Tradesvel Security Services Pvt. Ltd. Vs State of Maharashtra

Court: Bombay High Court

Date of Decision: Nov. 2, 1982

Acts Referred: BOMBAY SHOPS AND ESTABLISHMENTS ACT, 1948 â€" Section 2
Constitution of India, 1950 â€" Article 14, 16, 19, 20, 226
Contract Labour (Regulation and Abolition) Act, 1970 â€" Section 10
Factories Act, 1948 â€" Section 2
Industrial Disputes Act, 1947 â€" Section 2
Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981 â€" Section 1, 14, 15, 16, 17
Payment of Bonus Act, 1965 â€" Section 34

Citation: (1982) 84 BOMLR 608

Hon'ble Judges: P.B. Sawant, J

Bench: Single Bench

Judgement

P.B. Sawant, J.
This is a group of petitions seeking to challenge the Maharashtra Private Security Guards (Regulation of Employment and

Welfare) Act, 1981 (hereinafter referred to as a said Act) and the Scheme viz. the Private Security Guards, (Regulation of Employment &

Welfare) Scheme, 1981, deemed to have been prepared by the State Government in exercise of the powers conferred under Sub-section (1) of

Section 4 of the said Act. The petitions are filed both by the agencies or agents who hitherto carried on the business of supplying security guards to

various employers and also by the employers who engage the security guards on contract basis through such agencies or agents. Petitions Nos.

1204 of 1981, 136(1 of 1981, 1393 of 1981, 1692 of 1981, 1882 of 1981, 75 of 1982, 89 of 1982 and 195 of 1982 are filed by the agencies

and Petitions Nos. 420 of 1982, 422 of 1982, 1205 of 1981, 1386 of 1981, 1408 of 1981, 1499 of 1981, 1884 of 1981 and 816 of 1982 are

filed by the employers. Some of these petitions were filed immediately after the Ordinance viz. the Maharashtra Private Security Guards

(Regulation of Employment and Welfare) Ordinance, 1981, (Maharashtra Ordinance No. V of 1981) (hereinafter referred to as the said

Ordinance) was promulgated on June 28, 1981 and after the said Scheme was made under Sub-section (1) of Section 4 of the said Ordinance.

The Ordinance was however replaced by the said Act with retrospective effect from June 29, 1981 after the Act received the assent of the

President on September 25, 1981. The provisions of the said Ordinance stood bodily incorporated in the said Act and likewise there was no

alteration in the Scheme which was already made under the said Ordinance which is now deemed to have been made under the said Act by virtue

of Sub-section (2) of Section 31 of the said Act. The-challenges to the provisions of the Ordinance and the Scheme are now therefore to be

construed as challenges to the said Act and the Scheme made under the said Act.

2. Until the State Government promulgated the said Ordinance on June 28, 1981, about 250 agents and agencies were operating in Greater

Bombay and Thane Districts, regularly supplying persons to work as Security Guards to various factories and establishments. The object of the

legislation is to eliminate the agents and agencies who were working as middlemen for supplying the Security Guards, to create a pool of Security

Guards and to supply them to the factories and establishments through the Board constituted for the purpose and also to induce the employers to

engage as their direct employees the persons doing the security work and to prohibit their engagements on contract basis through the middlemen.

The legislation does not apply to those persons who are doing security work and are directly employed with the factories and establishments.

3. The present petitions seek to challenge this legislation on various grounds. In order to understand the significance of the challenge it is necessary

to know the object, the scheme and the various provisions of the legislation. Before we refer to the various provisions of the Act and the Scheme

made thereunder it would be necessary to know the genesis of the present legislation. The evil of the contract labour system in various industries

and establishments for various occupations had become the rule of the day. In engineering, cotton textile, cement, paper, coir-matting, mining and

even in Central and Provincial Public Works Departments, contract labour was employed on a large scale and the percentage of such labour

varied from 10 to 25 of the total number of employees employed in the units. There were certain advantages gained by the employers on account

of the engagement of the contract labour but there was a wide-spread feeling in responsible quarters that the disadvantages of the system were far

more numerous and weightier. In particular, it was noticed that ""the contract system enabled the employer to escape the provisions of most of the

labour Welfare Acts. Secondly, it enabled both the contractor as well as the employer to exploit the situation of wide-spread unemployment and

hire workers at the lowest rates. The contractor was interested in securing them at comparatively cheap rates and the employer was interested in

keeping his costs of labour down to the minimum. That resulted in unhealthy competition between the contractors supplying the contract labour to

the ultimate disadvantage of the workers. Thirdly, since the contract system was found profitable to the employers, a tendency grew amongst the

employers to engage contract labour in as many occupations and processes in the industry as they could. The result was that even in processes

which were necessarily a part and parcel of the regular production and business activity, the employers tended to engage more and more contract

labour resulting in wide-spread mal-practices of keeping a large army of casual workers on temporary basis for years together thus avoiding the

payment of fair wages and the granting of the terminal benefits and other facilities such as leave, medical care, etc. to them. This was commented

upon and condemned from time to time by various Committees and Commissions appointed to investigate into the conditions of labour, and

recommendations were made from time to time to abolish the contract system particularly where the employment was regular and the processes

and occupations in which the contract labour was engaged were essentially a part of the activities of the factories and establishments where they

were employed. This demand for abolishing the contract labour led to the enactment of the Central Act called the Contract labour (Regulation and

Abolition) Act, 1970. It applied to all establishments in which 20 or more workmen were employed and prohibited employment of contract labour

in any processes, operations or other work in such establishments. The Act also made provisions for the welfare and health of contract labour and

required the contractors to supply various facilities to the contract labour and also cast a corresponding responsibility on the employer who

engaged such contract labour to supply the amenities where the contractor failed to do so. The Act also made the contractor responsible for

payment of wages and also made the employer responsible for such payment of the wages remaining unpaid by the contractor. It appears that in

spite of the enactment of the said legislation, certain occupations and processes continued to escape, the provisions of the said legislation. In

particular, in this State certain sections of unprotected manual workers employed in certain employments continued to be exploited by the

contractors and hence the State Government had to enact an Act called the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation

of Employment and Welfare) Act, 1969 (hereinafter referred to as the Mathadi Act). The Act came into force on June 13, 1969 and applied to the

employments specified in the Schedule to the said Mathadi Act. The security guards or those who were discharging the duties of watch and ward

staff however were not brought within the purview of this Act. In the meanwhile the Trade Union of the security guards in the State called the

Maharashtra Rajya Suraksha Rakshak and General Kamgar Union Bombay, which is a party to this petition, (having been added as respondents

on their application) made representations to the State Government and demanded the constitution of a separate Board on the lines of the Mathadi

Boards under the Mathadi Act, for ensuring regular employment and human service conditions to the security guards employed in various factories

and establishments in Greater Bombay and Thane Industrial Complex and to prevent their exploitation at the hands of the agents and agencies

which were engaging them on a meagre salary and supplying them to various factories and establishments in that region. With a view to ascertain

the extent of exploitation and also to collect data with regard to the prevalent service conditions of the security guards, the State Government

conducted a rapid sample survey of the security guards employed on contract basis in Greater Bombay and Thane Industrial Complex. According

to this survey, there were about 200 to 250 security agents and agencies operating in the said regions. Most of these agencies were not even

registered under the Bombay Shops and Establishments Act, 1948. There was only one registered Union of the security guards in Greater Bombay

and Thane Industrial Complex and that was the respondent-Union which claimed a membership of about 2,200 security guards. According to the

claim made by the Union, there were about 70,000 security guards employed in various factories and establishments, etc. all over the said region.

The survey was based upon the examination of 50 such agencies carrying on the work of supplying security guards. It was noticed from this

sample survey that only 28% of the agents were extending the benefit of provident fund and the said benefit was available only to 45.38% of the

total security guards covered by the survey. Similarly, only 7. 38% of the total security guards enjoyed the benefit of gratuity. Likewise, only 35

agents engaging 2792 security guards were covered by the Employees'' State Insurance Scheme and only 8 agents engaging 1541 security guards

had extended medical facilities to the security guards. As regards leave, out of 50 agents which were covered by the survey, 43 were giving

weekly-offs with wages, 4 agents were giving weekly-offs without wages and the remaining 3 agents were not giving any weekly-offs whatsoever.

