of labour welfare measure. Entry 22 deals with labour welfare. Entry 23 deals with social security, employment and unemployment. Entry 24 deals with welfare of labour including conditions of work, provident funds, employer's liability, workmen's compensation, invalidity and old age pensions and maternity benefits. The act is valid and falls within entries 22, 23, and 24 of list iii.

29**.** Sections 3 and 4 of the act were challenged as violative of article 19(l)(*g*) and article 14 on account of procedural unreasonableness and conferment of unfettered powers on the licensing authority without the requisite safeguards. These two sections require licence in respect of industrial premises. The provisions are applicable both to trade mark holders as well as contractors. There is no difficulty with regard to manufacturers to obtain licence in respect of industrial premises. If contractors are employers of labour for and on their own behalf, the contractors will have to obtain licences for manufacture of beedis in industrial premises. The relevant authorities have to refer to certain matters in the grant or refusal of a licence. These matters as set out in section 4 of the act are (*a*) suitability of the place or premises which is proposed to be used for the manufacture of beedi or cigar or both (*b*) the previous experience of the applicant, (*c*) the 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 the welfare of labour (*d*) whether the application is made bona fide on behalf of the applicant himself or any other person and (*e*) welfare of the labour for the locality in the interest of the public generally and such other matters as may be prescribed. The licensing authority is required to communicate his reason in writing when he refuses to grant a licence. Section 5 of the act provides an appeal to the appellate authority against such order. The power to grant or refuse a licence is sufficiently controlled by necessary guidance. There are safeguards preventing the abuse of power. The right to appeal is a great safeguard. The various matters indicated in section 4 in regard to the grant of licence indicate not only the various features which are to be considered but also rule out any arbitrary act. There is machinery as well as procedure for determining the grant or refusal of a licence. The application for grant of a licence is to

be determined on objective considerations as laid down in the section. There is neither unfairness nor unreasonableness in sections 3 and 4 of the act.

30**.** The validity of the act was challenged on the principal ground that the act imposed unreasonable restrictions on the manufacturers in their right to carry on trade and business in the manufacture of beedis and cigars. The unreasonable restriction was said to be the imposition of vicarious liability on the manufacturers for acts and omissions in case of independent contractors through whom they get beedis and cigars and over whose employees

They do not have any control and with whom they do not come in contract. The provisions of section 2(*g*)(*a*) and 2(*m*) read with section 2(*e*) and (*f*) of the act are said to create a totally artificial and fictional definition of employer and thereby to cause vicarious liabilities upon a manufacturer of and trader in beedis in respect of diverse matters which entail civil and criminal liabilities. Liabilities are imposed on manufacturer or trader in beedis in respect of home-workers whom it is said, they cannot control. The home-workers are in thousands. It is impossible for a manufacturer to have any idea of the identity of the persons rolling beedis or the premises where they work. Raw materials are delivered to workers to do the work of rolling the beedis himself and not having done by any other person. It is, therefore, said there is no rational basis for imposing vicarious liability. Though liabilities and obligations are great in relation to contract labour there is said to be no corresponding creation of rights which normally exist in employer in respect of his employees. The cumulative effect and impact of the various provisions of the act imposing liability on the manufacturer is said to render it impossible for the manufacturer or trader to carry on his business. From a commercial point of view, the restrictions are said to be drastic and unreasonable.

31**.** The act defines in section 2(*e*) contract labour meaning 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; section 2(*f*) of the act defines employee to mean a person employed directly or through any agency, whether for wages or not, in any establishment to do any work skilled and unskilled and includes (1) any labourer who is given raw materials by an employer or a contractor for being made into beedi and cigar or both at home (hereinafter referred to in this act as "home-worker") and (*2*) any person not employed by an employer or a contractor but working with the permission of, or under agreement with, the employer or contractor. Section 2(*g*) of the act 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 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. Section 2(*m*) of the act defines "principal employer" to mean a person for whom or on whose behalf any contract labour is engaged or employed in an establishment. Section *2*(*h*) of the act defines "establishment" to mean 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. Section 2(1) of the act defines 'industrial premises' to mean any place or premises in 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.

32**.** These definitions indicate these features. First, there are workers in industrial premises and workers in an establishment. Second, the act recognises home-workers. Third, the act recognises contract labour by or through contractor. Fourth, any person who is given raw materials by an employer or a contractor is an employee. Again, any person though not employed by an employer or a contractor but working with the permission or under agreement with the employer or a contractor is an employee. Fifth, in relation to contract labour the principal employer is a person for whom and on whose behalf labour is engaged or employed in an establishment. Sixth, the employer in relation to other labour is a person who has ultimate control over the affairs of any establishment or who has by reason of advancing money, supplying goods or otherwise a substantial interest in the affairs of any establishment.

33**.** The two classes of employers are broadly defined as the employer and the principal employer. The first kind is the manufacturer who directly employs labour. Such a manufacturer becomes an employer within the meaning of section 2(*g*)(*b*) of the act by engaging labour. The second class of employer is the principal employer who through a
Contractor as defined in section 2(*a*) of the act engages labour which is known as contract labour. This labour is engaged by or on behalf of the manufacturer who becomes the principal employer. The third category of employer is a contractor who engages labour for executing work for and on his own behalf. Such a contractor may undertake work from a manufacturer or a trade mark holder but he becomes the principal employer in relation to contract labour on the ground that the labour is engaged for and on his own behalf. The fourth class of employer is where a contractor becomes what is known as sub-contractor, of a contractor. A contractor in such a case would ask the sub-contractor to engage labour for and on behalf of the contractor. In such a case the contractor would be the principal employer because the subcontractor is engaging contract labour for and on behalf of the contractor who is the principal employer. The fifth class of employer is where a person by reason of advancing money or supplying goods or otherwise having a substantial interest in the control of any establishment becomes the employer of labour. To illustrate, a mortgagee in possession of an industrial premises, a hypothecatee of goods manufactured in industrial premises or in any establishment, a financier in relation to a manufacturer or a contractor or a sub-contractor may become employer by reason of such consideration mentioned in the act.

