

The Bombay Shops and Establishments Act, 1948

BOMBAY ACT NO. LXXIX OF 1948

[11th January 1948]

An Act to consolidate and amend the law relating to the regulation of conditions of work and employment in shops, commercial establishments, residential hotels, restaurants, eating houses, theatres, other places of public amusement or entertainment and other establishments.

WHEREAS it is expedient to consolidate and amend the law relating to the regulation of conditions of work and employment in shops, commercial establishments, residential hotels, restaurants, eating houses, theatres, other places of public amusement or entertainment and other establishments and for certain other purposes hereinafter specified. It is hereby enacted as follows:-

CHAPTER I

Preliminary

1. Short title extent and operation. This Act may be called the Bombay Shops and Establishments Act, 1948.

[(2) It extends to the whole of the State of Maharashtra.]

(3) It shall in the first instance come into force in the local areas specified in schedule I:

^Provided that, on the commencement of the Bombay Shops and Establishments (Extension and Amendment) Act, 1960, Mah. XXVI of 1961, all the provisions of this Act shall also come into force in each of the areas in which the Central Provinces and Berar Shops and Establishments Act, 1947, C.P. and Berar Act, XXII of 1947, or the Hyderabad Shops and Establishments Act, 1951, Hyd. X of 1951, was in force immediately before such commencement.]

(4) The State] Government shall by notification published in the Official Gazette direct that all or any of the provisions of this Act shall come into force in such other local areas having population of twenty-five thousand and more as may be specified in the notification.

(5) The 5 [State] Government may also by a like notification direct that all or any of the provisions of this Act shall come into force in such local areas having population of less than twenty-five thousand as may be specified in the notification.

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Whether stands repealed by Motor Transport Workers Act, 1961 - According to ordinary principles of interpretation of statutes, repeal by implication is not favoured - None of the provisions of Bombay Shops and Establishments' Act can be said to be conflicting or inconsistent with the provisions of Motor Transport Workers Act - The former does not stand repealed by the latter.

Kishorbhai Khamanchand Goyal v. State of Gujarat &, Anr. 1996 II CLR 266 (Guj.H.C.)

1. For Statement of Objects and Reasons, see Bombay Government Gazette, 1948, Part V, page 499.
2. This Act was extended to the rest of the State of Maharashtra by Mah. 26 of 1961, s.2.
3. Sub-sec. (2) was substituted by Mah. 26 of 1961, s.3(a).
4. This proviso was added, *ibid* s.3(b).
5. This word was substituted for the word "Provincial" by the Adaptation of Laws Order, 1950.

2. Definitions.-In this Act, unless there is anything repugnant in the subject or context,-

(1) "Apprentice" means a person who is employed/whether on payment of wages or not, for the purpose of being trained in any trade, craft or employment in any establishment;

⁶ [(2) "Child" means a person who has not completed his fifteenth year of age; but does not include a person who has, before the date of commencement of the Bombay Shops and Establishments (Amendment) Act, 1977, completed his twelfth year of age even though he has not completed his fifteenth year of age, if he is on the day immediately preceding the said date an employee in any establishment to which this Act applies;]

⁷ (3) "Closed" means not open for the service of any customer, or for any business, of the establishment, or for work, by or with the help of any employee, of or connected with the establishment;]

(4) "Commercial establishment" means an establishment which carries on, any business, trade or profession or any work in connection with, or incidental or ancillary to, any business, trade or profession ^and includes establishment of any legal practitioner, medical practitioner, architect, engineer, accountant, tax consultant or any other technical or professional consultant and also includes] a society registered under the Societies Registration Act, 1866 (XXI of 1860), and a charitable or other trust, whether registered or not, which carries on ⁹ [whether

for purposes of gain or not] any business, trade or profession or work in connection with or incidental or ancillary thereto but does not include a factory, shop, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment;

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There is nothing in the definition of section 2(4) of "commercial establishment" which indicates that before an establishment can become a commercial establishment it must have a certain fixed place or abode, premises or location from where it operates. The idea of premises is not implicit in the definition of, "Commercial establishment".

The organisation to be a commercial establishment must not only be an organised activity for carrying on any business, trade or profession but the activity must be carried in a commercial manner. If these two conditions are satisfied it is wholly irrelevant that such an activity of which there is an employer and in which there are employees will be a commercial establishment only because it has no particular premises from which it operates.

A sales organisation with a regional officer" at the head of a region and having salesmen in different parts of the State, the organisation having no specific office or its own, would nonetheless be a commercial establishment if the organisation carries on any business, trade or profession, etc. (1973) I LLJ 447 Guj.

Commercial establishment is not only an establishment which carries on trade but also business, whether for the purpose of gain or not. The profit or intention to make profit is not an essential part of the legal definition of trade or business. Business includes trade. The occupation followed by the applicant can well come within the purview of the word "business" as well as "trade" and the applicant's premises is a "commercial establishment" as defined in section 2(4) (1971) II LLJ 31 (Bom.H.C.)

Establishment of a Legal Practitioner - Amendment to S.2(4) of 1948 Act effected by S.2 (b) of the amending Maharashtra Act 64 of 1977 sought to enlarge the definition of "Commercial establishment" by including the establishment of a legal practitioner, architect, engineer, accountant, tax consultant and certain other categories. But, there is no common properties or characteristics to be found in other commercial establishments and the establishment of a legal practitioner. There is no rational bases for herding them together and the conclusion that they have been brought together arbitrarily is inescapable. The inclusion of the establishment of a legal practitioner in

commercial establishment does not answer the test of reasonableness and the inclusion would therefore, be violative of Art. 14 of the Constitution.

Consequently, the provisions of the amending Act (Mah. Act 64 of 1977) insofar as they include the establishment of a legal practitioner in the Bombay Shops and Establishments Act, 1948 are struck down. *Narendra Kesharichand Fuladi v. The State of Maharashtra* 1985 ILLN512(Bom.H.C.).

Commercial Establishment- The firm Khanna Construction House has put up a building and parts thereof have been let out to various business concerns paying rent which totals Rs.88000/- per month. The occupants are tenants of the firm. The firm has employed workmen to provide various facilities and amenities to the occupants and those visiting the premises in their occupation. The Labour Court held that the business being carried on by the firm would amount to industry and there is no error in this finding. Commercial establishment as per S.2(4) of the Act includes an establishment which carries on any business. The very size of the establishment and the quantum of rent being recovered implies that the firm is in the business of providing accommodation plus service to residents who, in consideration thereof pay rent to it. -The enterprise amounts to "commercial establishment" within the meaning of the expression in the Act. *D.B. Khade v. Ramsingh Jaysing* 1986 (53) FLR 378 = 1986 I LLN 771 (Bom.H.C.)

The correct test of finding whether a professional activity falls within the definition 2(4) of the AeJ. is whether the activity is systematically and habitually undertaken for production or distribution of goods or for rendering material services to the community with the help of employees in the manner of trade or business in such an undertaking. It is also necessary to construe the word, "profession" in section 2(4).

It is clear that; a professional activity must be an activity carried on by an individual by his personal skill and intelligence. There is a fundamental distinction, therefore, between a professional activity and an activity of a commercial character and unless the profession carried on by the appellant also partakes of the character of a commercial nature the applicant's dispensary cannot fall within the ambit of section 2(4) of the Act.

Dispensary would fall within the definition of section 2(4) if the activity of the appellant is organised in the manner in which a trade or business is generally organized or arranged and if the activity is systematically or habitually undertaken for rendering material services to the community at large or a part of such community with the help of the employees and if such an activity involves co-operation of employees.

To put it differently the manner in which the activity in question is organised or arranged; the condition of the co-operation between the employer and the employee being necessary for its success and its object being to render material service to the community, can be regarded as some of the features which render carrying on of a professional activity to fall within the ambit of section 2(4) of the Act. Tested in the light of these principles, the case of the doctor does not fall within the purview of the Act. *Devendra Surti v. State of Gujarat* (1969) II LLJ 116 - 1969 LIC 245.

The ordinary meaning of an establishment given in the dictionary as equable to a place where one is permanently fixed for residence or business; such as an office or place of business with its fixtures, is not a safe guide for interpretation of the expression commercial establishment. The criteria to decide whether a particular establishment is a commercial establishment is only to find whether a regular mercantile activity is carried on by a person on behalf of another or by an individual himself with the assistance of other and whether such activity is regular and is commercial in its outlook and purpose. If such a meaning is attributable to an activity in a particular area a fixed place or premises for carrying on such a commercial activity is not the *sine qua non* in order to make such an overall integrated operation as one of a part of his own abode for commercial activities connected with and incidental to the carried on by a person engaged in a commercial establishment. It is not disputed that the employee is carrying on the business of his employer but in his own home. The utilisation employer's trade is by itself an incident that there is commercial establishment. *Laxmi Vishnu Textile Mills Ltd. v. Balakrishnan* (1978) 52 FJR 104 (Mad.H.C.)

There is nothing in the definition of "commercial establishment" which indicates that before an establishment could be a commercial establishment it should have a certain fixed place or abode, premises or location from where it operates. The act is for the benefit of the "persons employed" in shops and establishments. On reorganisation of an establishment its head office was abolished and some clerical staff from the head office came to be attached to a factory of the establishment. The authorities under the Shops Act sought to apply the Act to these employees treating them as "clerical department" of the factory. Held that when it was not necessary for an establishment to have a definite location or abode even in order to be a "commercial establishment" it was not necessary that a department should function at a separate identifiable place. The functional division of work might constitute a department. There was a clerical department in the head office before it was abolished. The same work that was being done at the head office was being done from the factory premises by the clerical employees. These employees would therefore, constitute a "clerical department"

of the factory and Shops Act would be applicable to them. *Guest Keen Williams Ltd. v. State of West Bengal* (1977) 51 FJR 267 (Cal.-D.B).