Out of the 50 agents further, as many as 42 agents were not providing any casual leave to the security guards while the remaining 8 were giving

some casual leave. Out of those who gave casual leave, 7 gave leave which varied between 6 to 10 days while the remaining one gave casual leave

of 12 days. Out of the said 50 agents again, 6 were giving privilege leave between 11 to 15 days while one was giving between 16 and 20 days

and 19 were giving over 20 days while the remaining 24 were not giving any privilege leave at all. As regards sick leave, 4 out of the said 50 agents

alone were giving such leave and that varied between 5 to 10 days. As regards festival holidays, 10 agencies out of the said 50 were giving

holidays upto 5 days, while 8 were giving 6 to 10 holidays and one was giving 11 to 15 days. The rest 31 were not giving any festival holidays at

all.

4. The condition with regard to the working hours was equally un-uniform. Out of the 50 agencies 34 agencies had working days of 7 1/2 hours

while 14 had a working day of 8 hours and one agency had a working day of 9 hours. The rest interval also varied, with 44 of the 50 agencies

providing a rest interval of half an hour whereas 5 of them giving rest interval of one hour and one of the agencies providing no rest interval at all.

5. As regards monthly wages, the average monthly wages given to the security guards engaged by the 50 agencies worked out to Rs. 264.72 only.

The payment of over-time likewise was un-uniform, twenty-eight of the 50 agencies paid over time only at single rate while 10 agencies paid it at

double rate. The remaining 12 agencies did not pay any over-time at all. As regards bonus, out of the 150 security guards who were examined as

and by way of sample survey, only 24 out of them were receiving bonus at the rate 8.33% of their total earnings while 13 of them were being paid

cash benefits ranging from Rs. 10/- per annum to Rs. 250/- per annum. The rest of the security guards were not getting any bonus or cash benefits

at all.

6. As regards the other amenities and facilities, out of 150 sampled security _guards, only 6 had drinking water facility, only 42 had canteen -

facility, only 16 had transport facility, only 4 were given accommodation and only 31 had rest sheds. Eleven of the said sampled security guards

were not even provided with sanitary arrangements.

7. On the basis of this rapid sample survey, certain conclusions were drawn and recommendations were made in the report. According to these

conclusions and recommendations, a majority of the security guards were in need of special legislative protection since they did not receive

anything beyond a meagre wage of Rs. 264.72 per month on an average. It was also noted that most of these agencies were collecting from the

employers substantially high amounts and pocketing the difference as their profits, and thus were carrying on a lucrative business in supplying

human labour. The report also noted that some unscrupulous agencies also employed untrained persons without a background of security work. It

was therefore necessary to stop exploitation of the unprotected security guards and to provide them with better service conditions. A

recommendation was therefore made that a notification could be issued under the Mathadi Act so as to provide the security guards with the same

facilities as the workers covered by the said Act. The report further noted that the State Government had earlier tried to abolish the contract labour

system amongst the security guards in about 28 establishments in Greater Bombay and Thane Districts by issuing a notification under the Contract

labour Act. The same however was struck down by this Court on the ground that the notification issued was not a speaking order. Hence the

reports suggested that the security guards should be covered under the provisions of the Mathadi Act by amending the Schedule of employment to

which the said Act applied. The report also observed that a non-official Bill was introduced by member of the Legislative Council to cover security

guards under the Mathadi -Act but the same was opposed by the State Government at that time because the Government was considering issuing

a notification under the Contract labour Act. Since this Court had struck down the notification so issued under the Contract labour Act, it was felt

that; that course was not quite satisfactory. The report therefore concluded that the only course open was now to amend the Schedule of the

Mathadi Act so as to include the employment of security guards in the employments mentioned in the said Schedule. The report further stated that

the only argument that could perhaps be put forth against the said proposal was that in case there was a strike in a factory or establishment where

the security guards are sent for employment, the security guards may join hands with the workers and join their agitation as well. According to the

report there was not much force in that argument because when they are covered by the Mathadi Act they would be under the control and subject

to the discipline of the Board constituted under the Mathadi Act.

8. It is against the background of this report which is at page 113 of the Compilation, that the present legislation was placed on the statute book.

This history of the legislation would broadly indicate the object of the legislation. It will now be convenient first to examine the provisions of the said

Act. There is no statement of object and reasons freshly given while replacing the Ordinance by the said Act. Hence the statement of the objects

and reasons which accompanied the Ordinance would form the statement of objects and reasons of the said Act as well. The said statement says

that it was represented to the Government that there were about 70,000 persons working as Security Guards in various factories and

establishments in Greater Bombay and in Thane Industrial Complex. Majority of them were provided by about 250 flourishing agencies operating

in the said areas. However, the service conditions of the Security Guards were not satisfactory. Their services depended merely on the whim and

sweet will of the agencies supplying them and they were being exploited and even removed arbitrarily from service on flimsy grounds. In many

cases, the security guards received a small portion of the amounts recovered by the agencies from the employers and the balance was pocketed by

them. The Government had recently conducted a survey (to which I have already made a reference earlier) and the findings of the survey

confirmed that there was a substantial truth in what was represented to the Government. The Government also noticed that the Security Guards

were required to do not only the usual patrolling and watch and ward work but occasionally they were compelled to fight situations like thefts,

assaults and fire. It was also noticed by Government that under the present system they were not entitled to any protection of the labour Laws

available to the other workers. In order therefore to ensure that the Security Guards in factories and establishments were not exploited and to

make better provisions for their terms and conditions of employment and welfare, a separate representative Board was considered necessary by

enacting a special law for the purpose on the lines of the Mathadi Act. This would also make it possible in due course to make recruitment of the

Security Guards through the Board only.

9. The preamble of the Act reiterates the broad features of the said statement of objects and reasons accompanying the Ordinance and states that

the Act was being placed on the statute book for regulating the employment of private security guards employed in factories and establishments in

the State of Maharashtra and for making better provisions for their terms and conditions of employment and welfare, through the establishment of a

Board therefor, and for matters connected therewith.

10. By section 1 of the Act, the Act is made applicable to the whole of the State. However, it is also provided that whereas it will come into force

in Greater Bombay and Thane District on June 29, 1981, its application to the other areas of the State will depend upon the notifications that may

be issued from time to time in that behalf and that different dates may be appointed for different areas and for different provisions of the Act to

come into force. sub-s. (4) of Section 1 then makes it clear that the Act applies to persons who work as Security Guards in any factory or

establishment but, who are not direct or regular employees of the factory or the establishment, as the case may be. The expressions ""factory"" and

establishment"" are defined along with other expressions in Section 2 of the Act. What is however important to note is the fact that the Act does

not apply to security guards or persons who are doing security work as direct employees in such factory or establishment. In other words it applies

to security guards engaged through agents or agencies only.

11. Section 2 defines the various expressions relevant for the Act. Sub-section (1) of Section 2 defines agency or agent in relation to a security

guard and states that an individual or a body of individuals or a body Corporate who undertakes to execute any security work or watch and ward

work for any factory or establishment by engaging such security guard on hire or otherwise, or who supplies such security guards either in groups

or as individual, would for the purposes of the Act mean agency or agent and would include a sub-agency or a sub-agent of such agency or agent.

12. Sub-section (3) of Section 2 defines employer to mean the principal employer when the security guard is engaged by or through an agency or

agent and when he is not so engaged, the person who has ultimate control over the affairs of the factory or establishment and includes any other

person to whom the affairs of the factory or establishment are entrusted whether such person is called an agent, manager or by any other name.