34**.** In cases where the manufacturer or trade mark holder himself employs labour there is direct relationship of master and servant and therefore liability is attracted by reason of that relationship. There cannot be any question of unreasonableness in such a case. In the second category the manufacturer or trade mark holder engages contract labour through a contractor and he becomes the principal employer. Though such labour may be engaged by a contractor with or without the knowledge of the manufacturer or trade mark holder, this contract labour is engaged for the principal employer who happens to be the trade mark holder or the manufacturer. The liability arises by reason of contract labour engaged for or on behalf of the principal employer. In the third category, the contractor becomes the principal employer because the contractor engages labour for or on his own behalf. Where the contractor engages labour for the manufacturer it is not unreasonable restriction to impose liability on the manufacturer for the labour engaged by the manufacturer through the contractor. It is important to notice that the act fastens liability on the person who himself engages labour or the person for whom and on whose behalf labour is engaged or where a person has ultimate control over the affairs of the establishment by reason of advancement of money or of substantial interest in the control of the affairs of the establishment.

35**.** Therefore, the manufacturers or trade mark holders have liability in respect of workers who are directly employed by them or who are employed by them through contractors. Workers at the industrial premises do not present any problem. The manufacturer or trade mark holder will observe all the provisions of the act by reason of employing such labour in the industrial premises. When the manufacturer engages labour through the contractor the
Labour is engaged on behalf of the manufacturer, and the latter has therefore liability to such contract labour. It is only when the contractor engages labour for or on his own behalf and supplies the finished products to the manufacturer that he will be the principal employer in relation to such labour and the manufacturer will not be responsible for implementing the provisions of the act with regard to such labour employed by the contractor. If the right of rejection rests with the manufacturer or trade mark holder, in such a case the contractor who will prepare beedis through the contract labour will find it difficult to establish that he is the independent contractor. If it is a genuine sale transaction by the contractor to the manufacturer or trade mark holder it will point in the direction of an independent contractor.

36**.** This court in ***dewan mohideen sahib*** **verses** ***industrial tribunal, madras*** said that the so called independent contractor in that case was supplied with tobacco and leaves and was paid certain amounts for the wages of the workers employed and for his own trouble. The so called independent contractor was merely an employee or an agent of the appellant in that case. The so

called independent contractor had no independence at all. The proprietor could at his own choice supply raw material or refuse to do so. The contractor had no right to insist on supply of raw materials to him. The work was distributed between a number of so called independent contractors, who were told to employ not more than 9 persons at one place to avoid regulations under the factories act. This court held that the relationship of master and servant between the appellant and the employees employed by the independent contractor was established in that case. If it is found that manufacturers or trade mark holders are not responsible on the ground that the person with whom they are dealing are really independent contractors then such independent contractors will have to be considered as principal employers within the meaning of the act.

37**.** The contention on behalf of the petitioners and the appellants is that in common law a person cannot be made responsible for actions of an independent contractor and that he should not be penalised, for the contravention of any law by an independent contractor is to be examined in view of the language employed in defining the expressions contract labour, contract, establishment, employer and principal employer. It was particularly said that when home-workers were given tobacco and leaves directly by the manufacturers the home-workers would not be under their control and the manufacturers should not be made responsible for providing any amenities or leave facilities for those home-workers.

38**.** This court in ***silver jubilee tailoring house*** **verses** ***chief inspector of shops and establishments*** discussed the question as to whether employer-employee relationship existed between the tailoring house and the workers in that case. The definition of a person employed in that case was a person wholly or principally employed therein in connection with the business of the shop. The workers were paid on piece rate basis. They attended the shops if there was work. The rate of wages paid to the workers was not uniform. The rate depended upon the skill of the worker and the nature of the work. The workers were given cloth for stitching. They were told how the stitching was to be done. If they did not stitch it according to the instructions, the employer rejected the work. The worker was asked to re-stitch. If the work was not done according to the instruction no further work was given to a worker. A worker did not have to make an application for leave if he did not come to the shop on a day. If there was no work, the employee was free to leave the shop. All the workers worked in the shop. Some workers could take cloth for stitching to their homes.

39**.** Mathew, j., speaking for the court referred to the decisions of this court and english and american decisions and came to these conclusions. First, in recent years the control test as traditionally formulated has not been treated as an exclusive test. Control is an important factor. Second, the organisation test viz. That the workers attend the shop and work there is a relevant factor. If the employer provides the equipment this is some indication that the contract is a contract of service. If the other party provides the equipment this is some evidence that he is an independent contractor. No sensible inference can be drawn from the factory of equipment where it is customary for servants to provide for their own equipment. Little weight can today be put upon the provisions of tools of minor character as opposed to plant and equipment on a large scale. Third, if the employer has a right to reject the end product if it does not conform to the instructions of the employer and direct the worker to restitch it, the element of control and supervision as formulated in the decisions of this court is also present. Fourth, a person can be a servant of more than one employer. A servant need not be under the exclusive control of one master. He can be employed under more than one employer. Fifth, that the workers are not obliged to work for the whole day in the shop is not very material. In the ultimate analysis it would depend on the facts and circumstances of each case in determining the relationship of master and servant.

40**.** The present legislation is intended to achieve welfare benefits and amenities for the labour. That is why the manufacturer or trade mark holder becomes the principal employer though he engages contract labour through the contractor. He cannot escape liability imposed on him by the statute by stating that he has engaged the labour through a contractor to do the work and therefore he is not responsible for the labour. The contractor in such a case employs the labour only for and on behalf of the principal employer. The contractor being an agent of the principal employer for manufacturing beedis is amenable to the control of principal employer. That is why the statute says that even if the

contractor engages labour without the knowledge of the employer the principal employer is answerable for such labour because the labour is engaged for or on his behalf. The act and the rules thereunder prescribe maintenance of log books and registers. Where the manufacturer or the trade mark holder engages labour directly, the manufacturer maintains registers and log books. Where the manufacturer engages contract labour through a contractor the manufacturer will require the contractor to maintain such log books of the contract labour and through such books and registers will keep control over not only the contractors but also the labour.

41**.** The principal employer is the real master of the business. He has real control of the business. He is held liable because he exercises supervision and control over the labour employed for and on his behalf by contractor. The benefits of the welfare measure reach the workmen only by direct responsibility of the principal employer, the basis of the welfare measure is in the interest of the workers with regard to their health, safety and wages including benefits of leave and family life. The bombay high court and the kerala high court struck down the provisions contained in sections *2*(*g*)(*a*) and 2(*m*) of the act in regard to the principal employer being liable for contract labour as an unreasonable restriction on the manufacturer's right to carry on business. This view proceeds on the basis that the principal employer is liable for acts of the independent contractor. The act does not define an independent contractor, nor mention the independent contractor. The act speaks of the principal employer in relation to contract labour and employer in relation to other labour. When a contractor engages labour for or on behalf of another person that other person becomes the principal employer. The attorney general rightly said that if it were established on the facts of any particular case that a person engaged labour for himself he would be the principal employer of contract labour. In such an instance there is no question of agency on behalf of another person.

