A

MANGALORE GANESH BEEDI WORKS ETC. ETC.

v.

UNION OF INDIA ETC.

January 31, 1974.

B

[A. N. RAY, C.J., H. R. KHANNA, K. K. MATHEW, A. ALAGIRISWAMI AND P. N. BHAGWATI, JJ.]

Beedi and Cigar Workers (Condition of Employment) Act, 1966—Ss. 3, 4, 2(g)(a), 2(g)(h), 2(m), 26, 27 and 31—Constitutional validity of—Constitution of India, 1950—Arts. 14, 19(1)(g)—Legislative competence—Act if falls within Entry 24 List II or Entries 22, 23 and 24 of List III, Seventh
C *Schedule—Rules laying down the maximum percentage of Beedis which can be rejected, validity of—Sec. 37(3) if unworkable.*

Interpretation—Reports of Commissions and Committees—Admissibility in evidence about the prevailing system and conditions of industry.

The beedi industry is widespread in the country. Three systems are adopted for the manufacture of beedis. First, the factory system in which
D the workers gather and work in a factory under the supervision of the manufacturer who is the owner of factory. Secondly, the contract system of employment wherein the proprietor gives the middleman quantities of beedi leaves and tobacco. The contractor manufactures beedis by employing directly labourers or by distributing material amongst the home workers. The third system is that of the out workers. They roll beedis out of tobacco and beedi leaves supplied by the proprietor without the agency of middle man.

The special feature of the industry is the manufacture of beedis through
E contractors and by distributing work in private dwelling houses where the workers take raw-material given by the employers of contractors. The relationship between employers and employees is not well defined. The application of the Factories Act has always met with difficulties. The labour in the industry is unorganised and is not able to look after its own interests. The industry is highly mobile. The attempts of some of the states to legislate in this behalf have not been successful. Anxiety has been expressed by several committees and commissions, appointed by the Central Government and some
F of the State Government, to introduce some regulation in the employer-employee relationship and to obtain certain benefits to the employees which have been denied to them. They have reported extremely unsatisfactory and unhealthy working conditions, long hours of work with low wages and unrestricted employment of women and children. It was found that the contract and home work systems enriched the proprietor at the expense of the workers and also deprived the workers of the bargaining power in regard to conditions of labour.

G It is in this background that the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, came into existence. The Act was passed to provide for the welfare of workers in Beedi and Cigar establishments and to regulate the conditions of their work and for matters connected therewith.

The petitioners and the appellants, proprietors of beedi factories and owners of trade mark and some home workers, impeached the constitutionality of the Act. They contended; (i) being a legislation for regulating beedi and cigar industry it fell under Entry 24 List II of the Seventh Schedule and there-
H fore Parliament had no legislative competence to enact the measure; (ii) Sections 3 and 4 of Act which required licence in respect of industrial premises violated Arts. 19(1)(g) and 14 since they conferred unfettered powers on the licensing authority without the requisite safeguards; (iii) the provisons

of section 2(g)(a), 2(g)(b) and 2(m) read with section 2(e) and (f) created a totally artificial and fictional definition of employer and thereby imposed vicarious liabilities upon a manufacturer of and trader in beedies in respect of diverse matters which entailed civil and criminal liabilities and thereby imposed unreasonable restrictions on the manufacturers in their right to carry on trade and business; (iv) sec. 26 and 27, dealing with leave and wages during leave period, cast unreasonable burden and imposed obligations which were not capable of fulfilment and thus violated Art. 19(1)(f) and (g), and, in any event, the sections were unenforceable with regard to home workers and therefore violated Art. 19(1)(f) and (g) so far as the same were applied to home workers; (v) Sec. 31 which provided for one month's wages in lieu of notice of dismissal was an unreasonable restriction; (vi) Rule 37 of the Maharashtra Rules and rule 29 of the Mysore Rules, dealing with rejection of substandard beedies, framed under s. 44 of the Act, imposed unreasonable restriction on the beedi and cigar manufacturers; and (vii) Sec. 37(3) which made provision for maternity benefits to women employed in an establishment was unworkable.

HELD: (Per Ray, C.J., Khanna, Mathew, and Bhagwati, JJ): Parliament has legislative competence for enacting the law and the provisions of the Act are valid and do not offend any provision of the Constitution.

Previous material in the shape of reports of commissions to review the working of the industry is admissible in evidence about the prevailing system and conditions of industry.

State of Madras v. *Rajagopalan*, [1955] 2 S.C.R. 541, referred to.

(i) The Act does not fall within entry 24 List II or entries 7 and 52 in List I. The true nature and character of the legislation is for enforcing better conditions of labour amongst those who are engaged in the manufacture of beedis and cigars. It, therefore, falls within entries 2, 23 and 24 in List III. The Act, in pith and substance is for welfare of labour. [233H, 234E]

(ii) Sections 3 and 4 of the Act are not violative of Arts. 19(1)(g) and 14. These sections do not confer unfettered powers on the licensing authority without the requisite safeguards. The power to grant or refuse a licence is sufficiently controlled by necessary guidance. There are safeguards preventing the abuse of power. The right of appeal is a great safeguard. There is machinery as well as procedure for determining the grant or refusal of a licence. [235B-C]

(iii) The provisions of Sections 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. There cannot be any question of unreasonableness in cases where the manufacturers or trade-mark holders themselves employ labour, because, there is direct relationship of master and servant. When the contractors engaged labour for the principal employer the liability arises by reason of contract labour engaged for or on behalf of principal employer. 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. When the contractor engages labour for and on his own behalf and supplies the finished product to the manufacturer 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 contract. It will be a question of fact in each case as to who is the person for whom the contract labour is engaged. If an independent Contractor employs labour for himself the liability will attach to him as the principal employer and not to the manufacturer. The Act thus fastens liability on the person who himself engages labour or the person for whom or 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. [237D, F; 241A]