Sub-section (4) defines establishment to mean an establishment as defined in Clause (8) of Section 2 of the Bombay Shops and Establishments

Act, 1948 and Sub-section (5) defines factory to mean a factory as defined in Clause (m) of Section 2 of the Factories Act, 1948. Sub-section (8)

defines principal employer to mean an employer who has engaged Security Guards through an agency or agent. Sub-section (1) defines Security

Guard or private Security Guard to mean a person who is engaged or is to be engaged through any agency or an agent, whether for wages or not,

to do security work or watch and ward work in any factory or establishment and, includes any person, not employed by any employer or agency

or agent, but working with the permission of, or under an agreement with, the employer or agency or agent. This definition excludes the member of

any employer''s family or any person who is a direct or regular employee of the principal employer. The latter part of the definition is consistent

with the provisions of Sub-section (4) of Section 1 referred to earlier and makes it once more clear that the Act does not apply to a security guard

directly employed by the principal employer. We have then the definition of wages in Sub-section (11) which is not material for our purpose.

13. Section 3 of the Act then gives powers to the State Government to make a Scheme or Schemes for ensuring an adequate supply and full and

proper utilisation of the Security Guards in factories and establishments, and generally for making better provisions for the terms and conditions of

employment of the Security Guards, to provide for the registration of employers engaging them as well as of the Security Guards and for making a

provision for the welfare of the Security Guards. The Scheme to be made by the State Government under the said section is in particular to

provide for matters which are mentioned in Clauses (a) to (n) of Sub-section (2) of the said Section 3. By Sub-section (3) of the said Section 3,

power is given to the State Government to provide for punishments and penalties for contravening any of the provisions of the Scheme or Schemes

to be made. Then comes Sub-section CO of the said Section 3, which makes a provision for a transitory period and bar dismissal, discharge,

retrenchment or any other form of termination of employment of the security guards by any principal employer, agency or agent on and from June

29, 1981 which is the date of the Ordinance, merely because the employer was liable to register himself under the scheme framed under that

section or merely because some other liability was likely to be cast on him under such scheme or because the Security guard employed was liable

to be registered under the Scheme. The bar operates from June 29, 1981 till the date the whole of the scheme framed under the section was

applied to such employer and the Security Guard or for a period of one year from June 29, 1981 whichever is earlier. The dismissal, discharge,

retrenchment or other termination of the appointment by way of penalty imposed for disciplinary action is however not within the purview of the

said bar.

14. Section 4 gives power to the State Government to prepare one or more schemes for Security Guards or a class of Security Guards in one or

more areas specified in the notification, and in like manner add to, amend or vary any Scheme or substitute another scheme for the Scheme already

made.

15. Section 5 provides the machinery for resolving the dispute with regard to the application of any scheme to any class of Security Guards or

employers and provides that such a dispute shall be referred to the State Government and the decision of the State Government which shall be

taken by it after consulting the Advisory Committee constituted u/s 15, shall be final.

16. Section 6 gives power to the State Government to constitute a Board for any Security Guards in any area and permits the establishment of one

or more Boards for one or more classes of Security Guards or for one or more areas. The Board so constituted is to be a body corporate with all

the trappings thereof. The Board is to consist of members nominated by the State Government from time to time. The nominees are to represent

the employers, the Security Guards and the State Government. The members representing the employers and the security guards are to be equal in

number and the members representing the State Government are not to exceed one-third of the total number of members representing both the

employers and the Security Guards. The Chairman of the Board is to be from one of the members nominated to represent the State Government

and has to be nominated as such by the State Government. The term of office of the members is to be prescribed by the State Government and the

meetings of the Board and the procedure to be followed by the Board is to be regulated by the Board itself subject to the approval of the State

Government.

17. Section 7 provides for an eventuality when the employers and the Security Guards refuse to recommend persons for representing them on the

Board or for any other reason it is not possible to constitute a Board, and provides that in such an eventuality the State Government may appoint a

suitable person to hold office until a Board is duly constituted as per the provisions of Section 6 of the said Act.

18. Section 8 states the powers and duties of the Board and states that it shall exercise such powers and discharge such duties and functions as

may be conferred on it by the Scheme. It also gives power to the Board to take such measures as it may deem fit for administering the Scheme. It

then provides that the Board shall submit a report to the State Government every year after the 1st day of April, and not later than 31st October,

on the working of the scheme during the preceding year ending on the 31st day of March of that year. The report is to be laid before each House

of the Legislature. The Board is to be bound by such directions that the State Government may, for reasons to be stated in writing, give to it, from

time to time for exercising the powers and for the performance and discharge of its duties and functions.

19. Section 14 of the Act gives power to the Board or such Officer as it may specify to determine any sum due from any employer or Security

Guard and for that purpose to conduct such inquiry as may be deemed necessary. Sub-section (3) thereof states that no such order determining

the sum shall be made without giving a reasonable opportunity to the employer or Security Guard as the case may be. The order made determining

the said sum is to be final and not to be questioned in any Court.

20. Section 15 provides for constitution of an Advisory Committee by the State Government to advise the Government upon such matters arising

out of the administration of the Act or any Scheme made under it or relating to the application of the provisions of the Act to any particular class of

Security Guards or employers, as the Advisory Committee may itself consider to be necessary or the State Government may refer to it for advice.

The Advisory Committee is to include an equal number of members representing the employers, the Security Guards, the Legislature of the State

and the State Government. The representatives of the State Government however are not to exceed one-fourth of the total number of members.

The Chairman of the Advisory Committee is to be one of the members representing the State Government and nominated as such.

21. Section 16 provides for the appointment of Inspectors and the duties of such Inspectors are to assist the enforcement of the provisions of the

Act and the scheme.

22. Section 17 provides that no Court will take cognizance of any offence made punishable by a Scheme or of any abetment thereof, except on a

complaint in writing by an Inspector or by a person specially authorised in that behalf by the Board or the State Government.

23. Section 18 bars a child i.e. a person who has not completed 14 years from working as a Security Guard.

24. We have then the provisions of Sections 19 and 20 which have a direct bearing on the contentions advanced on behalf of the petitioners.

Section 19 provides that the provisions of the Workmen''s Compensation Act, 1923, and the rules made thereunder, shall mutatis mutandis, apply

to the registered Security Guards employed in any factory or establishment; and for that purpose the Security Guards shall be deemed to be

workmen"" within the meaning of that Act. It also states that in relation to such Security Guards, the employer shall mean where a Board makes

payment of wages to any such Security Guards, the Board, and in any other case, the employer as defined in this Act. This will mean the principal

employer who has engaged the Security Guards and who has an ultimate control over the affairs of the factory or establishment, or where the

affairs of such factory or establishment are entrusted to any other person, such person whether called an agent, manager or otherwise. Similarly,

Section 20 states that notwithstanding anything contained in the Payment of Wages Act, 1936, the State Government may by notification direct

that all or any of the provisions of that Act and the rules made thereunder shall apply to all or any class of registered Security Guards employed in

any factory or establishment, with the modification that, in relation to registered Security Guards, an employer shall mean, where a Board makes

payment of wages to such Guards, the Board, and in any other case, the employer as defined under Sub-section (3) of Section 2 of the Act. The

import of the provisions of Sections 19 and 20 is that except for the purposes of the said two Acts viz. the Workmen''s Compensation Act, 1923

and the Payment of Wages Act, 1936, neither the Board nor the employer as defined under Sub-section (3) of Section 2 of the said Act is to be

looked upon as an employer notwithstanding the fact that the wages are paid by the Board or by such employer as the case may be. What is

further, were it not for the provisions of Section 19 and the notification issued u/s 20, the provisions of the Workmen"s Compensation Act, 1.923

and those of the Payment of Wages Act, 1936, as the case may be, would not be applicable to the Security Guards covered by the said Act.

25. Section 21 makes a similar provision with regard" to- the applicability of the Maternity Benefit Act, as Section 20 makes, with; reference to

the applicability of. the. Payment of Wages Act, 1936. Here again, the Board and; the employer as defined in the said Act can be looked upon as

an, employer in relation to the Security Guards only by virtue of the notification issued u/s 21 of the said Act for the purposes of the Maternity

Benefit Act and not otherwise.