42**.** In cases where an industrial manufacturer finds it convenient to give work on contract rather than do it employing his own man he cannot have the advantages of employing the labour without corresponding obligations. If the contractors could be made responsible for the working conditions of labour or their wages or their leave or their other benefits then no question would arise. It is not uncommon for labourers to work for a contractor on terms which are designed to satisfy the law that they are not servants but independent contractors.

43**.** In the present case, it is not material to find out as to who can be called an independent contractor. It can be said that independent contractors are those who employ labour for and on behalf of themselves in so far as the present act is concerned. The only scope for inquiry is whether a person has employed labour for and on his own behalf. If the answer be in the affirmative then such a contractor would be a principal employer within the meaning of section 2(*g*)(*a*).

44**.** It appears that the principal employer or the employer, as the case may be, is liable on the ground that the labour is employed for or on behalf of the principal employer or the employer. In relation to contract labour the principal employer is the person for whom or on whose behalf any contract labour is engaged in any establishment. An employer in relation to other labour is the person who has the ultimate control over the affairs of any establishment or has a substantial interest in the control of the affairs of any establishment as defined in section 2(*g*)(*b*) of the act. There is no vicarious liability in the case of the principal employer or in the case of employer. The act does not define an independent contractor. The act does not prevent an independent contractor from being the principal employer in relation to contract labour. It will be a question of fact in each case as to who is the person for whom or on whose behalf contract labour is engaged. If such a contractor who is referred to as an independent contractor employs labour for himself the liability will attach to him as the principal employer and not to the manufacturer or trade mark holder. There is no restriction on the right of the manufacturer or the trade mark holder to carry on business. They are liable under the act for contract labour employed for or on behalf of them.

45**.** For the foregoing reasons the provisions of the act in particular contained in section 2(*g*)(*a*), 2(*g*)(*b*) and 2(*m*) are constitutionally valid and do not impose any unreasonable restriction on the manufacturer or trade mark holder.

46**.** On behalf of the petitioners and the appellants, it is said that section 26 of the act gives substantive rights with regard to leave and section 27 of the act is the procedural part in computing

wages. The contention advanced was that section 26 of the act speaks of employees in an establishment and, therefore, these sections do not apply to home-workers. The contentions are that sections 26 and 27 of the act cast an unreasonable burden and impose obligations which are not practically capable of fulfilment and are thus violative of article 19(1)(*f*) and (*g*) of the constitution. In any event sections 26 and 27 of the act are said to be unenforceable in regard to home-workers and are, therefore, violative of article 19(1)(*f*) and (*g*) so far as the same are applicable to home-workers. These two sections deal with leave and wages during leave period. Broadly stated, section 26 allows leave at the rate of one day for every 20 days of work performed by an adult employee during the previous calendar year. In the case of a young person leave is at the rate of one day for every 15 days of work during the previous calendar year. There are provisions as to calculation of leave which are not material in the present case.

47**.** Under section 27 of the act an employee shall be paid at the rate equal to the daily average of his full time earning for the days on which he had worked during the month immediately preceding his leave exclusive of any over time earnings and bonus but inclusive of dearness and other allowances. There are two explanations. The first explanation states that the expression "total full time earning" includes cash equivalent to the advantage accruing through the concessional sale to employees of foodgrains and other articles, as the employee is for the time being entitled to, but does not include bonus. The second explanation states that for the purpose of determining the 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.

48**.** The word "establishment" is defined in section 2(*h*) of the act to mean any place or premises including the precincts in which or in any part of which any manufacturing process connected with the making of beedis or cigars or both is carried on and it includes an industrial premises. Section 2(*i*) of the act defines "industrial premises" to mean any place or premises not being a private dwelling house where the industry or manufacturing process of making beedis or cigar is carried on. An employee is defined in section 2(*f*) of the act to mean any person employed directly or through any agency in any establishment and include any labour who is given raw materials by an employer or contractor at home referred to as the home-worker and any person employed by an employer or a contractor but working at the premises with the employer or contractor. Therefore, the words "employed in an establishment" in section 26 of the act are referable to home-workers as well. The second explanation to section 27 of the act also speaks of determination of wages payable to homeworker during leave period.

49**.** It was said that the words "total full time earnings" occurring in section 27 of the act were inapplicable to home-workers for these reasons.

50**.** First a home-worker with the assistance of his family members could collect large earnings in a month preceding the month in which he would take leave. This was said to be an unreasonable restriction on an employer inasmuch as a home-worker would not work hard or perhaps at all for a considerable period of time and would work only in the month preceding which he would take leave. It is not possible for a home-worker to increase his earnings because the employer will have control over raw materials supplied to home-worker as also on the daily turnover. An employer is in a position to prevent malpractices or abuse of taking more materials to make a higher income. It is also reasonable to hold that an employer will not allow an employee to concentrate on increasing the income.

51**.** It was secondly said that section 27 of the act did not prescribe the minimum number of days an employee should work before he was entitled to annual leave wages. Reference was made to section 79(1) of the factories act 1948 which provides for 240 days of work as minimum for entitlement of annual leave. The provision in section 26 of the act is that for every 20 days one day's leave is allowed. If any worker does not work hard one will not be