The notification which seeks to cover under the Shops Act a Maternity Home run by medical practitioner is beyond the powers conferred by the act and therefore invalid. There is no evidence to show that the organisation is nothing more than consisting of employees who aid the respondent in her medical practice and the entire clientele depends on her personal skill and knowledge. *The State of Maharashtra v. Smt. Dhanalaxmi V. Meisheri* 1981 APS L.C, 97.

Amendment to S.2(4) of 1948 Act effected by S.2(b) of the Amending Maharashtra Act 64 of 1977 so as to include establishment of legal practitioner in the definition of "Commercial establishment" is unreasonable, irrational and arbitrary and also violative of Art. 14 of the Constitution.

The position of law as it stood in respect of the Shops Act prior to the amendment effected by Mah. Act 64 of 1977 was that the professional activity of a legal practitioner could not be included in the definition of 'commercial establishment' under section 2(4) of the unamended Act. This exclusion was made by the Courts on principle of interpretation. In *Sakharam Narayan Kha^ekar v. City of Nagpur Corporation* 1963 Mah.L.J. 533 the Court took the view that a lawyer who carries on his profession as an advocate is not an 'employer' within the meaning of S.2(7) of the Shops Act and he is not liable to have any establishment registered under S.7 of the Act. An activity to be a profession must be one carried on by an individual by his personal skill, intelligence and dependent on individual characteristics and it is the personal skill, intelligence, study, integrity which is a core of professional activity.. The very concept of activity which can justly be called commercial activity, must imply profession of law carried on by an advocate in any manner or to any extent cannot be said to partake of commercial character or to be a commercial activity. The activity of an advocate carrying profession of law is radically distinguished from any other commercial activity. The role of an advocate in practising and discharging his duties is participation in administration justice, which is a regal function of the state.

Amending Mah. Act 64 of 1977 sought to enlarge the definition of 'Commercial establishment' by including the establishment of a legal practitioner, architect, engineer, accountant, tax-consultant and certain other categories. But, there are no common properties or characteristics to be found on other commercial establishments and the establishment of legal practitioner which have been herded together. There is no rational basis for herding them together and the

conclusion that they have been brought together arbitrarily i inescapable. Therefore, the inclusion of the establishment of a legal practitioner in th context of the connotation of commercial establishment does not answer the test o reasonableness and the inclusion would therefore, be violative of Art. 14 of the Constitution of India also on the ground of unreasonableness, irrationality and arbitrariness.

Consequently, the provisions of the amending Act (Mah. Act 64 of 1977) insofar as the included the establishment of a legal practitioner in the Bombay Shops & Establishment Act 1948 are struck down. *Narindra Keshrichand Fuladi v. The State of Maharashtra* 1986 I CLR 15 (Bot H.C.)

Employees⁹ State Insurance Act, 1948- S.I sub-sections (4) and (5) - The place where the petitioner has been carrying on business is a shop and therefore the Act is applicable for it.

The petitioner, a partnership firm carrying on the business of playing music on occasions, such as, marriages and other social functions, questioned its liability to pay contribution under the provisions of the Act on two grounds (i) that the place where it was carrying on business was not a shop and (ii) that its business being one of intermittent or seasonal character the Act could not be extended to its business. The petitioner's petition under S.75 of the Act being rejected by the Employees' Insurance Court, Jaipur and the petitioner's appeal under S.82 of the Act being dismissed by the High Court of Rajasthan, the petitioner has filed this Special Leave Petition under Art. 136 of the Constitution of India.

Held: The place where the petitioner has been carrying on business is a shop. The Employees' State Insurance Act is applicable to it by virtue of the notification dated September 20, 1975 issued under sub-section (5) of S.I of the Act by the Government of Rajasthan extending all the provisions of the Act to shops employing 20 or more persons. The first contention of the petitioner, therefore, fails. The second contention of the petitioner is that as its business is of intermittent or seasonal character the Act could not be extended to the business. There is no much substance in this contention too. The petitioner cannot rely on sub-section (4) of S.I of the Act as that sub- section refers to factories only. In this case we arc concerned with a shop and not a factory. There is no merit in this Special Leave Petition. *Mis. Hindu Jea Band., Jaipur v, The. Regional Director, E.S.I.C., Jaipur* 1987 I CLR 228 (S.C.).

(5) "Day" means the period of twenty-four hours beginning at midnight:

Provided that in the case of an employee whose hours of work extend beyond midnight, day means the period of twenty-four hours beginning when such employment commences irrespective of midnight;

"[(6) "Employee" means a person wholly or principally employed, whether directly or through any agency, and whether for wages or other consideration in or in connection with any establishment; and includes an apprentice, but does not include a member of the employer's family;]

(7) "Employer" means a person owning or having ultimate control over the affairs of an establishment;

(8) "Establishment" means a shop, commercial establishment, residential hotel, restaurant, eating house, theatre, or other place of public amusement or entertainment to which this Act applies and includes such other establishment as the "[State] Government may, by notification in the *Official Gazette*, declare to be an establishment for the purposes of this Act;

(9) "Factory" means any premises which is a factory within the meaning of ^[clause (m) of section 2 of the Factories Act, 1948,(LX1II of 1948) or which is deemed to be a factory under section 85 of the said Act];

(10) "Goods" includes all materials, commodities and articles;

(11) "Holiday" means a day on which an establishment shall remain closed or on which an employee shall be given a holiday under the provisions of ihis Act;

(12) "Inspector" means an Inspector appointed under section 48;

(13) "Leave" ^means leave provided for in Chapter VII of this Act;

(14) "Local area" means any area or combination of areas to which this Act applies;

(15)Local authority" means a body specified in Schedule I-A and includes any other body which the State Government may, by notification in the *Official Gazetpfe*, declare to be a local authority for the purposes of this Act];

(16) "Manager" means a person declared to be a manager under section 7;

(17) "Member of the family of an employer" means the husband, wife, son, daughter, father, mother, brother or sister of an employer who lives with and is dependent on such employer; |

(118) "Opened" means opened for the service of any customer, or for any business of the establishment, or for work, by or with the help of any employee of! or connected with the establishment;]

(19) "Period of work", means the time during which an employee are at the disposal of the employer;

(20) "Prescribed" means prescribed by rules made under this Act;

(21) "Prescribed authority" means the authority prescribed under the rules mat under this Act;

(22) " Register of establishment" means a register maintained for the registration of establishments under this Act;

(23) "Registration certificate" means a certificate showing the registration of an establishment;

(24) "Residential hotel" means any premises used for the reception of guests and travellers desirous of dwelling or sleeping therein and includes 15 residential club

(25) " Restaurant or eating house" means any premises in which is carried wholly or principally the business of the supply of meal or refreshments to the public or a class of the public for consumption on the premises;

(26) "Schedule" means a Schedule appended to this Act;

(27) "Shop" means any premises where goods are sold, either by retail, wholesale or where services are rendered to customers, and includes an office a store-room, godown, warehouse or work place, whether in the same premises or otherwise, [mainly used] in connection with such trade or business but does not include a factory, a commercial establishment, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment;

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It is not every establishment in the sense of premises or buildings where business, trade or profession is carried on that is intended to be governed by the Act, but only those premises though carrying on one or the other of these kinds of activities which are of a commercial nature..

A lawyer who carries on his profession as an advocate cannot answer the definition of an "employer" in Section 2(7) of the Act. *Sakharam v. City of Nagpur Corporation* 65 Bom.L.R. 627.

The Office of Chartered Accountant with article clerks and one salaries ordinary clerk is not a commercial establishment so as to attract the provisions of the Act. *N.E. Merchant v. State* 1968 LIC 1034 - AIR Born. 282 1968 Cri.LJ 1041.

The firm of lawyers is also not a Commercial establishment. *Sasidharan v. Peter and Karunakaran* 1978 LIC 1614.

The accused owned small workshop in which he employed 3 workmen. The method of his doing business was to go to the local mills, to collect orders from them for small parts of machinery, to manufacture those parts in his workshop, to deliver the parts to mills when ready, and to collect the money therefore from the mills. No buying or selling was done on the premises. A question arose whether the workshop was a shop, it was held that the workshop in question was not a shop within the meaning of Section 2(27) of the Act. *Kalidas Dhanjibhai v. State of Bombay* LR. 57 Bot. 703 (S.C.).

Where a works place is mainly used in connection with the business of rendering services to customers which is conducted on the premises, it falls within the inclusive part of the definition of the word "shop" in Section 2(27) of the Act, *Homi Bhajiwala v. State* 62 Bom.LR1021.

(28) "Spread over" means the period between the commencement and the termination of the work of an employee on any day;

(29) "Theatre" includes any premises intended principally or wholly for the exhibition of pictures or other optical effects by means of a cinematograph or other suitable apparatus or for dramatic performances or for any other public amusement or entertainment;

(30) "Wages" means wages as defined in the Payment of Wages Act, 1936 (IV of 1936);

(31) "Week" means the period of seven days beginning at midnight of Saturday;

(32) "Year" means a year commencing on the first day of January

(33) "Young person" means a person who is not a child and has not completed his seventeenth year.

3. Reference to time of day.-References to the time of day in this Act are references to Indian standard time which is five and a half hours ahead of Greenwich mean time.

4. Exemption.-Notwithstanding anything contained in this Act, the provisions of this Act mentioned in the third column of Schedule II shall not apply to the establishments, employees and other persons mentioned against them in the second column of the said Schedule:

Provided that the [State] Government may, by notification published in the *Official Gazette*, add to, omit or alter any of the entries of the said Schedule [subject to such conditions, if any, as may be specified in such notification] and on the publication of such notification, the entries in either column of the said Schedule shall be deemed to be amended accordingly.