26. Section 22 saves generally the rights and privileges which any registered Security Guard employed in any factory or establishment is entitled to,

on the date the said Act came into force and which rights or privileges were available to such Security Guards under any other law, contract,

custom or usage applicable to such Security Guards, if such rights or privileges are more favorable to them than those to which they would be

entitled to under the said Act. This provision in the context can only mean that if the Security Guard employed with any agency or agent was

entitled to higher benefits from such agent or agency, he would continue to be given the same benefits wherever he may be assigned by the Board

hereafter.

27. Section 23 then provides for exemption from the operation of all or any of the provisions of the said Act or any Scheme made thereunder. It is

intended to be the usual exemption provision. However, the language of the said section is so cast that it is not capable of being applied to any

class whatsoever as will be shown at the relevant time. For the present it will suffice to note that the exemption, under this section is to be given

only to the Security Guards of all or any of the classes employed in any factory or establishment or in any class or classes of factories or

establishments. The exemption further is to be given only if the Security Guards concerned are in the enjoyment of benefits, which are on the whole

not less favorable to them than the benefits provided by or under the said Act or under any Scheme made thereunder.

28. Section 24 then gives power to the State Government to make an inquiry into the working of the Board or the Scheme made under the said

Act and submit its report to the State Government in that behalf.

29. Section 25 provides for supersession of the Board. Section 26 declares that any contract or agreement, whether made before or after the

commencement of the said Act, whereby a registered Security Guard relinquishes any right, privilege or concession conferred or accruing to him

under the Act or the Scheme, shall be void and of no effect, if it purports to deprive him of any such right or privilege or concession. It is difficult to

understand the provisions of this section as will be shown hereafter.

30. Section 27 provides for the quantum of penalty for the offence under the said Act. Section 28 gives protection to the State Government or the

Board or its Chairman or other Officers from any legal proceedings. Section 29 gives power to the State Government to make rules under the said

Act and Section 30 provides that the scheme and the rules made under the said Act shall be placed before the Houses of the Legislature. These

are all the material provisions of the said Act which are necessary to be considered.

31. We may now refer to the provisions of the Scheme. As stated earlier, the Scheme was made under Sub-section (1) of Section 4 of the

Ordinance but by virtue of Sub-section (2) of Section 31 of the said Act it is deemed to have been made under Sub-section (1) of Section 4 of the

said Act.

32. Clause 2 of the scheme mentions that the objects of the Scheme are to regulate employment of private Security Guards employed in factories

and establishments and to make better provisions for their terms and conditions of employment and welfare through the establishment of a Board

therefore, and for matters connected therewith. The said Clause also states that the scheme will apply to the registered Security Guards in any

factory or establishment in the areas specified in the Schedule to the scheme and to the registered employers employing them. The schedule to the

Scheme mentions two areas viz. Greater Bombay and Thane District. Therefore, the Scheme under challenge is applicable to Greater Bombay and

Thane District only.

33. Clause 3 makes Clauses 14 and 15 of the scheme operative from October 1, 1981 and the remaining Clauses from November 1, 1981.

Clauses l4 and 15 incidentally provide for registration of employers and of existing and new Security Guards respectively. Clause 4 is an

interpreting or definition provision and the material sub-cls. are (a), (b), (f), (j) and (k). Sub-clause (a) defines appointed day as June 29, 1981,

being the day of the commencement of the Ordinance. Sub-clause (b) defines Board to mean the Security Guards Board for Greater Bombay and

Thane District constituted u/s 6 of the Ordinance. Sub-clause (f) defines ''pool'' to mean a list or register of Security Guards maintained by the

Board but which does not include directly employed Security Guards. This definition further is consistent with the provisions of Sub-section (b) of

Section 1 and of Sub-section (10) of Section 2 of the Act. It once again emphasises the fact that the directly employed Security Guards are

outside the purview of the Act. Registered employer is defined accordingly by Sub-clause (j) to mean the employer whose name is for the time

being entered in the register of employers and registered Security Guard or registered private Security Guard is defined by Sub-clause (k) to mean

a person whose name is for the time being entered in the register of pool Security Guards.

34. Clause 6 of the Scheme enumerates the functions of the Board and states that the Board may take such measures as it may consider desirable

for carrying out the objective of administering the Scheme as set out in Clause 2 including the measures mentioned in Sub-clause (1)(i) to (xii)

thereof. Sub-clause (2) of Clause 6 gives power to the Board to apply the property, fund and other assets vesting in the Board for the purposes of

the Scheme. Sub-clause (3) then provides for the sources of the funds of the Board and they are the monies received by the Board from the State

Government and the fees, wages and levies received by the Board under the Scheme. Sub-clause (5) permits the Board to borrow money from

open market or otherwise while Sub-clause (6) gives it power to accept deposits. Sub-clause (11) then gives power amongst others to the Board

to fix the number of Security Guards to be registered under the various categories; to increase or decrease the number of Security Guards from

time to time as may be necessary after a periodical review of the register and anticipated requirements; to sanction the temporary registration of a

specified number of Security Guards in any category for specific periods; to determine the wages, allowances and other conditions of service

including the age of retirement of registered Security Guards; to determine the manner of disbursement of wages and other allowances to them; to

fix the rate of levy under cl 37; to settle disputes between registered employers and registered Security Guards and to delegate in writing to the

Chairman, Secretary or to any other Officer of the Board any of its functions under the Scheme subject to such conditions as it thinks fit.

35. Clause 8 of the scheme details the duties and responsibilities of the Chairman. Clauses 9 and 10 thereof enumerate the functions of the

Secretary and the Personnel Officer respectively. Clause 11 then provides for maintenance of registers for employers and of Security Guards.

Clause 12 enables the Board to classify the Security Guards in suitable categories, from time to time. Clause 13 enables the Board to determine

the number of Security Guards required in a particular category after consultation with the registered employers. Then comes Clause 14 which

makes it obligatory on every employer who had engaged private Security Guards on the appointed day i.e. June 29, 1981 or at any time thereafter

to get himself registered with the Board within 15 days from the date of coming into force of the said Clause. As has been stated earlier, the said

date is October 1, 1981. The proviso to the said clause then provides for the registration of the employer of any establishment coming into

existence after the commencement of the scheme and states that such employers shall apply for registration simultaneously with the commencement

of their business, It is obvious that this provision will apply only to such employers who engage Security Guards through agents or agencies and not

to those who employ Security Guards directly as their employees. Clause 15 then provides for registration of existing and new Security Guards,

and states that any Security Guard who was working on the appointed day i.e. June 29, 1981 or at any time thereafter in the employment in the

area to which the Scheme applies shall get himself registered within one month from the date of coming into force of that clause which is October

1, 1981. Clause 16 then provides for promotion and transfer of Security Guards. Clause 17 provides for medical examination of the Security

Guard before the registration; Clause 18 for registration fee both for the Security Guard and the employer and Clause 19 for the supply of identity

cards to the Security Guards. Clause 20 then provides for maintenance of service records for each Security Guard and Clause 21 provides for

maintenance of record-sheets in respect of each registered employer.

36. There is then a provision made in Clause 23 for disappointment money for the Security Guard when he presents himself for work and for any

reason the work cannot commence or proceed and he is relieved within two hours of his attending for work. The employer is enjoined to pay him

for that day at the rate to be fixed by the Board as appropriate to the category to which the Security Guard belongs. A Security Guard who is

detained for more than two hours, however, has to be paid full wages inclusive of dearness allowance.