Entitled to leave as contemplated in the act. The basis of calculating one day's leave for every 20 days of work is also adopted in the case of government servants. [*see* central civil service leave

rules, 1972 rules 26 and 2(m).] Instead of being unreasonable it can be said to be an impetus to a servant to put in the maximum of work in order to obtain the maximum amount of leave. The entitlement to leave under section 27 of the act is based on the number
Of days of actual work. It is, therefore, not an unreasonable restriction on the employer.
52**.** Thirdly, it is said that the payment of leave wages at the rate equal to the daily average of his total full time earnings in the case of home-workers is unreasonable. Reference is made to section 22 of the act which speaks of notice of periods of work in industrial premises. Section 22 of the act is not applicable to home-workers. In the case of homeworkers it is said that they are free to do work at any time and for any length of time in a day even for 24 hours a day. It is, therefore, said that it will be difficult to calculate the total fulltime earnings of home-workers.
53**.** The words in section 27 of the act are "total full time earnings". One meaning of the words in the case of home-workers will be daily average hours of work done by homeworkers during the last month before leave provided such average does not exceed the daily period of work as prescribed in a notice under section 22 of the act. Such a construction would give not only full meaning to the words "full time earnings" but would also place home-workers and workers in industrial premises in the same position with regard to their leave wages. It will not cast unreasonable burden on the employer in the form of leave wages disproportionate to the amount of work done by the home-workers.
54**.** Another meaning is that the total full time earnings would be the actual total earnings as far as the workers in industrial premises as well as home-workers are concerned. With regard to the second meaning the words "full time" will not have any restriction as to hours of work. The result may be that a home-worker may have longer hours of work and larger income compared with the worker in the industrial premises, but such longer hours of work
Can be controlled by an employer both with regard to giving raw materials and allowing longer hours of work.

55**.** As a matter of fact it is found that home-workers can turn out 700 to 1000 pieces a day. That is the view expressed in the report of the royal commission on labour in india 1931 as also the labour investigation committee report, 1944 and the report of the court of enquiry appointed by the government of madras, 1947. The minimum wages prescribed by various states for these home-workers are between rs 2 to rs 4.30 for rolling 1000 pieces. Therefore, the financial burden on account of leave wages will not be higher to constitute any unreasonable restriction.
56**.** The bombay high court in the present appeals said that the provisions of sections 26 and 27 of the act constitute unreasonable restriction not only with regard to home-workers but also with regard to employees in industrial establishment. The reason given is that if employees in industrial premises do not choose to work for all days for the full hours notified it will be equally impossible to determine what his full time earnings will be and what his daily average of the full time earnings for the days on which he worked during the preceding month will be. The mysore high court in the present appeal correctly said that the homeworkers will get wages for the leave period corresponding to the number of beedis manufactured by him for a particular employer. The hours of work will in that case be immaterial, because if he worked for less number of hours he would obtain lesser payment. There will thus be no difficulty in computing wages payable for the annual leave period. The home-worker will get leave wages corresponding to his actual earning just as the worker in the industrial premises will get leave wages corresponding to his full time earnings.
57**.** The andhra pradesh high court in the present appeal said that home-workers carry on their rolling work at homes which are neither establishments nor industrial premises. The word "establishment" as defined in section 2(*h*) of the act relates to home-workers as well. It is only industrial premises as defined in section 2(*i*) of the act which excludes private dwelling houses.
58**.** The home-workers are not required to work for a specified number of hours a day. The fact that sections 17 to 23 of the act can have no application to home-workers but only to persons employed in industrial premises does not render sections 26 and 27 of the act inapplicable to home-workers. The express language of sections 26 and 27 of the act is relateable to home-workers. They work in

establishments. The daily average of total full time earnings for the days worked during the month immediately preceding the leave is applicable to home-workers. It is because payment to home-workers is made at piece rate viz. For the number of beedis rolled. The madras high court said that sections 26 and 27 of the act have imposed unreasonable restrictions on manufacturers in regard to employees in industrial premises. The madras high court held that for working 11 days a worker would be entitled to one day as annual leave with wages. The act does not say so. The act provides that any fraction of leave for half a day or more will be treated as one day's full leave. Therefore, if on a calculation of entire leave at the rate of one day for every 20 days of work, there is any fraction of more than one day's leave so calculated or earned it would be treated as one day. It is only where there is fraction of leave earned that for such 11 days work one day's leave is to

Be given. It is not same as providing one day's leave for working only 11 days in all cases. The entitlement under the act to one day's leave for every 20 days shows that the period of 20 days is a minimum period prescribed for earning one day's leave.

59**.** The structure of sections 26 and 27 of the act is two-fold. First, so far as workers employed in industrial premises are concerned they are entitled to annual leave with wages provided they work for at least 20 days a year, for full hours of work specified in the notice. Therefore, sections 26 and 27 of the act will not apply to workers in industrial premises who have not worked for full working hours according to the notice for 20 days a year. Second,

Sections 26 and 27 of the act will apply to home-workers who work at least 20 days a year and the day within the expression 20 days will mean any period of day because there is no notified hour of work.

60**.** In view of the fact that the two sections are applicable both to workers in industrial

Premises and home-workers the expression "total full time earnings" occurs in section 27 of the act. Section 17 deals with working hours. Section 22 speaks of notice of periods of work. Sections 17 and 22 refer to industrial premises and are therefore not applicable to homeworkers. The total full time earnings for workers in industrial premises will attract the specified periods of work contemplated in section 22 of the act. With regard to a homeworker the wages during leave period will be calculated with reference to the daily average of his total full time earnings for the days on which he had worked during the preceding month. In the case of home-workers it will be the average of 30 days earning. To illustrate, if the worker has earned different sums on different days during the month the sums will be added for the purpose of arriving at an average. The computation in the case of home-workers will be first with reference to the total earning during the month and full time earning is the average thereof. The second explanation to section 27 of the act shows that for the purpose of determining the wages payable to home-worker during leave period day shall mean any period during which such home-worker, was employed during any period of 24 hours. Therefore, so far as the home-worker is concerned day shall mean any period. 61**.** The manner in which leave wages for workers in industrial premises and homeworkers are to be calculated may be illustrated with reference to the beedis and cigar workers (conditions of employment) mysore rules, 1969. Section 44(2) of the act provides that the state government may make rules inter alia for the records and register they shall

Maintain in establishments in compliance with the provisions of the act and the rules thereunder. Establishment means both industrial premises and any private house where the home-workers carry on their work. Rule 33 of the mysore rules framed under the act speaks of maintenance of records and registers in form 8. Form 8 has 8 columns as the muster roll of employees in industrial premises. Rule 33(2) of the mysore rules speaks of records for home-workers in form 14. There are four columns showing the date, whether work wasdone, number of beedis manufactured and the wages received. At the foot of form xiv it shows the total number of days worked in the month. Therefore, in the case of home-workers wages are calculated on the basis of these records, namely, the number of days worked and second the amount of wages received. In the case of home-workers hours of work are not necessary. In the case of employees in industrial premises columns 8 and 9 show inter alia thegroup, relay, shift number and period work. With regard to home-workers payment is made at the rate of 1000 pieces of beedis. Leave with wages in the case of home-workers is on that basis of

payment. The log book is a form of guarantee and security for both the employer and the worker in regard to quality of work and relative payment.