NOTES

The cumulative effect of all the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, shows that the nationalised banks are independent corporate entities having their own common seal and succession. Though the Central Government has control over the activities of the nationalised bank and the entire capital stands vested with it the bank is not an undertaking or an establishment of the Central Government. Entries in Schedule II of the Bombay Shops and Establishments Act, 1948 have exempted offices of the Reserve Bank and the State* Bank from the provisions of the Act showing that without specific exemptions the provisions of the Act are applicable to those banks. There is no such specific exemption for nationalised banks. A nationalised bank, therefore, cannot claim exemption from the provisions of the Shops and Establishments Act and its failure to renew its registration is an offence punishable with fine.

Corporation of the City of Nagpur v. Gopal Shastri (1977) 50 FJR 231 (Bom.H.C.)

Notification is a conditional legislation - Initially the establishments of the Food Corporation of India in Maharashtra were subject to the Bombay Shops and Establishments Act as a whole. However, as a result of notification issued by the State Government these establishments are totally exempted from the provisions of the Act from 28.3.1985. The employees challenged the notification on the ground that they were not given hearing despite the fact that it affected their vital right; '

Held: The notification constituted a piece of legislation and in the matter of law no one could insist upon a notice of hearing before the law is formulated. There is nothing in S.4 to compel the inference that a notice and hearing were required, once it is held that the notification constituted conditional legislation. Objection held not legal. *Transport and Dock Workers' Union v. Food Corporation of India* 1986 II LLN 681 (Bot. H.C.).

5. Application of Act to other establishments and persons.-(1)

Notwithstanding anything contained in this Act, the [State] Government may, by notification in the *Official Gazette*, declare any establishment or class of establishments to which, or any person or class of persons to whom, this Act or any of the provisions thereof does not for the time being apply, to be an establishment or class of establishments or a person or class of persons to which or whom this Act or any provisions thereof with such modifications or adaptation as may in the opinion of the [State] Government be necessary shall apply from such date as may be specified in the notification.

(2) On such declaration under sub-section (1), any such establishment or class of establishments or such person or class of persons shall be deemed to be an establishment or class of establishments to which, or to be an employee or class of employees to whom, this Act, applies and all or any of the provisions of this Act with such adaptation or modification as may be specified in such declaration, shall apply to such establishment or class of establishments or to such employee or class of employees

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A notification issued under Section 5(1) of the Act is made to apply to a class of workers who are not in the direct employment of the employer, the Notification itself being a deeming provision the concept of employment shall also be deemed in case of such workers. Being a special legislation, court cannot whittle down the full amplitude of the Section (1968) 70 Bom.LR. 817.

Section 5 is intended to include a one man shop.

Accordingly, where the owner of a one-man-shop keeps the shop open for business after 9 P.m. he renders himself liable to punishment under Section 30 read with Section 5 of the Act, *Emperor v. Mohammed* 43 Bom.LR 952.

6. Suspension of all or any of the Provisions of this Act.-The [State] Government may, by notification in the *Official Gazette*, suspend the operation of all or any of the provisions of this Act for such period and subject to such conditions as it deems fit on account of any holidays or occasions.

CHAPTER II Registration of Establishments

7. Registration of establishments.(1) Within the period specified in sub-section (4), the employer of every establishment shall send to the Inspector of the local area concerned a statement, in a prescribed form, together with such fees as may be prescribed, containing-

- (a) the name of the employer and the manager, if any;
- (b) the postal address of the establishment;
- (c) the name, if any, of the establishment;
- (d) the category of the establishment, i.e., whether it is a shop, commercial establishment, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment; and
- (e) such other particulars as may be prescribed.

(2) On receipt of the statement and the fees, the Inspector shall, on being satisfied about the correctness of the statement, register the establishment in the register of establishments in such manner as may be prescribed and shall issue, in a prescribed form, a registration certificate to the employer. The registration certificate shall be prominently displayed at the establishment.

(2-A) A registration certificate granted under sub-section (2), shall be valid up to the end of the year for which it is granted. An application for the renewal of a registration certificate shall be submitted not less than fifteen days before the date of expiry of the registration certificate or of the renewed registration certificate, as the case may be, and shall be accompanied by such fees, and the renewed registration certificate shall be in such form, as may be prescribed.]

(2-AA) If the application for the renewal of a registration certificate is submitted after the expiry of the period specified in sub-section (2A) but within thirty days after the date of expiry of the registration certificate or of the renewed registration certificate, as the case may be, such application shall be accompanied by an additional fee as late fee equal to half the fee payable for the renewal of a registration certificate.

[(2-B) Notwithstanding anything contained in the preceding sub-sections of this section, any registration certificate granted under sub-section (2) or renewal under sub-section (2A) may, at the option of the employer, be granted or renewed for a period of three years at a time, on payment of the fees for that

period, so as to be valid up to the end of the third year from and including the year in which is granted or renewed, as the case may be.]

(3) In the event of any doubt or difference of opinion between an employer and the Inspector as to the category to which an establishment should belong, the Inspector shall refer the matter to the prescribed authority which shall, after an inquiry as it thinks proper, decide the category of such establishment and the decision shall be final for the purposes of this Act.

(4) Within thirty days from the date mentioned in column (2) below in respect of an establishment mentioned in column (1), the statement together with fees shall be sent to the Inspector under sub-section (1):-

| Establishments | Date from which the period of 30 days to commence |
|--|---|
| (i) Establishments existing in local areas mentioned in Schedule I on the date on which this Act comes into force | The date on which this Act comes into force. |
| (ii) Establishments existing in local areas on the date on which this section comes into force. | The date on which this section comes into force in the local areas. |
| (iii) New establishments in local areas mentioned in Schedule I and other local areas in which this section has come into force. | The date on which the establishment commences its work, |

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A place where services are rendered to a customer is a shop for the purpose of the Act and these services may be of different kinds. But it cannot be said that where different kinds of services are rendered for every kind of service which the employer chooses to embark upon after he has registered his establishment, the employer must submit necessary information under section 7 for a fresh registration. If his establishment is already registered and he chooses to widen the nature of his activities in the same establishment, in such a case it is difficult to see how section 7(1) which contemplates an initial registration of the establishment, required to be complied with on every subsequent occasion when the employer embarks on a new venture on the same premises in addition to the original business.

It cannot be said that where different kinds of services are rendered in a shop for every kind of service which the employer chooses to embark upon after he has registered his establishment he must submit necessary information for fresh registration under section 7.

What is required to be registered under Section 7 is the establishment which the petitioner had already registered. If he widens his activities in the same establishment no fresh registration is essential. All that is required of the applicant is to intimate the authorities fact that he has started another business in the same premises under section 8 of the Act.

Dayawanti Bai v. Corporation of the City of Nagpur (1969) 11 LLJ 128 (Bom.H.C.).

If an establishment is already registered and the employer chooses to widen the nature of his activities in the same establishment in such a case section 7(1) which contemplates an initial registration of the establishment, is not required to be complied with on every subsequent occasion when the employer embarks on a new venture on the same premises in addition to the original business, 1969 MLJ 25 (Bom.H.C.).

S.7 - Prosecution for failure to register establishment under the Act

The appellant, dealing in tea, had in the year 1968, godowns wherein tea was stored. One salesman used to take tea pockets on a pushcart manually operated and sales were offered from door to door. The appellant was prosecuted for not registering the said establishments under the Act. The challenge is to the constitutional validity of the order bringing the appellant within the Act. Dismissal of writ petition by the High Court has led to this appeal.

Without deciding the challenge, the Supreme Court had closed the matter in view of the fact that about 3 decades are to over shortly. The practice of operating pushcart for selling tea from door to door no longer exists. The prosecution is also now stale. In the circumstances learned counsel for the State was fair enough to state that appellant would not be prosecuted for the alleged lapses. As such the appeal is disposed of.

Lipton India Ltd. v. State of Maharashtra 1996 11 LLJ 932 (S.C.)

8. Change to be communicated to Inspector.-It shall be the duty of an employer to notify to the Inspector, in prescribed form, [any change in any of the particulars contained in the statement submitted under section 7 within such period, after the change has taken place, as the State Government may prescribe in respect of any establishment or class of establishments]. The Inspector shall, on receiving such notice and the prescribed fees and on being satisfied about its correctness, make the change in the register of establishments in accordance with such notice and shall amend the registration certificate or issue a fresh registration certificate, if necessary.

9. Closing of establishment to be communicated to Inspector.-The employer shall, within ten days on his closing the establishment, notify to the Inspector in writing accordingly. The Inspector shall, on receiving the information

and being satisfied about its correctness, remove such establishment from the register of establishments and cancel the registration certificate:

^ [Provided that if the Inspector does not receive the information but he is otherwise satisfied that the establishment has been closed, he may remove such establishment from such register and cancel such certificate.

CHAPTER III

Shops and Commercial Establishments

10. Opening hours of shops.-(l) No shop-

(a) dealing wholly in milk, vegetable, fruits, fish, meat, bread or any other goods notified by the [State] Government shall on any day be opened earlier than 5 a.m.;

(b) [*****] other than those specified in clause (a) of this sub-section, shall on any day be opened earlier than 7 a.m.

(2) Subject to the provisions of sub-section (1) the [State] Government may fix later opening hours for different classes of shops or for different areas or for different periods of the year

11. Closing hours of shops.-(l) Notwithstanding anything contained in any other enactment for the time being in force, no shop-

(a) [****] other than those specified in clause (b) of this sub-section shall on any day be closed later than 8.30 p.m.;

(b) [dealing mainly in *pan bidi*, cigarettes, matches and other ancillary articles shall on any day be closed later than 11 p.m.:

Provided that any customer who was being served or was waiting to be served at such closing hour in any shop may be served in such shop during the quarter of an hour immediately following such hour.