A

(iv) The provisions of sections 26 and 27 are applicable to home workers and workers in industrial premises and are also capable of being made applicable without any reasonable restriction on the employers. As a matter of fact it is found that home workers can turn out 700 to 1000 beedies a day. The minimum wages prescribed by various states for these home workers are between Rs. 2 to Rs. 4.30 for rolling 1000 beedis. It will, therefore, not cause unreasonable financial burden on account of leave wages. The home workers will get wages for the leave period corresponding to the number B of beedies manufactured by him for a particular employer. The hours of work will be immaterial because if he works for less number of hours he will obtain lesser payment. There will be no difficulty in computing wages for the annual leave period. The home worker will get leave wages corresponding to his actual earnings just as the worker in the industrial premises will get leave wages corresponding to his full-time earning. The basis of calculation of wages in the case of home workers is the daily average of his total full time earnings C for the days he has worked during the month immediately preceding his leave. [248C-D]

(v) The provisions contained in s. 31 cannot be said to be unreasonable restrictions. Section 2(rr) of the Industrial Disputes Acts defines wages. Some aid can also be had from the definition of wages in the Payment of Wages Act that wages include leave wages. Therefore, the word 'wages' in sec. 31 of the Act will mean wages which are calculated under s. 27 of the Act. The calculation can be made both in respect of workers in industrial premises D and home workers in establishments. [248G]

(vi) The rules are valid on the ground that the maximum limit of 5 per cent for the rejection of Beedis is 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. Rules about rejection and fixing maximum limit of 5 per cent are reasonable and fair. The rules are intended to eliminate exploitation of illiterate workers who are mostly women. [250A]

(vii) The reasonableness of section 37(3) has not been challenged. There E is no difficulty with regard to the working of the Maternity Benefits Act, 1961, in regard to maternity benefits to women employer in an establishment. [252D]

Chintaman Rao & Anr. v. *The State of Madhya Pradesh,* [1958] S.C.R. 1340; *Birdhichand Sharma* v. *First Civil Judge Nagpur & Ors.* [1961] 3 S.C.R. 161. *Bhikuse Yamas Kshatriya (P) Ltd.* v. *Union of India & Anr.* [1961] 1 S.C.R. 860, distinguished.

F *Shanker Balaji Waji* v. *State of Maharashtra,* [1962] Supp. 1 S.C.R. 249, held inapplicable.

Dewan Mahideen Saheeb v. *United Bidi Workers Union Salem* [1964] 7 S.C.R. 646 *Chintaman Rao's case; Silver Jubilee Tailoring House & Ors.* v. *Chief Inspectors of Shops and Establishment & Anr.* referred to.

Syed Saheb & Sons v. *State of Mysore* [1972] Mysore Law Journal 450, approved.

G

Abdul Azeez Sahib and Sons, etc. v. *The Union of India,* [1973] II M.L.J. 126, *Chetabhai Purshottam Patel, Beedi Manufacturers of Bhandara & Ors* v. *State of Maharashtra,* [1972] 1 L.L.J. 130; *Chirukandeth Chandrasekharan* v. *Union of India* [1972] 1 L.L.J. 340, and Civil Appeals Nos. 1972 and 1968 of 1971 (Andhra Pradesh), over ruled.

ALAGIRISWAMI, J, (*concurring*) : The Act is the result of a compromise between the original intentions of the Government and the modifications they H had to make in the proposed measure as a result of concessions intended to bring home workers within the scope of the Act. The original intention was not to permit beedi rolling in private homes which will involve thousands of labourers in thousands of far-flung homes and the difficulty of applying the

provisions of the measure to them. The result is an Act which is likely to give rise to many difficulties in its actual working. It is obvious on a reading of the measure that its purpose is to rope in every possible person who could be brought in as an employer. But the result of the definitions in the Act is that everybody would be a principal employer and contractor and every labour will be contract labour. [252H]

Clause 2(g)(b) is intended to cover cases where a person runs business Benami. There can be no objection to such a provision. But merely because a person lends or advances money or supplies goods he cannot be called an employer. The words in cl. 2(g)(b) "who has by reason of his advancing money, supplying goods or otherwise a substantial interest in the control of affairs of any establishment" should be struck down. When section 26 provides that every employee in an establishment should be allowed in a calendar year leave with wages at the rate of 1 day for every 20 days of work performed by him during the previous calendar year it leads to real difficulty. The question is what is the wage which has to be paid to him during the period of leave. A home worker might work for 1 hour on one day, 8 hours on another day and not at all for a number of days. What would be the wages payable to him? The difficulty of applying the Maternity Benefit Act is again apparent. How can the provisions be applied to women who cannot be said to be employed continuously for a certain period before the confinement? Under section 31, no employer shall dispense with the services of an employee who has been employed for a period of 6 months or more except for a reasonable cause and without giving such employees at least one month's notice or wages in lieu of such notice. It is not clear as to who will be the employer competent to dispense with the services of the employee. [254A, 255C, 256B]

While Courts should give effect to the intentions of the legislature it can be done only if that is possible without doing violence to the actual language of the statute. The various definitions plainly seek to rope in everybody who has anything to do with the manufacture of beedies and while trying to give effect to the penal provisions in the statute considerable difficulties will arise. There will on the one hand be the actual occupier of the industrial premises. There will be on the other hand a person who might have advanced money to him and supplied goods to him and therefore may be substantially interested in its control. The actual occupier himself might be a contractor and in that case he as well as a person on whose behalf beedis are manufactured would be liable. Who in that case, would be actually liable? [254C]

The objection is not to any of the provisions on the grounds of unreasonableness or unconstitutionality. Nobody can dispute the need for setting right the evils. But, good intentions should not result in a legislation which would become ineffective and lead to a lot of fruitless litigation over the years. It has to be held in agreement with the majority of the High Courts that sections 26, 27, 31 and 37(3) do not apply to the home workers. It would be good in the interest of all concerned if the Act is amended as early as possible to remove all the lacunae and the difficulties pointed out. The difficulties have arisen because of an attempt blindly to apply the provisions which will be quite workable if they are applied to conditions where the Factory Act would be applicable. [256F]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1553, 1614-1618, 1769 of 1971 and 1131-1133 and 1440 of 1972.

(From the Judgment and Order dated the 24th June, 1971 of the Mysore High Court at Bangalore in Writ Petitions Nos. 806, 837, 1152, 1486, 1592, 1638, 1896, 159, 4152 and 310 of 1970 and 1456 of 1971).