37. Clause 24 prescribes four holidays for each Security Guard, three of them being 26th January, 1st May and 15th August. The fourth is to be

decided by the Board. The proviso to the clause however makes it clear that the employer may require any Security Guard to work in the factory

or establishment on all or any of these days, subject however to the condition that for such work the Security Guard is paid at the overtime rate

specified by the Board under Clause 29 of the Scheme. Clause 2.5 then sets out the obligations of the registered Security Guards. Under this

provision, every Security Guard who is registered is deemed to have accepted the obligations arising out of the scheme. The registered Security

Guard who is available for work is forbidden from engaging himself for employment under any registered employer, unless he is allotted to that

employer by the Secretary. He is also further required to carry out the directions of the Board and to accept employment under any registered

employer for which he is considered suitable by the Board. When he is allotted to a registered employer, he is required to carry out his duty in

accordance with the directions of such employer and the rules of the employment or place where he is working. Correspondingly, Clause 26

creates obligations for registered emloyers. Every registered employer is enjoined to accept the obligations of the scheme. He is forbidden from

employing any Security Guard other than a Security Guard who has been allotted to him. However, it is made clear that he is free to employ any

Security Guard directly. A registered employer is further required to submit all available information of his current and future requirements of

Security Guards. He is also required to disburse to the Security Guard allotted to him the wages and other allowances directly if the Board so

directs and to send to the Board a statement of such payment within the time specified by the Board. However, if the Board directs the remission

of the wages and allowances to itself, the registered employer is required to remit the amount to the Board. The registered employer is further

required to pay to the Board, the levy payable under Clause 37(1) as well as the gross wages and other amounts due to the Security Guards. In

case the employer makes default in remitting the amount of wages, the Board has power to require him to deposit with itself an amount equal to the

monthly average of the payments made during the past 12 months. In case of persistent defaults, the Board is also authorised to impose a penalty

upon the employer not exceeding 10 per cent of the amount that was to be remitted. The Board is further authorised to suspend the supply of

guards to the employer who commits defaults in making the payment due from him to the Board after giving a notice to that effect. A registered

employer has further to keep a record according to the instructions of the Board in respect of the Security Guards employed with him and produce

such record before the Board as and when directed to do so.

38. We have an important provision in Clause 27 prohibiting a registered employer from engaging a Security Guard other than a registered

Security Guard or directly employed Security Guard. An exception is made to this rule of prohibition in certain circumstances. One of the

circumstance is that the work is emergently required to be done and it is not reasonably practicable to obtain a registered Security Guard for this

work. In such cases, the permission of the Secretary of the Board is to be obtained. The Secretary in turn has to acquire the prior approval of the

Chairman to the employment of the Security Guards and where this is not possible, he has to report to the Chairman of the Board within 24 hours,

the full circumstances under which such Security Guards were employed. The Board is also authorised to permit employment of unregistered

Security Guards on holidays if the work is required to be done on that day and to the extent the registered Security Guards are not available for

work. A concession is then given to a registered Security Guard to take up employment elsewhere on those days on which he is not allotted for

work by the Board.

39. Clause 28 then provides that when the name of a registered Security Guard is removed from the register, the Scheme shall cease to apply to

such Security Guard from that day. This has an obvious reference to Clauses 31 and 32 which empower the Board to remove the Security Guards

from its register and we will soon refer to the said provisions. Clause 29 is one more important provision and relates to the wages, allowances and

other conditions of service of Security Guards. It gives power to the Board to fix the rates, allowances and overtime, hours of work, rest intervals,

leave with wages and other conditions of service including supply of uniforms, boots, torches, batteries, etc. necessary for the proper and efficient

execution of the Security Guards'' duties, and such rates of wages, etc. fixed by the Board are matters of implicit contract between the registered

Security Guard and a registered employer. These conditions of service are to be fixed or their revision or modification is to be done by the Board

after calling upon the Associations or in the absence of the representatives of the employers and the Security Guards to make such representations

as they may think fit. After taking into account the representations to be made if any and after examining all the material placed before it, the Board

has to fix and/or revise or modify the conditions of service of the Security Guards, while doing so, the Board has to have regard to the cost of

living, the prevalent conditions of service in comparable employments in the local area, the capacity of the registered employers to pay and any

other circumstances which may seem relevant to the Board. Such fixation, revision or modification of the conditions of service may take effect

prospectively or retrospectively as the Board may decide. Clause 30 then lays down the mode of disbursement of wages and other allowances to

the Security Guards. The wages and other allowances payable to a Security Guard by his employer are to be remitted by him to the Board within

such time as may be specified by the Board and thereafter the Board has to arrange to disburse the wages and other dues on specified days every

month subject to deductions recoverable from the Security Guard under the Scheme. The Board may however allow the registered employer to

pay the wages and other allowances directly to the Security Guards.

40. Clause 31 lays, down the disciplinary procedure against the registered employer as well as the Security Guard. On receipt of information of

complaint or otherwise that the registered employer has failed to carry out the provisions of the Scheme, the Personnel Officer of the Board is

given power to investigate the matter, and if he is satisfied, give the employer a warning in writing. In case of a breach demanding higher penalty,

the Personnel Officer has to report the matter to the Chairman who may cause further investigation and censure the employer and record the

censure in his record sheet. Likewise, a registered Security Guard who fails to comply with any of the provisions of the Scheme or who commits

an act of indiscipline or mis-conduct may be reported in writing to the Personnel Officer of the Board who may after investigating the matter warn

the Security Guard in writing. In case of misconduct demanding higher punishment, his case is reported to the Chairman. On receipt of a report

from the Personnel Officer or from an employer or any other person that a registered Security Guard has failed to comply with any of the

provisions of the Scheme or is guilty of an act of indiscipline or misconduct or has been inefficient in any other manner, the Chairman may after

giving an opportunity to the Security Guard, cause further investigation to be made and thereafter either warn the Security Guard in writing,

suspend him for a period not exceeding four days or terminate his services after giving one month''s notice or one month''s wages in lieu thereof or

dismiss him. The Chairman has also the power to suspend such a Security Guard during the pendency of the investigation against him.

41. Clause 32 then makes a provision for the termination of employment and states that the employment of a registered Security Guard shall not be

terminated except in accordance with the provisions of the Scheme. A Security Guard in his turn is forbidden from leaving his employment in the

pool with the Board except after giving 14 days'' notice in writing or forfeiting 14f days'' wages in lieu thereof.

42. Clause 33 makes a provision for appeal by the Security Guard who is aggrieved by the action taken by the authority against him. The appeal is

to be preferred against the order of the Personnel Officer, to the Chairman and against the order of the Chairman of the Board, to the State

Government. -This Clause also makes a provision of appeal by a Security Guard in other circumstances viz. if he is placed in a category in which

he ought not to have been placed; if he is refused registration under the Scheme or if he is required to undertake any work which is not of the

category to which he belongs. The appeal in such cases is to the Chairman of the Board. Likewise the Security Guard is also given a right of

appeal to the Chairman if he is aggrieved by the orders of promotion or transfer.

43. Clause 34 likewise makes a provision for appeal by the employer in case the employer is aggrieved by the disciplinary action taken against him

for having failed to carry out the provisions of the Scheme. The appeal is to be preferred to the Chairman. By Clause 35, the Chairman is given

power of revision of the orders passed by the Personnel Officer under Clause 31. By Clause 36 power is also given to stay the operation of the

order pending the appeal. Then comes somewhat controversial provision regarding the recovery of the cost of operating the Scheme, and for

provision for amenities and benefits to the Security Guard. Clause 37 which makes a provision for the same states that the cost of operating the

Scheme and for providing different benefits, facilities and amenities to the registered Security Guard shall be defrayed by payments made by the

registered employers to the Board. For this purpose, every registered employer has to pay to the Board such amount by way of levy in respect of

registered Security Guards allotted to and engaged by him as the Board may, from time to time, specify. The levy may have to be paid

retrospectively or prospectively. The employer to whom the Scheme applies has to pay the levy from the date from which the Scheme becomes

applicable to him irrespective of whether he gets himself registered within the time specified or any time thereafter. The Board is further

empowered to fix different rates of levy to recover from the registered employer for different categories of Security Guards. There is however a

restriction placed on the quantum of levy that the board may impose and it is laid down by Sub-clause (4) of said clause that the Board cannot

sanction any levy exceeding 50 per-cent of the total wage bill without the prior approval of the State Government. In other words, without the

approval of the State Government, the Board can impose levy to the extent of 50 per-cent of the total wage bill, but with the approval of the State

Government, the levy can be imposed at any rate. In case the employer fails to make the payment of levy due from him within the time specified,

the supply of registered Security Guards to him can be suspended after giving him three days notice for making the payment.