(2) Subject to the provisions of sub-section (1), the [State] Government may fix earlier closing hours for different classes of shops or for different areas or for different periods of the year.

12. Hawking prohibited before opening and after closing hours of shops.-

(l) No person shall carry on in or adjacent to a street or a public place the sale of any goods before the opening and after the closing hours fixed under sections 10 and 11 for the shops dealing in the same class of goods in the locality in which such street or public place is situate:

[Provided that nothing in this sub-section shall apply to the sale of newspapers]

(2) Any person contravening the provisions of sub-section (1) shall be liable to have his goods seized by an Inspector.

(3) The goods seized under sub-section (2) shall be returned to the person from whom they were seized on his depositing rupees twenty-five as security for his appearance in the Court.

(4) If the person fails to make the deposit, the goods seized shall be produced without delay before a Magistrate who may give such directions as to their temporary custody as he thinks fit.

(5) Where no prosecution is instituted for contravention of the provisions of sub-section (I) within such period as the Magistrate may fix in this behalf, Magistrate shall direct their return to the person from whom they were seized.

(6) Subject to the provisions of the preceding sub-section, the provisions of Code of Criminal Procedure, 1898 (V of 1898), shall so far as they may applicable, apply to the disposal of the goods seized under this section.

13. Opening and closing hours of commercial establishments. 1) No commercial establishment shall on any day be opened earlier than 8.30 a.m. and closed later than 9.30 p.m.

(2) Subject to the provisions of sub-section (1), the [State] Government may fix later opening or earlier closing hours for different classes of commercial establishments or for different areas or for different periods of the year.

14. Daily and weekly hours of work in shops and commercial establishment.-

(1) Subject to the ²⁹ [other] provisions of this Act, no employee shall be required or allowed to work in any shop or commercial establishment for more than nine hours in any day and forty-eight hours in any week.

(2) Any employee may be required or allowed to work in a shop or commercial establishment for any period in excess of the limit fixed under sub-section (1), if such period does not exceed [six] hours in any week.

(3) On not more than six days in a year which the [State] Government may fix by rules made in this behalf, for purposes of making of accounts, stock taking settlements or other prescribed occasions, any employee may be required or allowed to work in a shop or commercial establishment in excess of the period fixed under sub-section (1), if such excess period does not exceed twenty-four hours.

³¹ [15. **Interval for rest.**-The period of work of an employee in a shop or commercial establishment each day shall be so fixed that no period for continuous work shall exceed five hours and that no employee shall be required or allowed to work for more than five hours before he has had an interval for rest of at least one hour]:

[Provided that,-

(a) in the case of employees in a commercial establishment engaged in any manufacturing process, the interval for rest shall be .at least half an hour;

and

(b)in the case of any other employee the State Government may, on an application made in that behalf [by the union recognised under any law for the time being in force where there is such union, or where there is no such union by a majority of the employees concerned] permit the reduction of the interval for rest to half an hour.]

16. Spread-over in shops.-The spread-over of an employee in a shop shall not exceed eleven hours in any day:

Provided that in cases where any shop is on any day entirely closed for a continuous period of not less than three hours, the spread-over shall not exceed twelve hours in that day:

Provided also that where an employee works on any day in accordance with the provisions of sub-section (2) of section 14, the spread-over shall not exceed fourteen hours in any such day and where he works on any day in accordance with the provisions of sub-section (3) of the said section, the spread-over shall not exceed sixteen hours in any such day.

17. Spread-over in commercial establishments.-The spread-over of an employee in a commercial establishment shall not exceed eleven hours in any day;

Provided that the [State]Government may increase the spread-over period subject to such conditions as it may impose either generally or in the case of a particular commercial establishment or a class or classes of commercial establishments.

18. Holidays in a week in shops and commercial establishments,- [(I) Every Shop and commercial establishment shall remain closed on one day of the week. [Except where the day is fixed under the provisions of sub-section (1B), the employer shall prepare] a calendar or list of such closed days at the beginning of the year, notify such calendar or list to the Inspector and specify it in a notice prominently displayed in a conspicuous place in the shop or commercial establishment:

[Provided that, if no change is made in the calendar or list of closed days for any year, it shall not be necessary to notify again such calendar or list as aforesaid

Provided further that, where any shop or commercial establishment comes after the beginning of any year within the purview of this Act for the first time, the employer shall also prepare a calendar or list of such closed days for the remaining part of the year, and notify it to the Inspector within a month of the date on which the shop or establishment so comes within the purview of this Act.

(1-A) Notwithstanding anything contained in sub-section (1), [but except where the day is fixed under sub-section (1-B)], a shop or commercial establishment may remain open on any day notified as closed day under sub-section (1) if-

- (a) it remains closed on any day of the week; and
- (b) the employer has notified to the Inspector, his intention to close the shop or the commercial establishment, as the case may be, on the day substituted under clause (a), at least seven days before the substituted day or the day notified as closed day under sub-section (1), whichever is earlier.]

[(I-B) A local authority in respect of any area within its jurisdiction and State Government in any local area elsewhere, may, by order published in the prescribed manner, after consultation with representative associations or otherwise as appear to such authority or the State Government to be most appropriate for ascertaining the views of the employers and employees affected by the order, fix the day on which a shop or commercial establishment is to be closed, and any such order may either fix the same day for all shops or establishments therein, or may fix-

(a) different days for different classes of shops or establishments, or
(b) different days for different parts of the area or local area, or
(c) different days for different periods of the year,
and thereupon, every shop or commercial establishment shall, on such day so fixed remain closed; but nothing in this sub-section shall apply to a shop or commercial establishment the employer of which has notified to the Inspector at the beginning of the year his intention to close the shop or commercial establishment on a public holiday within the meaning of the Negotiable Instruments Act 1881, (XXVI 1881)]

(2) It shall not be lawful for an employer to call an employee at, or for employee to go to, his shop or commercial establishment or any other place for work in connection with the business of his shop or commercial establishment on a day on which such shop or commercial establishment remains closed.

(3) No deduction shall be made from the wages of any employee in a shop or commercial establishment on account of any day on which it has remained closed under this section. If any employee is employed on a daily wage, he shall nonetheless be paid his daily wage for the day on which such shop or commercial establishment remains closed. [If any employee is paid a piece rated wage, he shall nonetheless be paid his wage for the day on which the shop or commercial establishment remains closed, at a rate equivalent to the daily average of his wages for the days on which he has actually worked during the six days preceding such closed day, exclusive of any earning in respect of overtime:]

[Provided that nothing in this sub-section shall apply to any person whose total period of continuous employment is less than six days.

NOTES

Both the employer and Employee are prohibited against service to customer or for doing any business of the establishment on a closed day and therefore owner of establishment giving service to his customers on a weekly holiday is guilty of contravention of section 18-(1) even though there were no employees.

Jethalal Valand v. Vipinchandra Gandhi 1971 LIC 803 /12 Guj. LR 58.

Under section 18(3) an employee is entitled to wage for the day for which the establishment remains closed in any week under section 18(1) of the Act, provided he has been employed for six days continuously in that week.

The question whether a worker was employed for six days continuously in any week will have to be decided in each case on the facts and circumstances of that case.

Under section 18(3) of the Act the only condition to be satisfied about the the period of employment and not about having worked a particular number of hours in the week or on each of the six days other than the closed days,

Sitaldas v. Kalekar 65 Bom. LR. 10.

.The effect of exempting-power-loom establishments from the applicability of section 18(1) of the Bombay Shops and Establishments Act is that they need not remain closed on any day of the week but could remain open on all the 365 days of the year. If no special provision were made for employees other than daily wage employees or piece-rated employees, they would have to work for all the 365 days unless they themselves took a holiday subject to deduction from their wages. No such considerations would arise in the case of daily wage employees or piece-rated employees since they are only to be paid either according to the number of days they worked, or the amount of work they turned out. No provision at all was required to be made for providing a weekly holiday for them. That being the basic distinction between the daily wage employees and piece-rated employees on the one hand and other employees on the other, a special provision had to be made in column (3) of Entry No. 59 in Schedule II only in respect of such other employees, that they[^] should be paid for weekly holiday. The purpose of giving them a day off without affecting their fixed earnings could thus be achieved. Clearly therefore the word deductions, in column (3) of Entry No. 59 has been used in order to restrict the applicability of that limitation in the manner stated above.

In view of this, the piece-rated employee in the power-loom industry is not entitled to be paid for weekly holidays,

Buchayya Chandrayya v. G.S. Chindhade 1976 LIC 1072 (Bom.-D.B.).

CHAPTER IV

Residential Hotels, Restaurants and Eating Houses 19. Opening and closing hours of restaurants and eating houses.- (

Notwithstanding anything contained in any other enactment for the time being in force, no restaurant or eating house shall on any day be opened earlier than 5 a.m. and closed later than twelve midnight for service:

Provided that an employee in such restaurant or eating house may be required to commence work not earlier than 4.30 a.m. and shall not be required to work later than ⁴¹ [00.30 a.m.]:

Provided also that any customer who was being served or waiting to be served at the closing hour of such restaurant or eating house may be served in such restaurant or eating house during the quarter of an hour immediately following such hour.

(2) Subject to the provisions of sub-section (1), the [State] Government may fix later opening or earlier closing hours for different restaurants or eating houses or for different areas or for different periods of the year.

(3) Notwithstanding anything contained in this section, or any other enactment for the time being in force, or not more than ten days in a year on festive or special occasions, the [State] Government may, by notification in the *Official*

Gazette, fix such opening and closing hours for different restaurants or eating houses or different areas, as it thinks proper.