Civil Appeals Nos. 2516-2523, 2560, 2569, 2661-2164 *of* 1972 *and* 66-69, 72-75, 1307, 854-856, 857-859, 1203 *and* 1204 *of* 1973.

A (From the Judgment and Order dated the 8th September, 1972 of the Madras High Court in Writ Petitions Nos. 227, 422, 2631 of 1969, 2692, 2693, 2695, 2696, 2698 of 1968, 2680, 2683, 2688, 2689, 2691, 3477, 3478 of 1968, 531, 849, 1065 of 1969, 2681, 3480 of 1968, 40, 169 of 1969, 2854, 2856, 2855 of 1968, 468 of 1969, 2847, 2849, 2850, 2853 of 1968, 3268 of 1968, 211, 231, 276 of 1969, 2701, 2797 of
B 1968, 212 of 1969, 2684 and 2763 of 1968).

Writ Petitions Nos. 127-132 *of* 1972.

(Under Article 32 of the Constitution for the enforcement of fundamental rights).

Civil Appeals Nos. 307-311 *of* 1972.

C

(Appeals by Special Leave from the Judgment and Order dated the 30th November, 1971 of the Bombay High Court in Special Civil Application Nos. 2501 of 1968, 785, 2848, 2845 and 2846 of 1969).

Civil Appeal No. 585 *of* 1971.

(From the Judgment and order dated the 14th/15th October, 1970
D of the Gujarat High Court at Ahmedabad in Special Civil Application No. 872 of 1968).

Civil Appeals Nos. 1864-1873 *of* 1971 *and* 173 *of* 1973.

(From the Judgment and order dated the 16th/17th July, 1970 of the Bombay High Court (Nagpur Bench at Nagpur) iin Special Civil
E Applications Nos. 391 to 393 of 1969, 409 of 1968, 451, 453, 513, and 514 of 1969 and 453 of 1969).

Civil Appeals Nos. 1972—1988 *of* 1971.

(From the Judgment and Order dated the 26th August, 1970 of the Andhra Pradesh High Court at Hyderabad in Writ Petitions Nos. 2587, 2818, 3007, 3009, 3058, 3156 3254, 3618, 3776, 3824, 3825, 3826,
F 4364, 4553, 5013, 5174 of 1968 and 1235 of 1969).

Mr. Soli Sorabjee with *M/s M. Ramachandran, Salindra Swarup, J. B. Dadachanji, O. C. Mathur & Ravinder Narain* for the Appellant (in CAs. 1553/71) & for Petitioners.

M/s M. Ramachandran, Salindra Swarup, J. B. Dadachanji, O. C. Mathur & Ravinder Narain for the Appellant (in CA 1769/71).

G

Mr. K. N. Bhat, for the Appellant (in CA. 1614/71).

M/s D. V. Patel (in C.A. 1615) and *S. V. Gupte* (in C.A. 1616) with *M/s M. Ramachandran, T. S. Pai and A. S. Nambiar* for the Appellants (in CAs. 1615 & 1616/71).

M/s T. S. Pai, M. Ramachandran and A. S. Nambiar for the Ap-
H pellants (in CAs. 1617—1618/71).

Mr. K. K. Venugopal with *Mr. A. S. Nambir* for the Appellants (in CAs. 2661-64/72, 66-69/73 and 857-859, 1203 & 1204/73).

Mr. Vineet Kumar for the Appellant (in CAs. 1131-1133 & 1440/72 and for Appellants (in CA 585/71).

Mr. K. K. Venugopal with *Mrs. S. Gopalakrishnan* for the Appellant (in CAs. 2516-23/72).

Mr. K. K. Venugopal with *K. R. Nambiar* for the Appellant in CAs. 2560-69/72 & 72-75/73).

Mr. Niren De with *Mr. P. Paramashwara Rao* for Respondent No. 1.

Mr. Niren De with *M/s R. N. Sachthey and S. P. Nayar* for Respondent No. 1 (in CAS. 1614, 1616-1618/71, 1131-1133 & 1440/72 and for Respondent No. 2 (in CA 1615/71).

Mr. M. Veerappa, for Respondent No. 1 (in CAs. 1553, 1614, 1616, 1769) and for Respondents No. 1, 3, 4 and 5 (in CA. 1615), for Respondent Nos. 2 to 5 (in CAs. 1617-18) for Respondent (in CAs. 1131, 1132 & 1440), for respondent Nos. 2-3 (In CA. 1133) and for Respondent No. 2 (In WPs. 127—128/72).

Mr. S. Govind Swaminadhan with *Mr. A. V. Rangam and Miss A. Subhashini* for Respondent No. 2 (in CAs. 2516-23 2560-69, 2661-64, 66-69, 72-75, 854-59 & 1203—1204) and for Respondent (in CA. 1307/73).

Mr. K. S. Ramamurthy with *Mr. A. T. M. Sampath* for the Appellant (in CA. 1307).

M/s. K. S. Ramamurthy and *Mr. Y. S. Chitale* with *M/s T. S. Pai and A. S. Nambiar* for the Petitioner in (WP. 127).

Mr. Y. S. Chitale with *M/s M. Ramchandran, T. S. Pai and A. S. Nambiar* for the Petitioner (in WP. 128).

M/s M. Ramachandran, T. S. Pai and A. S. Nambiar for the Petitioner (in WP. 129).

Mr. A. S. Nambiar for the Petitioner (in WP. 130).

Mr. Niren De with *M/s P. Parameshwara Rao, R. N. Sachthey, and S. P. Nayar* for the Appellants (in CAs. 1972-88/71) and for Respondent No. 1 (in WP. 127-128).

Mr. D. V. Patel with Mr. P. H. Parekh and Mrs. Sunanda Bhandare for the Appellants (in CA. 307-311/72).

Mr. Niren De and *Mr. M. C. Bhandare* (for the State of Maharashtra in CA. 307 & 311) with *M/s R. N. Sachthey and S. P. Nayar* for Respondents Nos. 1-4 (in CAs. 307-308).

Mr. Niren De with *Miss S. Chakravarthy and Mr. R. H. Dhebar* (for the State of Gujarat, *M/s R. N. Sachthey and S. P. Nayar* for Respondent Nos. 1-3 (in CA. 585).