44. Clause 38 of the Scheme enables the Board to frame and operate rules providing for Contributory Provident Fund for registered Security

Guards as well as for payment of gratuity to them. While framing the rules both for provident fund and gratuity, the Board has to take into

consideration the provisions of the Employees" Provident Fund and the Miscellaneous Provisions Act, 1952 and the Payment of Gratuity Act,

1972 respectively. The last Clause 39 then provides for penalties and lays down that whoever contravenes the provisions of Clauses 14, 26 or 27

which incorporate the provisions for registration of employer, obligations of registered employers and the restriction on employment by the

registered employers of Security Guards other than the registered Security Guards respectively shall on conviction be punished with imprisonment

etc.

45. These are all the relevant provisions of the Scheme necessary to bear in mind while examining the challenges to it.

46. The aforesaid provisions of the Act and the Scheme show that the said Act and the said Scheme are together intended to regulate the

employment of Security Guards hitherto employed in factories and establishments through the middlemen such as the agents and agencies and to

make better provisions for their terms and conditions of employment and to provide for their welfare. For this purpose, such Security Guards are

pooled together and a Board is constituted for classifying them into different categories, for assigning them to different employers, for prescribing

the rates of their wages, allowances and other service conditions, for making the other benefits and amenities available to them, for ensuring that the

wages and other service conditions are promptly secured to them, for recovering the costs of operating the Scheme and for defraying the expenses

of the Scheme and for taking action against the Security Guards and employers in case of non-compliance with the provisions of the Act and the

Scheme. For this purpose, ail Security Guards who are not the direct employers of any employer, are required to register themselves with the

Board and they are prohibited from taking employment with any employer other than as direct recruits. The Security Guards are further forbidden

from refusing the assignment offered to them. Likewise, ail employers who went to engage security guards otherwise than as their direct employees

are required to register themselves with the Board and they are prohibited from engaging any Security Guard otherwise than as their direct

employee. It is further enjoined upon the employers to take Security Guards (other than those engaged as direct employees) only from the pool of

Security Guards registered with the Board. The registered employers are further required to pay such rates of wages and allowances and to give to

the Security Guards such other service conditions as are decided upon and directed by the Board. The payment is made either by the Board after

recovering the amount from the employers or is made directly by the employer as per the direction of the Board. The disciplinary action against the

Security Guard including the dismissal and the termination of his employment is not left to employer, but is made the direct responsibility of the

Board. The order passed by the Board in such matters is made appealable by providing that an appeal against such order will lie to the State

Government. In order further to ensure the smooth working of the Scheme, the constitution of the Board is designed suitably by providing that the

Board shall consist of representatives of the employers, the Security Guards and the State Government, and that the members representing the

employers and the Security Guards shall be equal in number and the members representating the State Government shall not exceed one-third of

the total number or of members representing both the employers and the Security Guards. The Chairman of the Board is to be appointed by the

State Government from amongst its representatives. The Board is further to be assisted by an Advisory Committee which is to consist of members

representing the employers, the Security Guards and the Legislature of the State in equal number, the members representing the State Government

being not to exceed one-fourth of its total number of members. The Chairman of the Committee is to be nominated by the State Government from

amongst its representatives. For defraying the costs of operating the Scheme and for providing the benefits and amenities to the workmen, the

employers have to pay a levy in proportion to the number of Security Guards engaged by them. The report of working of the Board as well as its

statement of accounts are to be submitted to the State Government and the same are to be laid before the Houses of Legislature. The direct

consequence of this legislation is the elimination of the middlemen from the field of supplying Security Guards which work will hereafter be done by

the Board. The indirect effect is that these employers who do not want to be covered by the said Act and the Scheme must hereafter engage

Security Guards as their direct employees. Thus the legislation will help to eliminate the contract labour system in the field of the watch and ward

and the security work. In other words, the legislation also aims at putting an end to the contract system of labour in this field and at stopping

exploitation of the Security Guards by the middlemen and ensuring them regular employment and better service conditions. The legislation is thus a

piece of welfare measure, aimed at improving the conditions of a sizable section of labour. ""It is in the light of this scrutiny of the Act and the

Scheme, that we have to examine the challenges to them advanced both on behalf of the employers and the middlemen viz. the agents and the

agencies who were hitherto carrying on the work of supplying the Security Guards to the employers.

47. The contentions advanced on behalf of the petitioners are as follows :-

(1) The Act read with the Scheme is. violative of Article 14 of the Constitution inasmuch as there are several provisions in both which are arbitrary,

vague, unintelligible, capricious and unreasonable, and therefore unequal in their operation.

(2) The provisions of the Act and the Scheme are violative of the Agencies'' fundamental rights to carry on their business guaranteed by Article

19(1)(g) of the Constitution inasmuch as:

(a) The effect of the Act and the Scheme is to bring about a total stoppage of business in a commercial sense;

(b) The restriction imposed upon the carrying on of the business has no rational connection with the objects sought to be achieved by the law;

(c) The restriction imposed is in excess of or disproportionate to the mischief or evil sought to be prevented or the object sought to be achieved;

(d) The business of supplying Security Guards being an innocuous and legitimate business it was not permissible for the State to totally prohibit the

same as in the case of trade or business in dangerous or noxious articles.

(3) The provisions of the Act read with the Scheme are violative of the employer''s fundamental right to carry on his trade or business inasmuch as

in substance and in reality they put a prohibition on the employer''s right to engage any person of his choice as Security Guard without making him

a part of his establishment.

(4) Section 22 of the Act read with Clause 9(e) and Clause 26(2) of the Scheme is violative of Article 14 of the Constitution inasmuch as it is left

to the arbitrary will and fancy of the Board to allot registered Security Guards whose existing rights and privileges are protected u/s 22 to any of

the registered employers the Board likes without laying down any guide lines or standards in the matter,

(5) The Act and the Scheme suffer from excessive delegation of the legislative powers.

(6) The power to collect levy under Clause 37 of the Scheme is illegal, excessive and arbitrary and the same is violative of the rights of the

employer under Article 14 and 19(1)(g) of the Constitution inasmuch as it does not have any relation to the nature of the services rendered.

(7) The Act and the Scheme are colourable pieces of legislation inasmuch as they trench upon the field already occupied by the Central legislation.

(8) Alternatively, it was contended on behalf of the petitioners that reading the Act as a whole, it does not abolish agencies nor does it make the

Security Guards the employees of the Board. The Act contemplates that the agencies will continue their business but it gives power to the Board to

regulate the employment of Security Guards in the Agency. Consequently, the Scheme prepared on the hypothesis that the Act abolishes the

Agencies is void.

(9) Assuming without admitting that the Agencies are abolished, the Act read with the Scheme makes the principal employer the regular employer

of the Security Guards. This tantamounts to compelling the principal employer to undertake security work in the sense of maintaining a separate

security establishment which the employer is not willing to do and therefore such compulsion amounts to a breach of Article 19(1)(g) of the

Constitution.

(10) So far as the employers are concerned, the Act read with the Scheme imposes an unreasonable restriction inasmuch as the restrictions

imposed are unwarranted by the situation and in any case they are wider than the situation requires.

48. In support of the first contention, reliance is placed firstly on the fact that the statement of objects and reasons is calculated to under-define the

duties and functions of the Security Guards who would be assigned by the Board to the employers and thus to create a distinction between them

and the directly recruited Security Guards. Secondly, it is contended that the Act does not make any distinction between those Security Guards

who are given the protection of the labour Laws and those who are not, and covers both and treats them equally. In addition, reliance in this

connection was also placed upon Sections 2(f), 2(10), 3(2)(g), 3(2)(h), 3(3), 3(4), 19, 20, 21, 22, 23, and 26 and it was argued that these

provisions violate Article 14 for various reasons.