62**.** Reference was made to four earlier decisions of this court for the purpose of showing that sections 26 and 27 are inapplicable to home-workers. These decisions are ***shri chintaman rao*** **verses.** ***State of madhya pradesh***, ***shri birdhichand sharma*** **verses.** ***First civil judge, nagpur shankar balaji waje*** **verses.** ***State of maharashtra*** and ***bhikuse yamasa kshatriya*** **(*p*)** ***ltd.*** ***V*****erses** ***union of india***. These four cases were decided with reference to the factories act. Sections 79 and 80 of the factories act were considered there. These two sections are in similar language to sections 26 and 27 of the act. The only difference is that unlike section 79 of the factories act, in section 26 of the act there is no requirement of working for 240 days a calendar year for entitlement to annual leave and further that in section 26 of the act the words used are

"employee" in place of the word "worker" and the word "establishment" in place of the word "factory" in the factories act.

63**.** In ***chintaman rao*** case this court held that the three ingredients and concepts of employment are first there must be an employer, second, there must be an employee and the third, there must be a contract of employment. In ***chintaman rao*** case certain independent contractors known as sattedars supplied beedis to the manager of a beedi factory. The sattedars manufactured the beedis in their own factories or they entrusted the work to third parties. The inspector of factories found in the beedi factory certain sattedars who came to deliver beedis manufactured by them. The owner of the factory was prosecuted for violation of sections 62 and 63 of the factories act for failure to maintain the register of adult workers. It was held that the sattedars and their "coolies" (*sic*) were not workers within the definition of section 2(1) of the factories act. The ratio was that the sattedars were not under the control of the factory management and could manufacture beedis wherever they pleased. Further the "coolies" (*sic*) were not employed by the management through the sattedars.

64**.** In ***birdhichand sharma*** case the appellant employed workmen in factory. The workmen were not at liberty to work at their houses. Payment was made for piece rates according to the amount of work done. The workmen applied for leave for 15 days. The appellants did not pay their wages. The appellant contended that the workmen were not workmen within the meaning of the factories act. It was held that the workmen could not be said to be independent contractors but were workmen within the meaning of section 2(1) of the factories act. A distinction was sought to be drawn between workmen and independent contractors. It was held that though the workmen could come and go when they liked, they were piece rate workers within the meaning of the factories act. If the worker did not reach factory before midday he would be given no work. He was to work at the factory. He could not work elsewhere. He would be removed if he was absent for 8 days. His attendance was noted. If his work did not come up to the standard the pieces prepared would be rejected. The leave provided under section 79 of the factories act was held to be a matter of right when a worker had put in a minimum number of working days.

65**.** In ***shankar balaji waje*** case it was held that the labourers who used to roll beedis in the factory were not workers within the meaning of the factories act. ***Birdhichand sharma*** case was distinguished on the facts. The minority view was that the workers in ***shankar balaji waje*** case were of the same type as ***birdhichand sharma*** case. In ***shankar balaji waje*** case the majority view was that there was contract of service. The worker was not bound to attend the factory for any fixed hours. He could be absent from the work any day he liked and for ten days without informing the appellant. He had to take permission if he was to be absent for more than 10 days. The worker was not bound to roll beedis at the factory. He could do so at home with the permission of the appellant. There was no actual supervision. Beedis not up to the standard could be rejected. Workers were paid at fixed rates.

66**.** In ***bhikuse yamasa*** case this court had to consider whether a notification under section 85 of the factories act giving the beedi rollers benefits provided to workers in the factories act was valid. Beedi rollers were refused benefits by the owners of beedi manufacturing establishments. Therefore, the state government issued notification under section 85 of the factories act. Section 85 of the factories act provides that the state government may declare that all or any of the provisions of the

act shall apply to any place where a manufacturing process is carried on notwithstanding that the number of persons employed therein is less than the number specified in the definition of factory or where the persons working therein are not employed by the owner but are working with the permission

Of, or under agreement with, such owner. The state government designated certain places to be deemed factory and the persons working there to be deemed workers. This court said that extension of the benefits of the factories act to premises and workers not falling strictly within the purview of the factories act is intended to serve the same purpose. On this reasoning the provisions for the benefit of deemed workers were held to be reasonable within the meaning of article 19(1)(*g*) of the constitution. 67**.** These four decisions were relied on by counsel for the petitioners and the appellants to show that home-workers would not be entitled to leave on the ground that sections 26 and 27 of the act were unworkable in regard to home-workers and constituted unreasonable restrictions. The imposition of liability to afford to home-workers benefits like annual leave with wages cannot be said to be unreasonable restriction on the right of the owner to carry on his business. In the act, the word, "employee" includes a home-worker. The word "establishment" applies to a private house. The second explanation to section 27 of the act indicates that a home-worker is dealt with by the section. Sections 26 and 27 of the act are to be read together. In ***birdhichand sharma*** case this court held that if a worker had put in a number of working days he would be entitled to leave. This court did not go into a question as to what the meaning of the word "day of work" would be to entitle a worker annual leave under section 79 of the factories act in ***birdhichand sharma*** case.

68**.** In the present case the act contemplates that home-workers are at liberty to work at any time and for any number of hours a day. The act cannot be said to be not applicable to home-workers. The act has made a distinction between the two types of workers and has made the act applicable to both the types of workers. Even with regard to workers in industrial premises where period of work is notified it is not obligatory on the part of the employer to allow an employee to work in the industrial premises for the whole of the notified period of work. The employee can be asked to work for the whole of the notified period of work which will not exceed 9 hours a day or 48 hours a week as provided in section 17 of the act. In ***shankar balaji waje*** case the majority view was that the expression "total full time earnings" mean earnings in a day by working full time on that day and full time was to be in accordance with the period given in the notice displayed in the factory for the particular day. On that ground the workers in ***shankar balaji waje*** case were held not to be entitled to wages for the leave period because such wages could not be calculated when the terms of work were such that they could come and go when they liked and no period of work was mentioned with respect to workers. The majority view in ***shankar balaji waje*** case will not