Mr. Niren De (For Union of India in CA. 1864/71), *Mr. M. C. Bhandare,* (for the State of Maharashtra in CAs. 1864-1873), with *M/s*

A *R. N. Sachthey,* and *S. P. Nayar* for the Appellants (in CA. 1864 to 1873/71) and for Respondent No. 2 (in CA. 173/73).

Mr. M. N. Phadke with *Mr. Rameshwar Nath* for Respondents Nos. 1-2 (in CA. 1871) and for Appellant (in CA. 173).

Mr. Rameshwar Nath, for Respondents No. 1 (in CAs. 1864-69)
B and for Respondents Nos. 3, 5-9, 11-13, 15-17 and 20 (in CA. 1871).

Mr. M. Krishna Rao with *Mr. B. Kanta Rao* for Respondent No. 7.

M/s Narayan Netter and Ram Shesh for the Intervenors—Dharwar Distt. Beedi Workers' Union, Hubli and Anr. (in CA. 1553).

Mr. R. P. Kapoor for Mr. I. N. Shroff for Intervener-State of
C Madhya Pradesh (in CA. 1769).

M/s S. R. Bommai, J. B. Dadachanji and P. C. Bhartari for Intervener—Puttappa Veerappa etc. (in CA. 1553).

Mr. Rameshwar Nath for Intervener (in CA. 1864).

The Judgment of A. N. RAY, C.J., H. R. KHANNA, K. K. MATHEW and P. N. BHAGWATI, JJ. was delivered by RAY C.J. A. ALAGIRISWAMY,
D J. gave a separate Opinion.

RAY, C.J. The provisions of the Beedi and Cigar Workers (Conditoin of Employment) Act, 1966 referred to as the Act are impeached as unconstitutional in these petitions and appeals.

Broadly stated, the Act is challenged on these grounds. First,
E Parliament has no legislative competence to enact this measure. It is a legislation for regulating beedi and cigar industry. Therefore, it falls under Entry 24 in State List II. Second, the restrictions imposed by the Act violate freedom of trade and business guaranteed under Article 19(i)(g). The Act imposes unreasonable burdens in cases where a manufacturer or trade mark holder of beedi has no master and servant relationship and no effective control on independent
F contractors or home-workers. The manufacturer or trade mark holder is rendered liable as the principal employer of contract labour. Third, section 4 of the Act imposes conditions which are arbitrary, excessive extraneous. Fourth, Section 7(i)(c) regarding entry into industrial premises, sections 26, 27 regarding annual leave with wages, section 31 regarding one months's wages in lieu of notice, section 37 regarding application of Maternity Benefits Act, 1961 and the rules for rejection
G of beedis are unconstitutional. These provisions are unreasonable restrictions on the freedom of trade and business.

The petitioners and the appellants are of two characters. The majority are proprietors of beedi factories and owners trade mark registered under the Trade Marks Act in relation to beedis. Some are home workers.

H The beedi industry is widespread in this Country, The manufacture of beedi is done in stages. The tobacco is blended often with some other ingredient. A small quantity of it is put on the beedi leaf which

is previously wet to render it flexible to prevent any crushing of leaf and is also cut to size. The beedi leaf is then rolled keeping the tobacco within it and its ends are then closed. The beedis thus rolled are collected and warmed or roasted after which they are ready for packing, labelling and sale. Where the proprietor owns a trade mark, the trade mark labels are affixed to the individual beedis as also on the packets.

The work of wetting and cutting of the wrapper leaves is one of the items of work in the process. Power is seldom employed for the purpose. The industry depends entirely upon human labour. If more than 20 workers are employed in a particular place for the manufacture of beedis, the provisions of the Factories Act, 1940 will apply to the premises.

Three systems are adopted in the manufacture of beedis. First, is the factory system. There the manufacture is an owner of the factory. Workers gather and work under his supervision as his employees. Second is the contract system of employment. That is the most prevalent form. Under this system, the proprietor gives to the middlemen quantities of beedi leaves and tobacco. The contractor on receiving the materials manufactures beedis (i) by employing directly labourers and manufacturing beedis or (ii) by distributing the materials amongst the home workers, as they are called, mostly women who manufacture beedis in their own homes with the assistance of other members of their family including children. The third system is that the outworkers. They roll beedis out of the tobacco and beedi leaves supplied by the proprietor himself without the agency of middlemen. The beedis thus supplied whether by the outworkers or contractors are roasted, labelled and packed by the proprietor and sold to the public.

Under these systems, the contractor engages labourers less than the statutory number to escape the application of the Factories Act. There is a fragmentation of the place of manufacture of beedis with a view to evading the factory legislation. Sometimes there is no definite relationship of master and servant between the actual worker and the ultimate proprietor. Branch managers of contractors are often men of straw. The proprietor will not be answerable for the wages of the outworkers because there is no privity of contract between them. A large body of actual workers are illiterate women who could with impunity be exploited by the proprietors and contractors. There is in this background an indiscriminate and undetectable employment of child labour. The contractor being himself dependent on the proprietor has little means to have any organized system. Women and infirm persons can earn something by rolling beedis. The dependence of these people particularly the women shows that they have little bargaining power against powerful proprietors or contractors.

A typical contractor agrees with the proprietor to purchase tobacoo and to pay for it at the ruling rate and to supply the proprietor with such quantity of beedis as will be fixed by the proprietor. He also undretakes not to use any tobacco other than that supplied by the

A proprietor. The proprietor has the authority to send his representative to inspect the place or places of manufacture. The contractor undertakes not to enter into any agreement of similar nature with any other concern to make beedis. The agreement stipulates that the contractor will be the sole employer answerable in regard to the disputes raised by the workers.

B There was a Royal Commission on Labour in India in 1931. The findings were these. The making of beedi is an industry widely spread over the country. It is partly carried on in the home but mainly in the workshops in the bigger cities and towns. Every type of building is used, but small workshops preponderate. It is there that the graver problems mainly raise. Many of these places are small airless boxes. There are no windows where workers are crowded. There are dark C semi basements with lamp and floors. Sanitary conveniences and arrangements for removal of refuses are practically absent. Payment is by piece rate. The hours are unregulated. Many smaller workshops are open day and night. There are no intervals for meals. There are no weekly holidays.