20. Restaurants and eating houses not to sell goods of the kind sold in before the opening and after the closing hours of shops.-Before and after the hours fixed for the opening and closing of shops under sections 10 and 11, no goods of the kind sold in such shops shall be sold in any restaurant or eating house except for consumption on premises.

21. Daily and weekly] hours of work in residential hotels, restaurants and eating houses.-(1) [Subject to the other provisions of this Act], no employee shall be required or allowed to work in any residential hotel, restaurant or eating house for more than nine hours in any day/and forty eight hours in any week].

(2) On the days which may be notified under sub-section (3) of section 19 employee may be required or allowed to work in a residential hotel, restaurant or eating house in excess of the period fixed under sub-section (1), if such excess period does not exceed three hours in any day.

⁴⁶[**22. Interval for rest.**-The period of work of an employee in a residential hotel, restaurant or eating house each day shall be so fixed that no period of continuous work shall exceed five hours and that no employee shall be required or allowed to work for more than five hours before he has had an interval for rest at least one hour]:

[Provided that, the State Government may, on an application made in that behalf [by the union recognised under any law for the time being in force where there is such union or where there is no such union by a majority of the employees concerned] permit the reduction of the interval for rest to half an hour.]

23. Spread-over.-The spread-over of an employee in a residential hotel, restaurant or eating house shall not exceed twelve] hours:

Provided that the [State] Government may increase the spread-over period subject to such conditions as it may impose on the days that may be notified under sub-section (3) of section 19.

24. Holidays in a week.-(1) Every employee in a residential hotel, restaurant or eating house shall be given at least one day in a week as a holiday:

Provided that nothing in this sub-section shall apply to an employee whose total period of employment in any week is less than six days.

(2) It shall not be lawful for an employer to call an employee at, or for an employee to go to, his residential hotel, restaurant or eating house or any other place for any work in connection with the business of his residential hotel, restaurant or eating house on a day on which such employee has a holiday.

(3) No deduction shall be made from the wages of any employee in a residential hotel, restaurant or eating house on account of any holiday given to him under sub-section (1). If an employee, is employed on a daily wage, he shall nonetheless be paid his daily wage for the holiday.

25. Employer to furnish identity card to employee.-The employer shall furnish every employee in a residential hotel, restaurant or eating house an identity card which shall be produced by the employee on demand by an

Inspector. Such card shall contain the following and such other particulars as may be prescribed, namely:

- (a) the name of the employer;
- (b) the name, if any, and the postal address, of the establishment;
- (c) the name and age of the employee;
- (d) the hours of work, the interval for rest and the holiday of the employee;
- (e)² [the signature (with date) of the employer or manager].

CHAPTER V

Theatres or Other Places of Public Amusement or Entertainment

26. Closing hours of theatres or other places of public amusement or entertainment.-Notwithstanding anything contained in any other enactment for the time being in force, no theatre or other place of public amusement or entertainment shall, on any day, be closed later than [00.30 a.m.]

27. Theatres or other places of public amusement or entertainment not to sell goods of the kind sold in shops after the closing hour of shops.- After the hour fixed for the closing of shop under section 11, no goods of the kind sold in a shop shall be sold in any theatre or other place of public amusement or entertainment except for consumption on premises.

28. Daily [and weekly] hours of work in theatres or other places of public amusement or entertainment.-(1) No employee shall be required or allowed to work in any theatre or other places of public amusement or entertainment for more than nine hours in any day and forty-eight hours in any week].

(2) Any employee may be required or allowed to work in a theatre or other place of public amusement or entertainment for any period in excess of the limit fixed under sub-section (1), if such period does not exceed six hours in any week].

[29. Interval for rest-The period of work of an employee in a theatre or other place of public amusement or entertainment each day shall be so fixed that no period of continuous work shall exceed five hours and that no employee shall be required or allowed to work for more than five hours before he has had an interval for rest of at least one hour]:

[Provided that, the State Government may, on an application made, in that behalf by the employees concerned, permit the reduction of the interval for rest to half an hour.]

30. Spread-over.-The spread-over of an employee in a theatre or other place of public amusement or entertainment shall not exceed eleven hours in any day:

Provided that the [State] Government may increase the spread-over period subject to such conditions as it may impose either generally or in the case of a particular theatre or other place of public amusement or entertainment.

31. Holiday in a week.-(1) Every employee in a theatre or other place of public amusement or entertainment shall be given at least one day in a week as a holiday:

Provided that nothing in this sub-section shall apply to an employee whose total period of employment in any week is less than six days.

(2) It shall not be lawful for an employer to call an employee at, or for an employee to go to, his theatre or other place of public amusement or entertainment or any other place for any work in connection with the business of his theatre or place of public amusement or entertainment on a day on which such employee has a holiday.

(3) No deduction shall be made from the wages of an employee in a theatre or other place of public amusement or entertainment on account of any holiday given to him under sub-section (1). If an employee is employed on a daily wage, he shall nonetheless be paid his daily wage for the holiday given to him.

CHAPTER VI

32. Employment of Children, Young Persons and Women . -No child shall be required or allowed to work whether as an employer or otherwise in any establishment, notwithstanding that such child is a member of the family of the employer.

33. Opening and closing hours for young persons and women.(I)[deleted]

(2) No such young person shall be required or allowed to work in any establishment after 7.00 p.m.

(3) No such woman shall be required or allowed to work in any establishment after 9.30 p.m.]

34. Daily hours of work for young persons.-(I) Notwithstanding anything contained in this Act, no young person shall be required or allowed to work, whether as an employee or otherwise, in any establishment for more than six hours in any day.

(2) No young person shall be required or allowed to work whether as an employee or otherwise in any establishment for more than three hours in any day unless he has had an interval for rest of at least half an hour.

34-A. Prohibition of employment of young persons and women in dangerous work.-No young person or woman working in any establishment, whether as an employee or otherwise, shall be required or allowed to perform such work as may be declared by the State Government by notification in the *Official Gazette*, to be work involving danger to life, health or morals.]

CHAPTER VII

Leave with Pay and Payment of Wages

35. Leave.-(1)(a) Subject to the provisions of clause (b), every employee who has been employed for not less than three months in any year, shall for every 60 days on which he has worked during the year be allowed leave, consecutive or otherwise, for a period of not more than five days:

(b) every employee who has worked for not less than two hundred and forty days during a year [irrespective of the date of commencement of his service,]

shall be allowed leave, consecutive or otherwise, for a period of not less than twenty-one days:

Provided that such leave may be accumulated up to a maximum period of forty-two days.

*Explanation:-*The leave allowed to an employee under clauses (a) and (b) shall be inclusive of the day or days during the period of such leave, on which a shop, or commercial establishment remains closed under sub-section (1) of section 18, or on which he is entitled to a holiday under sub-section (1) of section 24 or section 31.]

[X XXX]deleted

(2) If an employee entitled to leave under sub-section (1) [or (1-A)] is discharged by his employer before he has been allowed the leave, or if, having applied for and having been refused the leave, he quits his employment before he has been allowed the leave, the employer shall pay him the amount payable under section 36 in respect of the leave.

(3) If an employee entitled to leave under sub-section (1) [or (1-A)] is refused the leave, he may give intimation to the Inspector or any other officer authorised in this behalf by the [State] Government regarding such refusal. The Inspector shall enter such intimation in a register kept in such form as may be prescribed.¹⁶ [The employee shall also send a copy of such intimation to his employer and, thereupon, the employee shall be entitled to carry forward the unavailed leave without any limit.

(4) Notwithstanding anything contained in this section, every employee, irrespective of his period of employment, shall be entitled to additional holiday on the 26th January, 1st May, 15th August and 2nd October every year. For holiday on these days, he shall be paid wages at a rate equivalent to the daily average of his wages (excluding overtime), which he earns during the month in which such compulsory holidays falls:

Provided that the employer may require any employee to work in the establishment on all or any of these days, subject to the conditions that for such work the employee shall be paid double the amount of the daily average wages and also leave on any other day in lieu of the compulsory holiday.

36. Pay during leave.-Every employee shall be paid for the period of his leave at a rate equivalent to the daily average of his wages for the days on which he actually worked during the preceding three months, exclusive of any earnings in respect of overtime.

37. Payment when to be made.-An employee who has been allowed leave under section 35 shall, before his leave begins, be paid half the total amount due to him for the period of such leave.

38. Application and amendment of the Payment of Wages Act.

(l) Notwithstanding anything contained in the Payment of Wages Act, 1936, (V of 1936) herein referred to as "the said Act", the[State] Government may, by

notification published in the Official Gazette, direct that subject to the provision of sub-section (2) of the said Act [shall, in such local areas as may be specific in the notification, apply] to all or any class of establishments or to all or any classes of employees to which or whom this Act for the time being applies.

(2) On the application of the provisions of the said Act to any establishment or to any employees under sub-section (1), the Inspector appointed under this Act shall be deemed to be the Inspector for the purpose of the enforcement of the provisions of the said Act within the local limits of his jurisdiction.

[38 A. Application of Act VIII of 1923 to employees of establishment.-The provisions of the Workmen's Compensation Act, 1923 (VIII of 1923), and the rules made from time to time thereunder, shall, *mutatis mutandis*, apply to employees of an establishment to which this Act applies, as if they were workmen within the meaning of the Workmen's Compensation Act, 1923.

NOTES

S.38-A - Compensation can be claimed under Workmen's Compensation Act, 1923.

In this case, a Clerk in the establishment of Maharashtra State Electricity Board to whom admittedly the Bombay Shops and Establishments Act is applicable claimed compensation under the Workmen's Compensation Act, 1923 for the accidental injury sustained by him arising out of and in the course of his employment. The point is whether he is entitled to put up such a claim.