49. The statement of objects and reasons among other things, states that the legislation was being placed on the statute book since it was noticed

that the Security Guards were required to do not only the usual patrolling and watch and ward work of a factory or an establishment but

occassionally, they are even compelled to fight situations like thefts, assaults and fire. It is therefore argued that by implication the Security Guards

who will hereafter be supplied by the Board will not be required to detect and prevent thefts and assaults and to prevent fire and/or assist in

extinguishing it when it breaks out. This will place the registered employers at a material disadvantage as against the unregistered employers directly

employing Security Guards. Since the security work by its very nature includes the work of detecting and preventing thefts, assaults and fire, the

direct employees can be legitimately called upon to discharge the said duties. However, the Security Guards supplied by the Board cannot be

called upon to discharge the said duties, and the registered employers will have to hire a different set of staff to execute the same. In this connection

a reference is made to the various duties which a member of the modern security staff is required to undertake and a book entitled ""Security

Attitudes and Techniques for Management"" edited by Nool Cursor-Briggs and published by Hutchinson & Co., London is also pressed into

service.

50. There is no doubt that the statement of objects and reasons as it is worded, gives an impression that the Security Guards to be supplied by the

Board may not be required to fight situations like thefts, assaults and fire. This is obviously a result of the misconception of the duties and functions

of a member of the security staff. If the Security Guard" is not required to detect and prevent thefts, assaults and fire and to take steps in dealing

with the situations arising out of them when they occur one fails to understand what other work he is supposed to do. One would have thought that

these were an essential part of his function. The petitioners are therefore right in contending that if the Security Guards supplied by the Board are

not to perform the said duties, then firstly the registered employers may have to engage separate staff for performing them and to incur an

additional -expense. The registered employers will also be placed at an unwarranted disadvantage as against the unregistered employers who may

engage the Security Guards directly and who will be performing the said duties as part of their essential function. There will also be a discrimination

between a Security Guard and a Security Guard in the discharge of their duties. However, it appears that what was intended to convey by the

statement of objects and reasons was not that the Security Guards should not detect and prevent thefts, assaults and fire. The evil sought to be

pointed out was that the employers required: the Security Guards to detect and prevent thefts* assaults and fire even at the cost of their lives as the

Policeman or the fire-fighter would do but without their outfits and equipment. It does not appear that the intention is, to stop the registered

Security Guards from discharging their normal functions of detecting and preventing thefts, assaults and fire. The intention on the other hand

appears to be to prevent the employers from compelling the Guards to assume the role of a Policeman or a fire-fighter. Understood in its correct

perspective, the registered employers will not be placed in a disadvantageous position as against the unregistered employers and will therefore not

be required to incur additional expenses.

51. This is apart from the fact that it is not always correct to rely on the statement of objects and reasons to interpret the provisions of the Act.

Sub-section (1) of Section 2 of the Act defines Security Guard to mean a person engaged to do security work or watch and ward work. The

expressions ""Security Work"" and ""watch and ward work"" are not defined in the Act. These expressions therefore will take the same meaning as

are attributed to them in common parlance. So understood, the security or watch and ward work would involve detection and prevention of thefts,

assaults and fire as well. The Act has not prescribed any restriction on the nature of duties to be assigned to the Security Guards. It is therefore

legitimate to presume that they can properly be called upon to discharge the duties and function of detecting and preventing thefts, assaults and fire.

This will be so even if we were to assume that the implication of the said statement made in the statement of objects and reasons was as canvassed

on behalf of the petitioners. For the statement of objects and reasons cannot be relied upon for interpreting the provisions of the Act unless the

provisions are not clear. We may in this connection refer to the decision of the Supreme Court instate of State of Haryana and Another Vs.

Chanan Mal and Others, . In paragraph 31 thereof, it is observed by the Court as follows:

...We have the judge to character of the...Act by the substance and effect of its provisions and not merely by the purpose given in the statement of

reasons and objects behind it. Such statements of reasons are relevant when the object or purpose of an enactment is in dispute or uncertain. They

can never override the effect which follows logically from the explicit unmistakable language of its substantive provisions. Such effect is the best

evidence of intention. The statement of objects and reasons is not e part or the statute, and, therefore, not even relevant in a case in which the

language of the operative parts of the Act leaves no room whatsoever, as it does not on the...Act, to doubt what was meant by the legislators....

52. Since there is nothing either in the Act or in the Scheme which prohibits the assignment of the duties of detecting and preventing thefts, assaults

and fire to the registered guards, it will not be proper to hold that by virtue of the unhappy language of the statement of objects and reasons, no

such work can be assigned to them. Hence the challenge to the legislation on that count must fail.

53. The next argument arising out of the statement of objects and reasons is based on the statement made therein that

under the present system in which they (the Security Guards) work, they are not entitled to any protection of the labour Laws available to the other

workers.

what is pointed out on behalf of the petitioners is that the Security Guards employed in several agencies like the petitioners are entitled to the

protection of all the labour Laws and therefore this statement is made without application of mind to the situation. Hence the legislation which is

born out of such non-application of mind is discriminatory inasmuch as it treats unique as equals and prohibits all agencies indiscriminately from

carrying on the business of supplying the Security Guards.

54. It is true that the Security Guards engaged by some of the agencies to-day are entitled to the protection of the labour Laws and to that extent

the said statement is not correct. However, the said statement refers to the conditions of employment of an average Security Guard. Admittedly,

there are about 70,000 persons working as Security Guards in various factories and establishments in Greater Bombay and in Thane Industrial

Complex alone and no less than 250 agencies are supplying them to the said factories and establishments. As has been pointed out earlier, the

report of the sample survey of only 50 out of the said 250 agencies shows that a majority of the agencies are not offering even the minimum of

service conditions guaranteed by the various labour Laws. The legislation is intended to cover all the Security Guards and not the Security Guards

employed by only some of the agencies. In this, view of the matter, no exception can be taken to the said statement which as stated earlier

describes the service conditions of an average Security Guard. It can therefore hardly be said that the said statement is a product of a non-

application of mind to the conditions of the Security Guards merely because it does not also state that the Security Guards employed by some of

the agencies have protection of the labour Laws. What is more, this argument also ignores the fact that to have the remedies available under the

labour Laws is not the same thing as having the protection of the said laws. One can always evolve better laws and more effective remedies. As the

facts and figures produced on behalf of the petitioners themselves show, even for ensuring the minimum service conditions, several Security Guards

had to resort to Industrial and labour Courts and not till they succeeded by the labourious Court-process that the protection of the labour Laws

became a reality to them. Benefits delayed are benefits denied. It is not therefore possible to accept the contention that the Act-treats unequals

equally because some guards to-day enjoy the so-called protection of the labour Laws. It may further be pointed out that the legislation has been

enacted for the benefit of the Security Guards and Section 23 of the Act gives power to the State Government to grant exemptions from all or any

of the provisions of the Act to such Security Guards as are in the enjoyment of benefits, which on the whole are not less favorable to them than the

benefits provided by or under the Act or the Scheme. As regards the effect and proper construction of Section 23, we will have an occasion to

deal with it at its proper place later. Suffice it to say for the present that since the legislature has made the said provision for exemption, it cannot be

argued that the Act is tended to apply to all indiscriminately.

55. Having done with the statement of objects and reasons, we may now take up the specific provisions of the Act which are challenged-.on the

ground of the violation of Article 14. The first such provisions is Sub-section (4) of Section 2 which defines ""establishment"" to mean an

establishment as defined in Clause (8) of Section (2) of the Bombay Shops and Establishments Act, 1948. The argument is that the definition of

establishment given in Clause (8) of Section 2 includes commercial establishment and commercial establishment has been defined by Clause (4) of

the said Section 2 to mean 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 but does not include a factory, shop, residential hotel, restaurant, eating house, theatre, or other place

of public amusement or entertainment. According to the argument, a Co-operative Housing Society is not included in the definition of establishment

and therefore the Security Guards detailed for work at the establishment of a Co-operative Housing Society are outside the purview of the Act. In

this connection it is pointed out that this will also amount to discrimination between Co-operative Housing Societies and other Co-operative

Societies, inasmuch as Security Guards engaged by the Co-operative Societies doing banking business, etc. will be covered by the Act but those

engaged by Co-operative Housing Societies will not be covered.