In 1944, the Government of India appointed a Committee under D the Chairmanship of Shri D. V. Rege to investigate conditions of industrial labour. The report referred to the contract system whereby the factory owner engaged a large number of middlemen supplied them with raw materials and purchased finished products from them. The report found that unhealthy working conditions, long hours of work, employment of women and children, deduction from wages and the sub-contract system of organisation required immediate attention. E It was desirable to abolish outworker system and to encourage establishment of big industries if protective labour legislation was to be enforced with success.

In 1946, the Government of Madras appointed a Court of Inquiry into labour conditions in beedi, cigar, snuffcuring and tanning industries. There were 90,000 workers depending on beedi industry in F Madras. Of these, 26,500 workers were women. Employment of children in the Industry was universal. 2/5ths 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.

G In 1954, the Government of India appointed Shri 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 home work systems enriched proprietor at the expense of the worker and also deprived the latter of his bargaining power in H 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.

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 was reluctance 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 working places.

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.

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.

It is in this background that the Act came into existence. In *State of Madras* v. *Rajagopalan*, [1955] 2 SCR 541 this Court held that the previous material in the shape of Reports of Commissions of review the working of the industry was admissible in evidence about the prevailing system and conditions of industry.

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

A 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 matter 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.

B

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 C 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. D 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 E most valuable ingredient, the employees were able to earn some income by again rolling it into beedis and selling them.

The relationship between the proprietor, middlemen and outworkers came up for consideration in this Court in *Chintaman Rao & Anr.* v. *The State of Madhya Pradesh* [1958] SCR 1340. The proprietor of a beedi factory was prosecuted under the Factories Act for non- F compliance 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 G 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 H is referred to where the terms 'contract labour' or 'principal employer' of '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.

The Madras High Court in *M/s. K. Abdul Azeez Sahib and Sons, Four Horse Beedi Manufacturers, Vellore-4 and Ors.* v. *The Union of India* (1973) II M.L.J. 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 date 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 section 7(1)(c), 7(2), 26, 27, 31, and 37 (3) in so far 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 section 7(1)(c), 7(2), 26 and 27 are *ultra vires* and illegal and unenforceable against the petitioner who are manufacturers of cigar or cigar rollers.

The Bombay High Court in *M/s. Chotabhai Purushottam Patel, Beedi Manufacturers of Bhandara & Ors.* v. *State of Maharashtra by Secretary, Industries and Labour Department, Sachivalaya, Bombay & Ors.* (1972) 1 L.L.J., 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 home workers at all.

The Mysore High Court in *P. Syed Saheb & Sons.* v. *State of Mysore* (1972) Mysore Law Journal 450 held that sections 3 and 4 of the Act are constitutional and not violative of Articles 14 and 19 (1)(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-

A 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.

The Kerala High Court in *Chirukandeth Chandrasekharan* v. *Union of India* (1972) 1 L.L.J. 340 held that the provisions of sections 2(g)(a), 2(m) 3, 4, 21, 26 and 27 of the Act impose unreasonable B 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 to 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 imposition of 5 per cent on the C 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 provision 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 in as much as the quality of beedis would go down if the workers are assured that more than 5 per cent will not be rejected.

D

The Andhra Pradesh High Court in Civil Appeals Nos. 1972 and 1988 of 1971, held that sections 3 and 4 of the Act offend Articles 14 and 19 (1)(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 in- E dependent contractor where he is employing labour for and on his own behalf. There he is the principle employer. No artificial relationship of master and servant arises as a result of the operation of the definitions in section 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.

F 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 G 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 prosection 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, H provident funds, employers' libility, 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. A

The scheme of the Act relates to provisions regarding health and welfare, conditions of employment, leave with wages, extension of benefits by applying other Act 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. B C D

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.

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. E F

Sections 3 and 4 of the Act were challenged as violative of Article 19(1)(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 of refusal of a licence. These matters as set out in section 4 of the Act are (a) suitability of the place of 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 G H

A financial resources of the applicant including his financial capacity to meet the demands arising out of the provision of the laws for the time being in force relating to the welfare of labour (d) whether the application is made bonafide 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 writ-
B ing 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
C features which are to be considered but also rule out any arbitrary act. There is machinery as well as procedure for determining the grant of refusal of a licence. The application for grant of a licence is to be determined on objective consideration as laid down in the section. There is neither unfairness nor unreasonableness in sections 3 and 4 of the Act.

The validity of the Act was challenged on the principal ground that
D 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
E 2(g)(a) and 2(m) read with sections 2(e) and (f) of the Act are said to create a totally artificial and fictional definition of employer and thereby to cast 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 con-
F trol. 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
G 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.

The Act defines in section 2(e) contract labour meaning any per-
H son 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 (i) any labour 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 (ii) any person not employed by an employer or a contractor but working with the permission of, or under agreement with, the employer or contractor. 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 premise.. Section 2(i) 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.

These definitions indicate these features. First, there are workers in industrial premises and workers in 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, supply goods or otherwise a substantial interest in the affairs of any establishment.

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

A 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 B because the sub-contractor 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 estab- C lishment, 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.

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 D cannot be any question of unreasonableness in such a case. In the second category the manufacturer of 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 E 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 F 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.

Therefore, the manufacturers or trade mark holders have liability G 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 H such contract labour. It is only when the contractor engages labour for or on his own behalf and supplies the finished product 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.

This Court in *Dewan Mohideen Sahib* v. *United Bidi Workers' Union Salem,* [1964] 7 S.C.R. 646 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.

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.

This Court in *Silver Jubilee Tailoring House & Ors.* v. *Chief Inspector of Shops and Establishments & Anr.* (Civil Appeal No. 1706 of 1969 decided on 25th September, 1973) 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

A 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
B could take cloth for stitching to their homes.

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
C 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 factor of equipment where it is customary for servants to provide for their own equipment. Little weight can today be put upon the provisions of
D 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 re-stitch 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
E 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.

The present legislation is intended to achieve welfare benefits and amenities for the labour. That is why the manufacturer or trade marks
F 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
G to the control of principal employer. That is why the statute says that even if the contract 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 manu-
H facturer engages contract labour through a contractor the manufacturer will require the contract or 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.