Their Lordships considered the scope and extent of S.38-A of the Bombay Act and held that the claim was quite legally maintainable. Under S.38A of the Bombay Act, the provisions of the Workmen's Compensation Act, 1923 and the Rules made thereunder shall 'mutatis mutandis' apply to the employees of an establishment to which Bombay Act applies, as if they were workmen within the meaning of the 1923 Act. This is a legislative device adopted by the legislature to enact the provisions of 1923 Act with reference to the employees covered under the Bombay Act. The definition workman under 1923 Act does not cover the clerical cadre, but the fiction created under S.38A would cover all categories of employees of the respondent Board except those who are exempted under Sch.II of the Act.

Yasudev Anant Kulkarni v. Executive Engineer, M.S.E.B. 1994 II CLR 172 (Bom.-D.B.)

^ [3B-B. Application of Industrial Employment (Standing Orders) Act to establishments.-The provisions of the Industrial Employment (Standing Orders)

Act, 1946, in its application to the State of Maharashtra [(hereinafter in this section referred to as "the said Act"), and the rules and standing orders (including model standing orders) made thereunder from time to time, shall, *mutatis rnuimdis*, apply to all establishments wherein fifty or more employees are employed and to which this Act applies, as if they were industrial establishment within the meaning of the said Act.

NOTES

By reason of S.38(b) the provisions of the Industrial Employment (Standing Order) Act, 1946 shall apply to all establishments to which the Bombay Shops and Establishments Act applies as if they were industrial establishments within the meaning of Industrial Employment (Standing Order) Act, 1946.

An appellant, who was employed as stenographer, was suspended on 20.3.78 pending disciplinary enquiry against him. He made an application claiming full back wages. The Labour Court relying upon the provisions of the Industrial Employment (S.O.) Act. declared that the appellant was entitled to 50% of his wages for three months from May 1978; 75% of his wages for subsequent three months and full wages for balance period minus lawful deduction. Being dissatisfied with the order the appellant preferred writ petition this was dismissed and the order of the Labour Court was confirmed. The appellant challenged that order in this appeal.

Held: Section 38(B) of the Act does not make any provision for number of employees that an establishment should employ for the satisfaction of the conditions imposed by S.38(B) of the Industrial Employment (Standing Orders) Act, 1946. By virtue of S.38(B) the provisions of the Industrial Employment (Standing Orders) Act, 1946 are engrafted into the Bombay Shops and Establishment Act, 1946 with only the necessary consequential changes in points of details in so far as they are applicable. Hence, the order made by the Labour Court relying upon the provisions of the Industrial Employment (Standing Orders) Act, 1946 for paying wages during suspension period is legal and valid.

C.N. Bhaskaran v. Shri S.A. Patil and Others. 1986 I LLJ 163 (Bom. H.C.).

Section 38-B of the Bombay Shops and Establishments Act makes no provision for the number of employees that the establishment (covered by the Bombay Shops and Establishments Act) should employ for the satisfaction of the condition imposed by S.1(3) of the The Industrial Employment (Standing Orders) Act. The interpretation placed by the learned Single Judge on S.38-B of the Bombay Shops and Establishments Act is perfectly legal. By S.38-B, in effect the provisions of the Industrial Employment (Standing Orders) Act, 1946 are engrafted into the Bombay Shops and Establishments Act, 1948 with only the

necessary consequential changes in points of detail in so far as they are applicable.

C.N. Bhaskaran v, J Gannon Dunkerely & Co. & Ors. 1986 I C.L.R. 313.

S.38-B - Industrial Employment (Standing Orders) Act, 1946 - S.10-A - Section 38-B of Bombay Shops and Establishments Act, 1948 does not confer on managerial cadre benefits restricted to 'workmen' by Industrial Employment (Standing Orders) Act, 1946 and Rules framed thereunder. Petitioner, who was Manager of respondent Bank drawing salary of Rs.4,500/- p.m., cannot, therefore, claim subsistence allowance under S.10-A of Industrial Employment (Standing Orders) Act, 1946.

Kalyanpur Keshav Venkatrai Pai v. Corporation Bank 1987 II C.L.R. 6 (Bom.H.C.).

S.38-B - before its amendment in 1986 and Industrial Employment (Standing Orders) Act, 1946 - Applicability even if employees are less than 100.

The question decided is that the provisions of Industrial Employment (Standing Orders) Act, 1946 in its application to the State of Maharashtra and the Rules and Standing Orders including Model Standing Orders mutatis mutandis apply to all establishments under Shops Act as if they were industrial establishment and that applicability is not restricted to establishments in which 100 or more employees are employed.

Fictionally, when establishments become Industrial Establishments by the thrust of S.38-B of the Shops Act, the Standing Orders issued under the Standing Orders Act, from time to time would apply mutatis mutandis to establishments under the Shops Act. Upto this time the fiction work. But there cannot be fiction over fiction. It cannot be suggested for a moment that shops and establishments on becoming industrial establishments must qualify thence forth to have 100 employees or more. Such an interpretation would destroy not only the purpose of S.38-B but the working of the Shops Act too and the purpose for which it was enacted.

Indian Tobacco Co. Ltd., Nagpur v. Industrial Court, Nagpur 1995 I LLJ 582 (S.C.)

[33-C. Application of Maternity Benefit Act for women employees in establishment.-Notwithstanding anything contained in the Maternity Benefit Act, 1961 (hereinafter in this section referred to as "the said Act"), the State Government may, by notification in the *Official Gazette*, direct that all or any of the

provisions of the said Act or the rules made thereunder shall apply to women employed for wages in all or any of the establishments to which his Act applies, For that purpose, such women employees shall be deemed to be women within the meaning of the said Act. On such application of the provisions of the said Act, an Inspector appointed under this Act shall be deemed to be the Inspector for the purpose of the enforcement of the provisions of the said Act also within the limits of his jurisdiction.]

CHAPTER VIII

Health and Safety

39. Cleanliness.-The premises of every establishment shall be kept clean and free from effluvia arising from any drain or privy or other nuisance and shall be cleaned at such times and by such methods as may be prescribed. These methods may include lime washing, colour washing, painting, varnishing, disinfection and deodorising.

40. Ventilation.-The premises of every establishment shall be ventilated in accordance with such standards and by such methods as may be prescribed.

41. Lighting.-(1) The premises of every establishment shall be sufficiently lighted during all working hours.

(2) If it appears to an Inspector that the premises of any establishment within his jurisdiction are not sufficiently lighted, he may serve on the employer an order in writing specifying the measures which in his opinion should be adopted and requiring them to be carried out before a specified date.

42. Precautions against fire.-In every establishment except such establishment or class of establishments as may be prescribed, such precautions against fire shall be taken as may be prescribed.

42-A. First-Aid.-In every establishment wherein a manufacturing process as defined in clause (k) of section 2 of the Factories Act, 1948, (LXIII of 1948) is carried on, there shall be provided and maintained a first-aid box containing such articles as may be prescribed.]

CHAPTER IX Enforcement and Inspection

43. Powers and duties of local authorities.-Save as otherwise provided in this Act, it shall be the duty of every local authority to enforce, within the area subject to its jurisdiction, the provisions of this Act, subject to such supervision of the [State] Government as may be prescribed:

Provided that the local authority may by order direct that the said duty of enforcing the provisions of this Act shall be discharged, in such circumstances and subject to such conditions, if any, as may be specified in the order, by its Chief Executive Officer or any other subordinate to it:

Provided also that in respect of the areas not subject to the jurisdiction of any local authority, it shall be the duty of the [State] Government to enforce the said provisions.

44. Power to make by-laws.-A local authority empowered under section 43 to enforce the provisions of this Act may, with the previous sanction of the [State] Government make by-laws not inconsistent with the provisions of the Act, or the

rules or orders made by the ^[State] Government thereunder for the purpose of carrying out the provisions of this Act.

[44- A. Provisions for taking over administration of the Act from local authorities.-Notwithstanding anything contained in sections 43 and 44, with a view to implementing the policy of the State Government of taking over the administration of this Act gradually from all the local authorities in the State, the State Government may, from time to time, by notification in the *Official Gazette*, without the necessity of giving any further notice or reasons, declare that any local authority or authorities or class of local authorities specified in such notification shall cease to perform the duty of enforcing the provisions of this Act from a date specified in that notification. From that date, it shall be the duty of the State Government to enforce the said provisions, in respect of the areas subject to the jurisdiction of such local authorities also.]

²⁶ **[45. Delegation of powers.-**The State Government may by order published in the *Official Gazette*, direct that any power exercisable by it under this Act or the rules made thereunder (except the power to make rules) shall in relation to such matters and subject to such conditions, if any, as may be specified in the order, be exercised also by any local authority, or by any officer subordinate to the State Government, as may be specified in the order.]

46. Power of "State Government to provide for performance of duties on default by local authority.-(1) If any local authority makes default in the performance of any duty imposed by or under this Act, the [State] Government may appoint some person to perform it and may direct that the expense of performing it with a reasonable remuneration to the person appointed to perform it shall be paid forthwith by the local authority.

(2) If the expense and remuneration are not so paid, the ^[State] Government may, notwithstanding anything contained in any law relating to the municipal fund or local fund or any other law for the time being in force, make an order directing the bank in which any moneys of the local authority are deposited or the person in charge of the local Government Treasury or of any other place of security in which the moneys of the local authority are deposited to pay such expense and remuneration from such moneys as may be standing to the credit of the local authority in such bank or may be in the hands of such person or as may from time to time be received from on behalf of the local authority by way of deposit by such bank or person; and such bank or person shall be bound to obey such order. Every payment made pursuant to such order shall be a sufficient discharge to such bank or person from all liability to the local authority in respect of any sum or sums so paid by it or him out of the moneys of the local authority so deposited with such bank or person.