Apply to sections 26 and 27 of the act because the home-workers are entitled to wages during the leave period and such wages do not in the case of home-workers depend upon the consideration whether a particular home-worker works for a whole of the notified period of work. The basis of calculation of wages in the case of home-workers is the daily average of his total full time earnings for the days on which he had worked during the month immediately preceding his leave. If a home-worker does full time work by rolling out 1000 pieces he will get corresponding amount of wages. Both the factory workers in industrial premises and home-workers in establishments are similarly placed by proper control over or regulation of supply of raw materials to home-workers. Just as the total full time earnings of the worker in an industrial premises are calculated with reference to hours of work each day, similarly the full time earnings of the home-worker are calculated by the earnings of each day which are kept under control by supply of measured raw materials to produce the requisite number of beedis which a worker can produce a day within his hours of work in establishment. So far as home-workers are concerned, the payment is made at piece rate and it is not material in their case about specified hours of work because they will get lesser payment if they will not work for the same number of hours as workers in industrial premises. The provisions of sections 26 and 27 are applicable to home-workers and workers in industrial premises are also capable of being made applicable without any reasonable restrictions on employers.

69**.** It has been contended that section 31 of the act which provides one month's notice in lieu of notice of dismissal was an unreasonable restriction. The reason advanced was that the act has not defined the word "wages" and therefore it is not possible to calculate wages. Section 27 of the act prescribed the rate for calculating wages during the period of leave. Section 39(1) of the industrial disputes act applies to matters in respect of every industrial premises. Section 2(*rr*) of the industrial disputes act defines wages. The definition of wages in the industrial disputes act applies to workers in industrial premises contemplated by the act. Home-workers are not included in industrial premises because they work in private dwelling houses which are establishments. The definition of wages in the industrial disputes act will apply to workers who are paid on monthly basis. Section 28(1) of the act empowers the state government to direct that the provisions of the payment of wages act, 1936 shall apply to employees in establishments to which the act applies. Section 2(6) of the payment of wages act defines "wages" to include *inter alia* any remuneration to which the person employed is entitled in respect of any leave period. Some aid may be had from the definition of wages in the payment of wages act viz. Wages include leave wages. Therefore, the word "wages" in section 31 of the act will mean wages which are calculated under section 27 of
The act. This can be calculated both in the cases of workers in industrial premises and homeworkers in establishments. Therefore, the provisions contained in section 31 of the act cannot be said to be unreasonable restrictions.
70**.** The petitioners and the appellants next contended that rule 37 of the maharashtra rules and rules 29 of the mysore rules framed under section 44 of the act imposed unreasonable restrictions on the beedi and cigar manufacturers. Rule 37 of the maharashtra rules provides that no employer or contractor shall ordinarily reject as sub-standard or chat or otherwise more than 5 per cent of the beedis or cigars of both received from the worker
Including a home-worker. Rule 37(2) of the maharashtra rules further provides that where any beedi or cigar is rejected as sub-standard or chhat or otherwise on any ground other than the ground of wilful negligence of the worker, the worker shall be paid wages for the pieces so rejected at one half of the rates at which wages are payable to him for the beedis or cigars or both which have not been so rejected.
71**.** Rule 29 of the mysore rules provides that no employer or contractor shall ordinarily reject as sub-standard or chhat or otherwise more than 2 per cent of the beedis or cigars or both received from the worker including a home-worker. It is also provided there that the employer or contractor may effect such rejection up to 5 per cent for reasons to be recorded and communicated in writing to the worker.
72**.** Rule 29 of the kerala rules is identical to rule 29 of the mysore rules except that instead of 2 per cent it provides for 2.5 per cent as a limit for rejection.
73**.** The kerala high court held that kerala rule 29 fixes arbitrary percentage and is not in the interest of the general public. The imposition of 5 per cent by the proviso to rule 29 was said by the kerala high court to be arbitrary. It was said that the percentage of rejection might be higher than 5 per cent but the fixed limit of 5 per cent would have this bad consequence, it is that quality of beedis would go down if the workers were assured that more
Than 5 per cent would not be rejected.
74**.** The mysore high court rejected the contention that mysore rule 29 imposes an unreasonable restriction. The reason given by that high court was as follows. The argument that sub-standard beedis or cigars in excess of 5 per cent cannot be rejected by the employer is unsound. Ordinarily 2 per cent rejection is permitted. Rejection up to 5 per cent is permissible only after recording reasons therefor. But if the employer finds that the quantity of substandard beedis is about 5 per cent, the matter is to be referred to the inspector. Therefore, rule 29 does not compel the employer to accept sub-standard beedis when the rejection is above 5 per cent.
75**.** The bombay high court upheld rule 37 of the maharashtra rules which allows rejection of more than 5 per cent. The 5 per cent rejection is said by the bombay high court to be an outer limit. It does not mean according to the bombay high court that the rejection must be 5 per cent. It is said that the contractors by reason of their experience will find 5 per cent rejection to be reasonable. The

experience suggests that the outer limit of 5 per cent is fairly reasonable. It is difficult to imagine that no limit should be fixed. The bombay high court further found that even for sub-standard beedis there is a market though at a lesser rate. The bombay high court further found that pilfering of tobacco was an accepted vice of the industry. Inspite of that malady rejection in the industry hardly exceeded 3 per cent. The bombay high court found 5 per cent rejection to be reasonable.

76**.** The maximum limit of 5 per cent for the rejection of beedis is, therefore, based on experience in the industry and secondly the employer can reject more than 5 per cent by raising a dispute before the appropriate authority.

77**.** On behalf of the petitioners and the appellants it was said that the word "substandard" by itself would offer no guidance for rejection and confer arbitrary power. Section 39(1) of the act provides that the provisions of the industrial disputes act shall apply to matters arising in respect of every industrial premises and section 39(2)(*c*) of the act provides that notwithstanding anything contained in sub-section (1) a dispute between an employer and employee relating to the payment of wages for beedi or cigar or both rejected by an employer shall be settled by such authority and in such manner as the state government may by rules specify in that behalf. Section 44(2)(*r*) of the act provides for making of rules with regard to the manner in which sorting or rejection of beedi or cigar or both and disposal of rejected beedi or cigar or both shall be carried out. The mysore rule 27 provides that any dispute between an employer and employee in relation to rejection by the employer of beedi or cigar or both make by an employee may be referred in writing by the employer or the employee or employees to the inspector for the area who shall after making such enquiry as he may consider necessary and after giving the parties an opportunity to represent their respective cases, decide the dispute and record the proceedings in form x. Form x relates to

Record of decision of order. Various particulars, inter alia, are substance of the dispute, substance of the evidence taken and findings and statement of the reasons therefor. There is also a right of appeal from the decision of the inspector to the chief inspector.