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 manufacurer'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.

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 than 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.

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).

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

A 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.
B

For the foregoing reasons the provisions of the Act in particular contained in sections 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.

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 Articles 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 Articles 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 calender year. In the case of a young person leave is at the rate of one day for very 15 days of work during the previous calender year. There are provisions as to calculation of leave which are not material in the present case.

Under section 27 of the Act an employee shall be paid at the rate equal to the daily everage of his full time earning for the days on which he had worked during the month immediately preceding his leave exclusive of any overtime 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.

The word "establishment" is defined in section 2(h) of the Act to mean any place or premises including the 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 angency in any establishment and include any labour who is given raw materials by an employer or a contractor at home referred to as the home worker and 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 home worker during leave period.

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.

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 on increasing the income.

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 provisions 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 conteplated 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.

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 home workers 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 full time earnings of home workers.

A The works 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 home worker 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
B 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.

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
C 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.

D 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 4.30 for rolling 1000 pieces. Therefore, the Financial burden on
E account of leave wages will not be higher to constitute any unreasonable restriction.

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
F 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 home workers will get wages for the leave period corresponding to the number of beedis manufactured by him for a particular employer. The hours
G 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.

H 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. A

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 tender 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. B C D

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 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 hours of work. E F

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 home workers. 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 home worker 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 preceeding month. In the case of home workers it will be the average of 30 days earnings. 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 G H

A 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 B worker is concerned day shall mean any period.

The manner in which leave wages for workers in industrial premises and home workers 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 C 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 No. XIII. Form No. XIII 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 No. XIV. There are four columns showing the date, D whether work was done, 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 worker hours of work are not necessary. In the case of employee industrial premises columns 8 and 9 show *inter alia* the group, relay, E 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.

Reference was made to four earlier decisions of this Court for the F purpose of showing that sections 26 and 27 are inapplicable to home workers. These decisions are *Shri Chintaman Rao & Anr.* v. *The State of Madhya Pradesh*, [1958] S.C.R. 1340; *Shri Birdhichand Sharma* v. *First Civil Judge, Nagpur & Ors.*, [1961] 3 S.C.R. 161; *Shankar Balaji Waje* v. *State of Maharashtra*, [1962] Suppl. 1 S.C.R. 249 and *M/s. Bhikuse Yamasa Kshatriya (P) Ltd.* v. *Union of India* & Anr. [1964] 1 S.C.R. 860. These four cases were decided with reference to the Factories Act. Sections 79 and 80 of the Factories G Act were considered there. These two sections are in similar language to section 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.

H In *Chintaman Rao* (supra) 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 (supra) 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.

In *Birdhichand Sharma* case (supra) 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 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.

In *Shankar Balaji Waje* case (supra) 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 (supra) was distinguished on the facts. The minority view was that the workers in *Shanker Balaji Waje* case (supra) were of the same type as *Birdhichand Sharma* case (supra). In *Shankar Balaji Waje* case (supra) the majority view was that there was contracts 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.

In *Bhikuse Yamase* case (supra) 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

A 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 B 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.

C 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" D 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 (supra) 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" E would be to entitle a worker annual leave under section 79 of the Factories Act in *Birdhichand Sharma* case (supra).

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 F 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 (Supra) the majority view was that the expression "total full time earn- G ings" 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 (supra) were held not 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 H to workers. The majority view in *Shanker Balaji Waje* case (Supra) 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 woks 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 workers 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 workers 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 the 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 worker 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.

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 dfined 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 defination 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 house which are establishments. The defination 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 home workers in establishments. Therefore, the proivsions contained in section 31 of the Act cannot be said to be unreasonable restrictions.

The Petitioners and the appellants next contended that Rule 37 of the Maharasthra Rules and Rule 29 of the Mysore Rules framed under section 44 of the Act imposed unreasonable restrictons on the beedi and cigar manufacturers. Rule 37 of the Maharashtra Rules

A provides that no employer or contractor shall ordinarily reject as sub-standard or chhat or otherwise more than 5 percent 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 B at which wages are payable to him for the beedis or cigars or both which have not been so rejected.

Rule 29 of the Mysore Rules provides that no employer or contractor shall ordinarily reject an 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 C contractor may effect such rejection upto 5 per cent for reasons to be recorded and communicated in writing to the worker.

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.

D The Kerala High Court held that Kerala rule 29 fixes arbitrary percentage and is not in the interest of the general public. The inposition 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.

E

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 upto 5 per cent is permissible only after recording reasons therefore. But if the employer F finds that the quantity of sub-standard 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.

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 G 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 H lesser rate. The Bombay High Court further found that pilfering of tobacco was an accepted vice of the industry. Inspite of that melody rejection in the industry hardly exceeded 3 per cent. The Bombay High Court found 5 per cent rejection to be reasonable.

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.

On behalf of the petitioners and the appellants it was said that the word "sub-standard" 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 any thing 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 rihgt of appeal from the decision of the Inspector to the Chief Inspector.

It therefore apears 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 per cent. For that a dispute is raised before the appropriate authorities set up under the Rules. The State Government under Sections 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 Apeal to the Chief Inspector.

A Under Rule 29 of the Mysore Rules rejection of more than 2 per cent and upto 5 per cent is required to be for reasons in writing. Rule 37 of the Maharashtra Rules provides for rejection upto 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 B 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 abligation to make payment at half of the rate as rejected beedis if such rejection was not due to the wilful negligence of the employee.

C 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 upto 5 per cent. The Rules further used the word 'ordinarily' in regard to such rejection. D 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 word "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 on rejection E 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 restricton on the right of rejection.

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 F 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 sub-standard beedis. It is also reasonable to hold that home workers will be interested in seeing that the beedis are not sub-standard because in the process home workers would be earning less. The Maharashtra Rule is intended to eliminate exploi- G tation 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.

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 H Act had been applied by notification under section 2(i) 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 home workers. 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 women 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 women 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.

For these reasons, we hold that Parliament had legislative competence in making this Act and the provisions of the Act are valid and do not offend any provisions of the Constitution.