47. Expenses of local authority to be paid out of its fund.- Notwithstanding anything contained in any enactment in regard to any municipal or local fund, all expenses incurred by a municipality or a local board under and for the purposes this Act shall be paid out of the municipal or local fund, as the case may be.

48. Appointment of Inspectors.-(1) Every local authority shall appoint sufficient number of persons with the prescribed qualifications as Inspectors for! the area

subject to its jurisdiction as it may deem fit for the purpose of carrying out) the provisions of this Act.

(2) In areas which are. not subject to the jurisdiction of any local authority, the [State] Government shall appoint Inspectors with the prescribed qualifications [and in areas which are subject to the jurisdiction of any local authority, the State Government may appoint Inspectors with the prescribed qualifications for such supervision as the State Government may prescribe.]

[(3) A local authority or, as the case may be, the State Government may direct that the powers conferred on it by this section shall in such circumstances, and subject to such conditions (if any), as may be specified in the direction be exercised.

(a) in the case of a local authority, by its standing committee or by any committee appointed by it in this behalf or, if such local authority is a municipal corporation, by its Municipal Commissioner or Deputy Municipal Commissioner, and

(b) in the case of the State Government, by any officer subordinate to it.

(4) Notwithstanding anything contained in the Minimum Wages Act, 1948, (XI of 1948), Inspectors appointed, whether by a local authority, or the State Government under this Act in relation to any area, shall be deemed to be also Inspectors for the purposes of the Minimum Wages Act, 1948, in respect of establishments to which this Act applies, and the local limits within which an Inspector shall exercise his functions under that Act shall be the same as the area for which he is appointed under this Act XI of 1948.¹

49. Powers and duties of Inspectors.-Subject to any rules made by the [State Government] in this behalf an Inspector may, within the local limits for which he is appointed.-

(a) enter, at all reasonable time and with such assistants, if any, being persons in the service of the ^[Government or of any local authority as he thinks fit, any place which is or which he has reason to believe is an establishment;

(b) make such examination of the premises and of any prescribed registers, records and notices, and take on the spot or otherwise evidence of any persons as he may deem necessary for carrying out the purposes of this Act;³⁰ [*****]

[(bb) if he has reason to suspect that any employer of an establishment to which this Act applies has committed an offence punishable under section 52 or 55 seize, with the previous permission of such authority as may be prescribed such registers, records or other documents of the employer, as he may consider necessary, and shall grant a receipt therefor and shall retain them only for so long as may be necessary for examination thereof, or for prosecution; and]

(c) exercise such other powers as may be necessary for carrying out the purposes of this Act;

Provided that no one shall be required under this section to answer any question or give any evidence tending to criminate himself.

50. Inspectors to be public servants.-Every inspector appointed under section 48 shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (XLV of 1860).

51. Employer [and manager to produce registers, records etc. for inspection.-Every employer [and in his absence the manager shall on demand produce for inspection of an Inspector all registers, records and notices required to be kept under and for the purpose of this Act.

CHAPTER X

Offences and Penalties

52. Contravention of certain provisions and offences.-(a) If any employer fails to send to the Inspector a statement within the period specified in section 7 or to notify a change within the period specified in section 8 or to notify the closing of his establishment under section 9; or

(b) If in any establishment there is any contravention of any of the provisions of sections 10, 11, 13, 18, 19, 20, 26, 27, 39, 40, 41 or 42 or any orders made thereunder, or

(c) If in any establishment any person is required or allowed to work in contravention of sections 14, 15, 16, 17, 21, 22, 23, 24, 28, 29, 30, or 31, or

(d) If in any establishment a child or young person or woman is required or allowed to work in contravention of section 32, 33 or 34; or

[(e) If any employer or manager contravenes the provisions of Section 51 or any employer contravenes the provisions of section 62 or 65; or]

(f) If in any establishment there is any contravention of any section, rule or order for which no specific punishment is provided in this Act,

the employer and the manager shall, on conviction, each be punished [for each offence] with fine which shall not be less than [one thousand rupees] and which may extend to [five thousand rupees]:

Provided that, if the contravention of the provisions of sub-section (1) section 7 is continued after the expiry of the tenth day after conviction, the employer shall on conviction be punished with a further fine which may extend one hundred rupees for each day on which the contravention is so continued.

53. Contravention of section 12.-If any person contravenes the provisions section 12, he shall, on conviction, [be punished for each offence with fine which shall not be less than one thousand rupees] and which may extend to [five thousand rupees.]

54. Employee contravening section 18(2), 24, 31 and 65.-If any employee contravenes the provisions of sub-section (2) of section 18, 24, 31 or 65 he shall on conviction [be punished for each offence with fine which shall not be less than five hundred rupees] and which may extend to [five thousand rupees]

55. False entries by employer and manager.-If any employer or manager with intent to deceive makes, or causes or allows to be made, in any register, record notice prescribed to be maintained under the provisions of this Act or the rules made thereunder, an entry which, to his knowledge, is false in any material particular, or willfully omits or causes or allows to be omitted, from any such

register, record or notice, an entry which is required to be made therein under the provisions of this Act or the rules made thereunder, or maintains or causes or allows to be maintained, more than one set of any register, record or notice except the office copy of such notice, or sends, or causes or allows to be sent, to an Inspector, any statement, information or notice prescribed to be sent under the provisions of this Act or the rules made thereunder which, to his knowledge, is false in any material particular, he shall, on conviction, be punished with fine which shall not be [^][less than [^][one thousand rupees] and which may extend to [^][five thousand rupees]:

Provided that if both the employer and the manager are convicted, the aggregate of the fine in respect of the .same contravention shall not exceed [^][five thousand rupees.]

56. Enhanced penalty in certain cases after previous conviction,- If any employer and manager who have been convicted of any offence under sub-section (1) of sections 10, 11, 13, 14, 18, 19, 24, 31 or 34 or under sub-section (2) or (3) of section 14 or under section 55 or under sections 21, 26, 28, 32, 33, 51, 57, 62 or 65, are again guilty of an offence involving a contravention of the same provision, they shall each be punished on the second conviction with fine which shall not be [^][less than [^][one thousand rupees] and which may extend to five thousand rupees]; and if they are again so guilty, they shall each be punished on the third or any subsequent conviction with fine which shall not be less than [seven thousand and five hundred rupees] and which may extend to [ten thousand rupees]:

Provided that if both the employer and the manager are convicted the aggregate of the fine in respect of the same contravention shall not exceed ten thousand rupees] on second conviction and [Fifteen thousand rupees] on third or any subsequent conviction:

Provided further that, for the purposes of this section, no cognizance shall be taken of any conviction made more than two years before the commission of the offence which is being punished:

Provided also that the Court, if it is satisfied that there are exceptional circumstances warranting such a course may after recording its reasons in writing impose a smaller fine than is required by this section.

57. Penalty for obstructing Inspector.-Whoever willfully obstructs an Inspector in the exercise of any power under section 49 or conceals or prevents any employee in an establishment from appearing before or being examined by an Inspector, shall, on conviction, be punished with fine which shall not be less than [one thousand rupees] and which may extend to [^][five thousand rupees].

58. Determination of employer for the purpose of this Act.-(I) Where the owner of an establishment is a firm or other association of individuals, any one of the individual partners or members thereof may be prosecuted and punished under this Act for any offence for which an employer in an establishment is punishable:

Provided that the firm or association may give notice to the Inspector that it has nominated one of its members who is resident in the [State] to be the employer for the purposes of this Act and such individual shall so long as he is so resident

be deemed to be the employer for the purposes of this Act, until further notice cancelling the nomination is received by the Inspector or until he ceases to be a partner or member of the firm or association.

(2) Where the owner of an establishment is a company, any one of the directors thereof, or in the case of a private company, any one of the share holders thereof, may be prosecuted and punished under this Act for any offence for which the employer in the establishment is punishable:

Provided that the company may give notice to the Inspector that it has nominated a director, or, in the case of a private company, a shareholder who is resident in the State to be the employer in the establishment for the purposes of this Act, and such director or shareholder shall so long as he is so resident be deemed to be the employer in the establishment for the purposes of this Act, until further notice cancelling his nomination is received by the Inspector or until he ceases to be a director or shareholder.

59. Exemption of employer or manager from liability in certain cases.-(I)

Where the employer or manager of an establishment is charged with an offence against this Act or the rules or orders made thereunder, he shall be entitled upon complaint duly made by him to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the employer or manager of the establishment proves to the satisfaction of the Court-

(a) that he has used due diligence to enforce the execution of this Act; and

(b) that the said other person committed the offence in question without his knowledge, consent or connivance, that other person shall be convicted of the offence and shall be liable to the like fine as if he were the employer or manager, and the employer or manager shall be discharged from any liability under this Act.

(2) When it is made to appear to the satisfaction of the Inspector at any time prior to the institution of the proceedings -

(a) that the employer or manager of the establishment has used all due diligence to enforce the execution of this Act,

(b) by what person the offence has been committed, and

(c) that it has been committed without the knowledge, consent or connivance of the employer or manager, and in contravention of his orders, the Inspector shall proceed against the person whom he believes to be the actual offender without first proceeding, against the employer or manager of the establishment, and such person shall be liable to the like fine as he were the employer or manager.