78**.** It therefore appears that the rules about rejection and fixing maximum limit of 5 per cent are reasonable and fair. First, experience in the industry as recorded in the report of minimum wages committee supports such limit of 5 per cent as normal and regular. Second, inspite of 5 per cent maximum limit it is permissible to the employer to reject more than 5 percent. For that a dispute is raised before the appropriate authorities set up under the rules. The state government under section 44(2)(*r*) and (*s*) of the act is empowered to make rules in respect of the manner in which sorting or rejection of beedi or cigar or both and disposal of rejected beedi or cigar or both shall be carried out and the fixation of maximum limit of rejection of beedi or cigar or both manufactured by an employee. Section 39(2) of the act provides that a dispute between an employer and employee relating inter alia to rejection by

The employer of beedi or cigar or both made by an employee and the payment of wages for beedi or cigar rejected by the employer shall be settled by such authority and in such manner as the state government may by rules specify in that behalf. Rule 27 of the mysore rules as well as rule 27 of the kerala rules provide that a dispute between an employer and employee or employees in relation to rejection by the employer of beedi or cigar or the payment of wages for the beedi or cigar rejected by the employer may be referred in writing by the employer or employee to the inspector for the area. The inspector after hearing the parties shall decide the issue. The aggrieved party has the right of appeal to the chief inspector.

79**.** Under rule 29 of the mysore rules rejection of more than 2 per cent and up to 5 per cent is required to be for reasons in writing. Rule 37 of the maharashtra rules provides for rejection up to 5 per cent without any obligation to give reasons. It was said by the petitioners that the mysore and kerala rules fixed the limit for rejection but the maharashtra rule did not do so. Both the rules fixed 5 per cent as the maximum limit for rejection. The mysore and the kerala rules have nothing corresponding to maharashtra rule 37(2) requiring payment at half the rates for beedis rejected as sub-standard, if the same was not due to the wilful negligence of the employee. It was, therefore, said that either up to 5 per cent rejection under maharashtra rule 37 or rejection of more than 5 per

cent the employer was under an obligation to make payment at half of the rate as rejected beedis if such rejection was not due to the wilful negligence of the employee.

80**.** It has, therefore, to be ascertained as to whether the rules prohibit employer from rejecting more than 5 per cent even if they are found to be sub-standard and secondly whether the requirement to pay wages at one half of the rate for the rejected beedis is a reasonable restriction. The rules provide for rejection up to 5 per cent. The rules further used the word "ordinarily" in regard to such rejection. In case of rejection of more than 5 per cent rule 27 of the mysore rules and rule 37 of the maharashtra rules provide for raising of a dispute in regard to such rejection. The dispute contemplated is in relation to rejection of beedis and the payment of wages for the rejected beedis. The words "rejection" and "rejected" indicate that the dispute is raised because of the rejection of beedis. The contention advanced on behalf of the petitioner that before a dispute is raised no rejection is possible is erroneous. The dispute arises because of rejection. Therefore, rules 27 and 29 of the mysore rules and rule 27 of the kerala rules do not impose any unreasonable restriction on the right of rejection.

81**.** Maharashtra rule 27 also permits rejection of more than 5 per cent and raising of disputes. The contention on behalf of the petitioners that the maharashtra rule which requires payment at one half of the rate for the rejected beedis on any ground other than the ground of wilful negligence of the worker is an unreasonable restriction is not correct. The bombay high court correctly held that the experience in the industry is that there is a market for substandard beedis. It is also reasonable to hold that home-workers will be interested in seeingthat the beedis are not sub-standard because in the process home-workers would be earning less. The maharashtra rule is intended to eliminate exploitation of illiterate workers who are mostly women. The rules with regard to rejection are, therefore, reasonable. It is also open to the employers to raise dispute for rejection above 5 per cent.

82**.** The petitioners and the appellants challenged section 37(3) of the act as unworkable. That sub-section provides that the provisions of the maternity benefit act, 1961 shall apply to every establishment as if such establishment were an establishment to which the said 1961 act had been applied by notification under section 2(1) of the said 1961 act. The proviso to section 37(3) of the act states that maternity benefit act in its application to a home-worker

Shall apply subject to certain modifications. The madras high court upheld the contention and said that since a worker in a beedi industry is not required to work regularly for any prescribed period of hours in a day or even day after day for any specified period, from the very nature of the case, provisions of the said 1961 act are unworkable with regard to such home-workers. It may be stated that the reasonableness of section 37(3) of the act was not

Challenged. An argument which was submitted was that it was difficult to locate homeworkers. That argument was not pressed in this court. The provisions of the said 1961 act in sections 4 and 5 thereof deal with prohibition of employment of, or work by, women, prohibited during certain period and right of payment of maternity benefit. Section 4 of the 1961 act does not present any difficulty because it speaks of prohibition of work by a woman in any establishment during six months immediately following the day of her delivery. Further, section 4 provides that on a request being made by a pregnant woman she will not be required to do work of an arduous nature or work which involves long hours of standing and that period is one month immediately preceding the period of six weeks before the date of her expected delivery. Section 5(2) of the said 1961 act provides that no woman shall be entitled

To maternity benefit unless she has actually worked in any establishment for a period of not less than 160 days in the twelve months immediately preceding the date of her expected delivery. There is no difficulty with regard to working of these sections in regard to maternity benefits to women employed in an establishment.

83**.** For these reasons, we held that parliament had legislative competence in making this act and the provisions of the act are valid and do not offend any provision of the constitution.

(commission agents/deposit collectors of banks, although were not regular employees, held, nonetheless covered further held, relationship of master and servant did exist between the bank and such workmen.)

Facts and contentions of the parties

The government of india, ministry of labour by an order dated 3-10-1980 referred the following dispute under section 7-a and 10(l)(d) of the industrial disputes act between the management of 11 banks and the deposit collectors to the industrial tribunal, hyderabad for adjudication:

"whether the demands of the commission agents or as the case may be deposit collectors employed in the banks listed in the annexure that they are entitled to pay scales, allowances and other service conditions to regular clerical employees of those banks is justified? If not, to what relief are the workmen concerned entitled and from which date?"