The Writ Petitions Nos. 127-132 of 1972 are dismissed. The Judgments of the Madras High Court, Bombay High Court and the Andhra Pradesh High Court are set aside, and Civil Appeals Nos. 2516-23, 2560-69, 2661-64 of 1972, 66-69, 72-75, 1307, 854-56, 857-59, 1203 and 1204 of 1973, 307-311 of 1972 and 173 of 1973 are dismissed. The State of Maharashtra and the Union of India appeals against the judgements of the Bombay High Court and the Andhra Pradesh High Court being Civil Appeals Nos. 1864-73/1971 and 1972-88/1971 respectively are accepted. The appeals from the Judgement of the Gujarat High Court and Mysore High Courts being Civil Appeals Nos. 585/1971 and 1553, 1614-18, 1769/1971, 1131-33 and 1440 of 1972 respectively are dismissed. The parties will pay and bear their own costs.

ALAGIRISWAMI, J.—I am substantially in agreement with the judgment delivered by my Lord, the Chief Justice, but I think it is necessary to add a few words to clarify certain matters in view of the complications that are likely to arise otherwise. The Act is the result of a compromise between the original intentions of the Government and the modifications they had to make in the proposed measure as a result of concessions intended to bring the home workers within the scope of the Act. The original intention was not to permit beedi rolling in private homes which will involve thousands of labourers in thousands

A of far-flung homes and the difficulty of applying the provisions of the measure to them. The result is an Act which is likely to give rise to many difficulties in its actual working. It is obvious on a reading of the measure that its purpose is to rope in every possible person who could be brought in as an employer. But the result of the definitions in the Act is that every body would be a principal employer, employer and contractor and every labour will be contract labour.

B Take the definition of the word "contractor". In so far as it says that it means "a person who, in relation to a manufacturing process, undertakes to produce a given result by executing the work" it is not objectionable and refers to a contractor ordinarily understood. But when the words "through contract labour" are added it leads to com-
C plications. "Contract labour" is defined as "any person engaged or employed in any premises by or through a contractor". Therefore, all labour employed by a contractor is contract labour. If any manufacturer employs any person through a contractor, the labour would be contract labour. Then again "contractor" also means "a person who engages labour for any manufacturing process in a private dwelling house". In such a case even a principal employer who engages labour
D for any manufacturing process would be a contractor. The further definition of the word "contractor" includes a sub-contractor, agent, *munshi, thekedar* or *sattedar*. These are obviously included to cover a class of persons dealt with by this Court in certain decisions including *Chintaman Rao's Case* (1958 SCR 1340). An "employer" is defined to be, in relation to contract labour, the principal employer. I have already pointed out that contract labour would include labour employed
E even by the manufacturer himself direct. "Principal employer" is defined as "a person for whom or on whose behalf any contract labour is engaged or employed in an establishment". Therefore, when contract labour is employed for a person he is principal employer. When contract labour is engaged or employed on behalf of a person he is also a principal employer. What distinction could be made between the two is a little difficult to understand. However, in the second part of de-
F finition of "employer" in relation to labour other than the contract labour in clause 2(g) (b)—though in view of what I have said earlier it is difficult to see what that other labour could be—there can be no objection to the person who has the ultimate control over the affairs of any establishment being considered the employer, as also any person to whom the affairs of the establishment are entrusted, whether such other person is called the managing agent, manager, superintendent, or by any
G other name. But to call a person who has, by reason of his advancing money, supplying goods or otherwise, a substantial interest in the control of the affairs of any establishment, also an employer is very difficult to justify. It is apparently intended to cover cases where a person runs business *benami* i.e. in another's name. There can be no objection to such a provision. But merely because a person lends or advances money or supplies goods he cannot be called an employer. He
H may have a substantial interest in the control of the affairs of the manufacturing establishment in the sense that the security for the money advanced depends upon the manufacturing establishment being run properly or even in the sense that a person supplying goods might also be

interested in the control of the affairs because he may be supplying goods on credit. I think the words "or who has, by reason of his advancing money, supplying goods or otherwise, a substantial interest in the control or the affairs of any establishment" should be struck down.

The interpretation placed upon the expression "employer" by the learned Attorney General does not really flow from the various definitions in the Act. I think it is not without significance that the learned Attorney General put forward this interpretation because it is only on that basis that the Act could be workable at all. While I realise that courts should give effect to the intentions of the legislature, it can be done only if that is possible without doing violence to the actual language of the statute. The various definitions plainly seek to rope in everybody who has anything to do with the manufacture of beedies and while trying to give effect to the penal provisions in the statute considerable difficulties will arise. There will on the one hand be the actual occupier of the industrial premises. There will be on the other hand a person who might have advanced money to him and supplied goods to him and therefore may be substantially interested in its control. The actual occupier himself might be a contractor and in that case he as well as the person on whose behalf beedies are manufactured would be liable. Who, in that case, would be actually liable? I do not agree with the view taken by the Bombay High Court that the Act exhibits an intention to retain the system of contractors. It only takes notice of the existence of the system of contractors and it appears to me that by making the principal employer responsible in every case it is actually trying to force the principal employer to undertake the work of manufacture himself rather than give it to contractors because in any case he would be ultimately liable financially and otherwise to everyone of the workmen employed. Quite possibly if an independent contractor is one of the type envisaged by the Madras High Court in its judgment in *Abdul Aziz Sahib & Sons* v. *Union of India* (1973 2 MLJ 126) that is, of a person buying the materials from the person whom it calls the trade mark holder and then selling the beedies to him, he could be called an independent contractor. But he is actually a manufacturer himself in that case. He may be selling the beedies manufactured by him not to one person but to many persons. The conditions in the beedi industry being that the actual person who ultimately sells the beedies to the public employs various means by which he does not take any responsibility for the welfare of the workers employed in the industry, the Act proceeds on the basis that he must be made responsible. I find it difficult to accept the contention of the learned Attorney General that the criterion adopted by the Madras High Court is both wide as well as restrictive. It can be said to be wide or restricted, as one choose to call it, only if one envisages a situation like the one in *Dewan Mohideen's case* (1964 7 SCR 646). But then if the so called contractor is really a *benami* for the manufacturer there is no difficulty in holding the manufacturer responsible.