60. Cognizance of offences.-(I) No prosecution under this Act or the rules or orders made thereunder shall be instituted except by an Inspector and except with the previous sanction of the [District Magistrate · [Additional District Magistrate, Sub- Divisional Magistrate, Commissioner of Labour, Additional Commissioner of Labour or Deputy Commissioner of Labour, or the local authority, as the case may be [or, without any such sanction, by an aggrieved

person, or by a representative of the registered union of which the aggrieved person, is a member:

Provided that any local authority may direct that the powers conferred on it by this sub-section shall, in such circumstances and subject to such conditions, if any, as may be specified in the direction, be exercised by its standing committee or by any committee appointed by it in this behalf or, if such local authority is a municipal corporation, by its Municipal Commissioner, [Deputy Municipal Commissioner or Assistant Municipal Commissioner.

(2) No court inferior to that of a [Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence against this Act or any rule or order made thereunder.

61. Limitation of Prosecutions. (1) No court shall take cognizance of any offence under this Act or any rule or order made thereunder, unless complaint thereof is made within [three months from the date on which the alleged commission of the offence came to the knowledge of an Inspector.

[(2) Notwithstanding anything contained in sub-section (1) the aggrieved person or a representative of the registered union of which the aggrieved person is a member, may within three months from the date on which the alleged commission of the offence took place give intimation of the offence to the Inspector and request him to institute prosecution. On receipt of such intimation and request, the Inspector may himself institute the prosecution within the period of limitation specified in sub-section (1) or inform the applicant before the expiry of the said period or as soon as possible thereafter that he does not propose to institute prosecution. On receipt of such intimation, the applicant shall be entitled to institute prosecution, and the Court shall take cognizance of the offence, if complaint thereof is made to it within two months from the date of receipt of the intimation of the Inspector by the applicant.

NOTES

The essence of Section 61 is that if any employer or Manager of any such establishment were to be prosecuted under section 52(a) read with section 7(1) of the Act, it must be so done within a period of three months from the existence of any such establishment came to be known to the Inspector-in-charge of the case. *State of Gujarat v. N. Vishwanatha*, 1970 Cri.L.J./ 1053; II Guj .L..R. 817.

CHAPTER XI

Miscellaneous and Supplemental

62. Maintenance of registers and records and display of notices,- Subject to the general or special orders of the [State Government an employer shall

maintain such registers and records and display on the premises of his establishment such notices as may be prescribed. All such registers and records shall be kept on the premises of the establishment to which they relate.

63. Wages for overtime work.-Where an employee in any establishment to which this Act applies is required to work in excess of the limit of hours of work, he shall be entitled, in respect of the overtime work, wages at the rate of twice his ordinary rate of wages.

Explanation .For the purposes of this section the expression "limit of hours of work" shall mean-

- (a) in the case of employees in shops and commercial establishments, nine hours in any day and forty-eight hours in any week;
- (b) in the case of employees in residential hotels, restaurants, eating houses, theatres or other places of public amusement or entertainment, nine hours in any day; and
- (c) in the case of employees in any other establishment, such hours as may be prescribed.

[Provided that, the maximum limit for working overtime shall not exceed three; hours and the employer may, for the purpose of the work beyond the said overtime hours, engage additional number of employees.]

NOTES

The employee of a bakery who was a delivery man and whose work was to deliver bread and loaves prepared by the bakery to its customers, applied under section 63 of the Bombay Shops and Establishments Act, 1948, for payment of overtime wages alleging that he had worked more than forty-eight hours every week in respect of certain wage periods. On the question whether the application was maintainable in view of the fact that under Schedule II, item 8 of the Act, the prohibition contained in section 14 of the Act, prohibiting the employer from making the employee work beyond the limit of work prescribed therein is removed as regards delivery men it was held that if the employee established that he had worked overtime in any particular week, he was entitled to overtime wages as provided in section 63 of the Act.

The limit of work for the purpose of section 14 of the Bombay Shops and Establishments Act, 1948, is entirely different from the limit of work laid down for the purpose of Section 63 of the Act. Whereas the limit of work for the purpose of section 14 is laid down in order to prohibit the employer from requiring an employee to make him work beyond the limit, the limit of work laid down for the purpose of section 63 is purely for the purpose of computation of overtime wages. *Penambur Visnurnurthi v. Fernandes*, 58 Bom.L.R. 977.

64. Evidence as to age.-(1) When an act or omission would, if a person were under or over a certain age, be an offence punishable under this Act, and such person is in the opinion of the Court apparently under or over such age, the burden shall be on accused to prove that such person is not under or over such age.

(2) A declaration in writing by a [qualified medical practitioner] relating to an employee that he has personally examined him and believes him to be under or over the age set forth in such declaration shall, for the purposes of this Act, be admissible as evidence of the age of the employee.

Explanation.-For the purposes of this section, a qualified medical practitioner shall have the same meaning as in the Factories Act, ²[1948, (LXIII of 1948)].

65. Restriction on double employment on a holiday or during leave.-No employee shall work in any establishment, nor shall any employer knowingly permit an employee to work in any establishment, on a day on which the employee is given a holiday or is on leave in accordance with the provisions of this Act.

66. Notice of termination of service.-No employer shall dispense with the services of an employee who has been in his continuous employment -

(a) for not less than a year, without giving such person at least thirty days' notice in writing, of wages in lieu of such notice:

(b) for less than a year but more than three months, without giving such person at least fourteen days' notice in writing, or wages in lieu of such notice:

Provided that, such notice shall not be necessary where the services of such employees are dispensed with for misconduct.

[Explanation.-For the purposes of this section, "misconduct" shall include-

(a) absence from service without notice in writing or without sufficient reasons for seven days or more;

(b) going on or abetting a strike in contravention of any law for the time being in force; and

(c) causing damage to the property of his employer.

NOTE

S.66 - Discharge of an employee without notice - Relief of reinstatement and back wages -Termination of an employee without notice is bad in law and therefore workman entitled to reinstatement and continuity of service with back wages. *N.L. Mehta Cinema Ent. P. Ltd, v. Vijay G. Shivgan &. Ors.* 1988 I C.L.R. 416 (Bom.H.C.)

67. Rules.-(1) The [State] Government may make rules to carry out the purposes of the Act.

(2) In particular and without prejudice to the generality of the foregoing provision, such rules may be made for all or any .of the following matters, namely:-

- (a) the appointment of prescribed authority under clause (21) of section 2;
- (b) the period for which, the conditions subject to which and the holidays and occasions on which, the operation of the provisions of this Act may be suspended under section 6;
- (c) the form of submitting a statement, the fees and other particulars under sub-section (1), the manner in which the registration of establishments is to be made and the form of registration certificate under sub-section (2) of section 7 and the form and the period for notifying] a change and the fees under section 8;
- (d) fixing six days in a year for additional overtime under sub-section (3) of section 14;
- (e) fixing ten days in a year for overtime under sub- section (3) of section 19;
- (f) further particulars to be prescribed for an identity card under section 25;
- h) fixing times and methods for cleaning the establishments under section 69; fixing standards and methods for ventilation under section 40; prescribing such establishments as are to be exempted from the provisions of, and, precautions against fire to be taken under section 42.
- ha) the articles which a first-aid-box maintained under section 42-A contain;
- (i) the supervision which the State Government shall exercise over authorities under section 43;
- (j) the qualification of Inspectors appointed under section 48 and their powers and duties under section 49;
- (k) the registers and records to be maintained and notices to be displayed under section 62;
- (l) the limit of hours of work under clause (c) of the explanation to section 63,
- (m) any other matter which is or may be prescribed.

(3) The rules made under this section shall be subject to the condition of previous publication and when so made, shall be deemed to be part of this *Act*.

[(4) All rules made under this Act shall be laid before each House of the Legislature as soon as possible after they are made, and shall be subject to modifications as the State legislature may make during the session in which they are so laid or the session immediately following and published in the *Gazette*].

68. Protection to persons acting under this Act.-No suit, prosecution or legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

69. Right and privileges under other law etc. not affected.- Nothing in this Act shall affect any right or privileges which an employee in any establishment is entitled to at the date this Act comes into force in a local area, under any other law, contract, custom or usage applicable to such establishment or any award, settlement or agreement binding on the employer and the employee in such establishment if such rights or privileges are more favourable to him than those to which he would be entitled under this Act.

¹¹ **[70. Persons employed in factory to be governed by Factories Act and not by this Act-** Nothing in this Act shall be deemed to apply to a factory to which the provisions of the Factories Act, 1948 (LXIII of 1948,) apply:

Provided that, where any shop or commercial establishment situate within precincts of a factory is not connected with the manufacturing process of the factory the provisions of this Act shall apply to it:

Provided further that, the State Government may, by notification in the *Gazette*, apply all or any of the provisions of the Factories Act, 1948 (LXIII of 1948,) to any shop or commercial establishment situate within the precincts of factory and on the application of that Act to such shop or commercial establishment, the provisions of this Act shall cease to apply to it.

71. Submission of annual report etc.-It shall be the duty of every local authority to submit within two months after the close of the year, to the Commissioner of Labour, Bombay a report on the working of the Act within the local area under its jurisdiction during such year. It shall also submit to him from time to time such annual or periodical return as may be required.

72 Repeal of Bombay Shops and Establishments Act.-On and from the date of commencement of this Act, the Bombay Shops and Establishments Act, 1939 Bom. (XXIV of 1939), shall be repealed:

Provided that-

- 2(a) every appointment order, rule, bye-law, regulation, notification or notice made, issued or given under the provisions of the Act so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been made, issued or given under the provisions of this Act, unless and until superseded by any appointment, order, rule, bye-law, regulation, notification or notice made, issued or given under this Act.
- (b) any proceeding relating to the trial of any offence punishable under the provisions of the Act so repealed shall be continued and completed as if the said Act had not been repealed but had continued in operation and any penalty imposed on such proceedings shall be recovered under the Act so repealed.