Before the tribunal parties led evidence both oral and documentary. After hearing the parties the tribunal by its award dated 22-12-1988 held that the deposit collectors were workmen of the bank concerned.

Hussainbhai* verses *alath factory thezhilali union

V.r. Krishna iyer, j. -the petitioner before us in this special leave petition is a factory owner manufacturing ropes. A number of workmen were engaged to make ropes from within the factory, but these workmen, according to the petitioner, were hired by contractors who had executed agreements with the petitioner to get such work done. Therefore, the petitioner contended that the workmen were not *his* workmen but the contractors' workmen. The industrial award, made on a reference by the state government, was attacked on this ground. The learned single judge of the high court, in an elaborate judgment, rightly held that the petitioner was the employer and the members of the respondent-union were employees under the petitioner. A division bench upheld this stand and the petitioner has sought special leave from this court.

2. It is not in dispute that 29 workmen were denied employment which led to the reference. It is not in dispute that the work done by these workmen was an integral part of the industry concerned; that the raw material was supplied by the management; that the factory premises belonged to the management; that the equipment used also belonged to the management and that the finished product was taken by the management for its own trade. *The* workmen were broadly under the control of the management and defective articles were directed to be rectified by the management. This concatenation of circumstances is conclusive of the question. Nevertheless, this issue is being raised time and again and so we proceed to pass a speaking order. We should have thought that even cases where this impressive array of factors were not present, would have persuaded an industrial court to the conclusion that the economic reality was employer-employee relationship and, therefore, the industrial law was compulsively applicable. Even so, let us look at the issue afresh.

3. Who is an employee, in labour law? That is the short, die-hard question raised here but covered by this court's earlier decisions. Like the high court, we give short shrift to the contention that the petitioner had entered into agreements with intermediate contractors who had hired the respondent-union's intermediate workmen and so no direct employer-employee *vinculum juris* existed between the petitioner and the workmen.

4. This argument is impeccable in *laissez faire* economics 'red in tooth and claw' and under the contract act rooted in english common law. But the human gap of a century yawns between this strict doctrine and industrial jurisprudence. The source and strength of the industrial branch of third world jurisprudence is social justice proclaimed in the preamble to the constitution. This court in ***ganesh beedi*** case has raised on british and american rulings to hold that mere contracts are not decisive and the complex of considerations relevant to the relationship is different. Indian justice, beyond atlantic liberalism, has a rule of law which runs to the aid of the rule of life. And life, in conditions of poverty aplenty, is livelihood, and livelihood is work with wages. Raw societal realities, not fine-spun legal niceties, not competitive market economics but complex protective principles, shape the law when the weaker, working class sector needs succour for livelihood through labour. The conceptual confusion between the classical law of contracts and the special branch of law sensitive to exploitative situations accounts for the submission that the high court is in error in its holding against the petitioner.

5. The true test may, with brevity, be indicated once again. Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship *ex contractu* is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the management, not the immediate contractor. Myriad devices, half-hidden in fold

after fold of legal form depending on the degree of concealment needed, the type of industry, the local conditions and the like may be resorted to when labour legislation casts welfare obligations on the real employer, based on articles 38, 39, 42, 43 and 43-a of the constitution. The court must be astute to avoid the mischief and achieve the purpose of the law and not be misled by the *maya* of legal appearances.

6. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the management cannot snap the real life-bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off.

7. Of course, if there is total dissociation in fact between the disowning management and the aggrieved workmen, the employment is, in substance and in real-life terms, by another. The management's adventitious connections cannot ripen into real employment.

8. Here, on the facts, the conclusion is correct and leave must be refused.

Miss a. Sundarambal verses government of goa, daman & diu

(an educational institution is an industry, but teachers in an educational institution cannot be treated as workman.)

Facts

The appellant, miss a. Sundarambal, was appointed as a teacher in a school conducted by the society of franciscan sisters of mary at caranzalem, goa. Her services were terminated by the management by a letter dated april 25, 1975. After failed in her several efforts in getting the order of termination cancelled, she raised an industrial dispute before the conciliation officer under the industrial disputes act 1947. The conciliation proceedings failed and the government of goa, daman and diu declined to make a reference under s. 10(l)(c) on the ground that the appellant was not a workman under s.2(s) of the act. Thereupon, the appellant filed a write petition before the high court of bombay, panaji bench, goa for issue of a writ in the nature of mandamus requiring the government to make a reference under s. 10(1)(c) of the act to the labour court to determine the validity of the termination of her services. The high court held that the appellant was not a workman by its judgement dated september s. 1983. The appellant then filed the appeal by special leave in the supreme court,

Issue

1. Whether the school, in which the appellant was working, was an industry?
2. Whether the appellant was a 'workman[7] employed in that industry?

Decision

The court held that even though an educational institution has to be treated as an 'industry, teachers in an educational institution cannot be considered as workmen.

Bang/ore water supply & sewerage board verses r. Rajappa followed. *The corporation of the city of nagpur verses its employees* followed. *May and baker (india) ltd. Verses workman,* (1961) followed. *University of delhi. Ram nath,* (1963) overruled.

Fn *university of delhi verses ram nath* it was held that the university of delhi, which was an educational institution and miranda house, a college affiliated to the said university, also being an educational institution could not come within the definition of the expression "industry' as defined in s.2(i) of the act. But in *bangalore water supply and sewer age board rajappa* the decision in *university of delhi verses ram nath* was overruled. Krishna lyer, j. Who delivered the majority judgement in *bangalore* case observed thus: (para 143).

"where a complex of activities, some of which qualify for exemption, other not, involves employees on the total undertaking, some of whom are not "workmen' as in the university of delhi case, or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the *corporation of nagpur,* will be the true test. The whole undertaking will be "industry" although those who are not 'workmen' by definition may not benefit by the status."

Thus an educational institution has to be treated as an industry in view of the decision in *bangalore water supply & sewerage board* verses *rajappa* but whether teachers in an educational institution can be considered as workmen was not decided in that case.

In para 7 of its judgement the court reproduced the definition of workman as given in s.2(s) of the act. In order to be a workman, a person should be one who satisfies the following conditions:

(1) he should be a person employed in an industry for hire or rewards;
(2) he should be engaged in skilled or unskilled manual, supervisory, technical or clerical work; and