The main contentions put forward on behalf of the various appellants are regarding the provisions of ss. 26, 27, 29, 31 and 37 of the Act and Rule 37 of the Maharashtra Rules and the corresponding rules

made by the various other States. The very convincing reasons and the criticism made by the various appellants were not met by the arguments advanced by the learned Attorney General. It is now well established from the *Chintaman Rao's case* (supra), Shankar Balaji's case (1962 Supp. 1 SCR 249) and *Bhikuse's case* (1964 1 SCR 860) that in this industry even people working in factories belonging to manufacturers come as they like, go as they like, work on some days even for one hour a day, and there are no fixed hours of work. This sort of situation exists mainly due to the fact that the payment is made to the worker on a piece rate, and the work is also carried on as a part-time occupation. What applies to them applies with greater force to the home workers. Therefore when section 26 provides that every employee in an establishment (which will include a dwelling house) shall be allowed in a calendar year leave with wages at the rate of one day for every twenty days of work performed by him during the previous calendar year, it leads to real difficulty. There may not be much point in the criticism that whereas the Factories Act provides for annual leave only for person who had worked for 240 days in a year this Act provides for one day's leave for every 20 days during which they have worked. It may be possible for the contractor to know on how many days the home worker has worked from the log book maintained by him. But what is the wage which has to be paid to him during the period of leave? That term is not defined in the Act and it is not permissible to refer to other Acts in order to understand the meaning of that term. Even if we take it to be what it means in popular usage it is not possible to say what are the wages in the case of a home worker. A home worker might work for one hour on one day, eight hours on another day and not at all for a number of days. What would be the wages payable to him? I am not canvassing the reasonableness of this provision but of the difficulty in giving effect to the provision. The same criticism applies to various other provisions contained in that section. Section 27 provides that for the leave allowed to an employee under section 26 he shall be paid at the rate equal to the daily average of his total full-time earnings for the days on which he had worked during the month immediately preceding his leave exclusive of any overtime earnings and bonus but inclusive of dearness and other allowances. The term "Full-time earnings" has been interpreted in *Shankar Balaji's* and *Bhikuse's* cases. If it is not applicable to an employee of the type of Pandurang in *Shankar Balaji's* case surely it cannot apply to a home worker. This difficulty is not got over by *Explanation II* which describes a "day" as any period during which the home worker was employed during a period of twenty-four hours. That does not help in calculating the full-time earnings. Again, what meaning are we to give to the term "full-time earnings" when there is no period of work at all and there are no fixed hours of working in the case of a home worker? I am not satisfied with the learned Attorney General's interpretation of section 23 that it is not permissible after this Act came into force for any worker of the type of Pandurang in *Shankar Balaji's case* to work under the conditions described in that case. If a person should not be employed in an industrial premises except in accordance with the notice of work displayed in the premises under section 22, it

does not mean that he cannot work for less than the period mentioned in the notice of work. Only if he is employed for a longer time than that mentioned in the notice of work would the occupier of the industrial premises make himself liable to be proceeded against. In any case even if that interpretation is correct that cannot apply to a home worker.

The difficulty of applying the provisions of the Maternity Benefits Act is again apparent. The very purpose of allowing the home workers to work in their homes being that the work of rolling beedies is light work, which men and women can do in their homes during their spare hours, the provision of the Maternity Benefits Act regarding women not being allowed to do arduous labour for a certain period before delivery and after delivery is not apparent. And how can the provision be applied to women who cannot be said to be, so to say, employed continuously for a certain period before the confinement.

Under section 31 no employer shall dispense with the services of an employee who has been employed for a period of six months or more, except for a reasonable cause, and without giving such employees at least one month's notice or wages in lieu of such notice. Is it enough that the employee has been employed for a period of six months if he has been working for one or two days every month during those six months, and in any case how are his wages in lieu of notice to be determined? And who would be the "employer competent to dispense with the services of the employee"? If a contractor dispenses with the services of an employee in contravention of section 31 and is convicted under section 33 for the first time, would the principal employer be liable to imprisonment if there is a second prosecution? These are some of the problems which are likely to arise in actual working of the Act.

I must make it clear that my objection is not to any of the provisions on the ground of their un-reasonableness or constitutionality. The long abstracts which the learned Attorney General read from the Report of the Royal Commission on Labour, the Rege Committee Report, and the Reports of Dr. B. V. N. Naidu and Mr. M. A. Natarajan depict the miserable conditions in which the workers in the industry work. Nobody can dispute the need for setting right those evils. But good intentions should not result in a legislation which would become ineffective and lead to a lot of fruitless litigation over the years. I think it is necessary to utter a word of caution lest the fact that we uphold the validity of the Act as such should be interpreted by various courts and tribunals as sanctioning one interpretation or the other of the various provisions. That would be opening up the pandora's box of litigation. I would therefore hold in agreement with the majority of the High Courts that sections 26, 27, 31 and 37(3) do not apply to home workers.

And finally as regards Rule 37 of the Maharashtra Rules, it was accepted by the appellants as reasonable if it is interpreted as mean-

A ing that ordinarily chhat up to five per cent could be rejected, but higher than that is rejected it would be subject to a decision by the Inspector. It was said that to make the rejection of chhat in excess of five per cent to depend upon the decision by the Inspector would make all those beedies useless because they have got to be heated immediately so that the beedies may not be spoilt because of the B moisture. I think that interpretation is correct and the other States may amend the Rules so as to bring it in line with the Maharashtra Rule.

I have tried to interpret the various provisions of the Act not in order to consider their constitutionality or the reasonableness of the restrictions as reflecting on the constitutionality, but of their interpretation in so far as they are likely to lead to difficulties in actual C application of the provisions of the Act. I think it would be good in the interest of all concerned if the Act is amended as early as possible to remove all the lacunae and the difficulties pointed out above. These difficulties have arisen because of an attempt blindly to apply the provisions, which would be quite workable if they are applied to conditions where the Factories Act would be applicable, D where the labour is regular in its attendance every day as well as over a period, to conditions of work which are vastly different as well as to people who work at home without a conscious attempt to mould them to suit those conditions. The sooner that is done the better for all concerned.

P.H.P. *Appeals dismissed.*