56. In the first instance, it is not possible to hold the definition of ""establishment"" in Sub-section (4) of Section 2 of the Act, will-not cover an

establishment ""of a Co-operative Housing Society. The said definition is broad enough to include an establishment of a Co-operative Housing

Society as well. Assuming however that it does not include a Co-operative Housing Society, the Act will not violate Article 14 firstly because it is

not necessary that the Act should embrace all the establishments. It must be remembered that the Act aims at the welfare of the Security Guards

and not at establishments. Admittedly, the Security Guards are not engaged at any particular establishment all the time. They are transferred even

to-day from one establishment to another from time to time. Secondly, a Co-operative Housing Society''s requirement of Security Guards is very

limited. Taken all the Co-operative Housing Societies together, the number of guards engaged by them will be insignificant compared to their total

number. The financial capacity of Co-operative Housing Societies to bear the burden of fair service conditions is also limited since such societies

are not commercial establishments trading or doing business in the commercial sense. If, therefore, such Societies stand excluded from the purview

of the Act, there will be a valid classification between the said Societies and other establishments and the classification will have a nexus with the

object of the legislation. For this reason also it cannot be said that the definition of the expression ""establishment"" in Sub-section (4) of Section 2 of

the Act suffers from a breach of Article 14 of the Constitution.

57. The next provision attacked is the definition of Security Guard in Sub-section (1) of Section 2. It is contended that while defining the

expression ""Security Guard"" all that is stated is that the Security Guard is a person engaged or is to be engaged to do security work or watch and

ward work. There is no proper description of what constitutes security or watch and ward work and therefore the Act is capable of being applied

to any person who does any work. It is also submitted on behalf of the petitioners that on the basis of this definition read with the statement of

objects and reasons to the Act, it will be possible for the Court to exclude duties and functions which properly belong to the Security ''work from

the duties and functions of a registered Security Guard. I have already dealt with the later part of the argument while dealing with the contention

arising out of the statement of objects and reasons. It is not necessary to repeat what has been stated there. In the absence of the definitions in the

Act, the expressions ""security work"" or ""watch and ward work"" will have the same connotation as they have in common use and the said

expressions will have to be understood as such. Ail functions and duties which are properly implicit in the said expressions can be assigned to the

Security Guards and persons performing the said duties can properly bear the label of Security Guards. Since the expressions are not capable of

two different meanings, there will be no difficulty experienced in practice. The argument is based more on an imaginary situation than a real or even

a probable one, Hence the argument that the said definition is violative of Article 14 cannot be entertained.

58. As regards, the provision contained in Section 3(2)(g) which empowers the State Government to make a Scheme providing for prohibiting,

restricting or otherwise controlling the employment of Security Guards to whom the Scheme does not apply, and the employment of such Security

Guards by the employers, the argument is that the said power goes beyond the scope of the Act and has no relation to the purpose of the Act, is

arbitrary and therefore violative of Article 14 of the Constitution. A closer scrutiny will show that there is no force in this contention. The purpose

of the Act as stated earlier is to create a pool of Security Guards to end the contract-labour-system operating in the field and to regulate their

employment and to prevent their exploitation by middlemen. To ensure this object it is not enough to oblige all Security Guards to register

themselves in the pool and to seek employment through the Board. Nor is it sufficient to enjoin upon the '' employers who desire to hire security

Guards other than as direct recruits, to do so through the Board and from amongst the registered Security Guards. If correspondingly, there is no

prohibition against Security Guards seeking employment otherwise than through the Board and against the employers engaging Security Guards

otherwise than from amongst the registered Security Guards, the whole object of the legislation would be defeated. It may always happen that a

person who is not a Security Guard to-day and therefore is not covered by the Scheme may offer himself to do the work of a Security Guard on a

contract-system and can defeat the object of the Act on the sole ground that being an unregistered Security Guard he is free to take employment

through a middleman. Likewise, an employer who does not engage Security Guards through the Agencies to-day or is not in need of them for the

present will not be covered by the Scheme. He will therefore be free to engage a person to do security work through an agency or on contract

basis without recourse to the Board. In either case the purpose of the Act will be frustrated. It is therefore necessary to arm the Scheme with a

provision which places restrictions on or otherwise controls the employment of persons as Security Guards whether the Scheme applies to them or

not.

59. The provision of Clause (h) of the said Section 3(2) was attacked on the ground that inasmuch as the Scheme was intended to provide for the

welfare of the registered Security Guards and the expression ""welfare"" was not defined, the Scheme could be framed for any purpose not strictly

falling within the concept of welfare and hence the powers given were arbitrary and likely to be abused. It was also contended that the provision

was unintelligible.

60. It is necessary to remember that the expression ""welfare"" though not defined in the Act is not capable of embracing an unchartered sea of

measures, ""welfare of labour"" or ""Labour welfare"" are well-known concepts which have acquired over the period a certain and definite meaning. It

is not a concept the depth of which is to be unravelled for the first time. Therefore it can safely be accepted that the measures which fall strictly

within the concept of ""labour welfare"" alone are intended to be catered to under the said Clause (h). There is also nothing vague and unintelligible

with the said power. Hence the fear that under the power given by the said clause, any measures which may not properly belong to the welfare of

the Security Guards may be adopted and levies recovered for defraying the expenses of such measures is only imaginary and therefore has to be

rejected.

61. The next provision under attack is Sub-section (4) of the said Section 3. I find myself in agreement with the petitioners that the provision

contained in the said Sub-section 00 is quite uncalled for. It also appears to be true that the said provision has been bodily lifted from some other

enactment without application of mind. The provision states that on and from the June 29, 1981 on which date the Ordinance was promulgated or

on and from the date on which the Act or any provisions thereof are brought into force, no principal employer or agency or agent shall dismiss,

discharge or retrench or otherwise terminate the appointment of any Security Guard, merely by reason of the employer''s liability to register himself

under a Scheme or by reason of the liability of the Security Guard to register himself under the Scheme during the period from June 29, 1981 upto

the date the -whole Scheme became applicable to such employer or Security Guard or during the period of one year from the said date, whichever

was earlier. It is difficult to understand as to which employer or agency will dismiss, discharge etc. any Security Guard, and for what purpose. In

the first instance, if there is any such termination of service, it will entail payment of terminal benefits. Secondly, the agency or agent will like to avail

of as much period as can be had to retain the employment of the Security Guards to keep the business going. The termination of services of the

Security Guards would on the contrary bring to an end his business forthwith. There is further no question of the principal employer terminating the

services of the Security Guard since such a Security Guard is not his employee. Looked at from any angle, the provision is meaningless and

unnecessary. However, it is not possible to appreciate as to how on that account the said provision violates Article 14 of the Constitution and

renders the Act invalid.

62. The attack on the provisions of Sections 19, 20 and 21 on the ground of a breach of Article 14 also does not appear to be well conceived.

The Act as such, like other similar acts such as the Dock Workers (Regulation of Employment) Act 1948 which is the Central Act and the

Mathadi Act which is the State Act, does not state as to who will be the employer of the registered guards in the pool. The Schemes prepared

under the said other Acts however state in identical language that a registered worker in the pool who is available for work shall be deemed to be

in the employment of the Board. The Scheme prepared under our present Act however does not make any such declaration. To this aspect I will

advert later at its proper place. However it may be mentioned that provisions identical to those in Sections 19, 20 and 21 of the present Act are

also in the said other Acts and yet it was found necessary to declare in the Schemes made under the said two Acts, that a registered worker

available for work will be deemed to be in the employment of the Board. The argument that is advanced on the basis of this comparison of the

provisions is that the registered worker in the present case, Viz. the Security Guard, has no employer. This is evident from the fact, argue the

petitioners, that for the purposes of the three Acts viz. the Workmen''s Compensation Act, 1923, the Payment of Wages Act, 1936 and the

Maternity Benefit Act, 1961, alone the employer of the Security Guards is named, thereby indicating that for all other purposes, the registered

Security Guard has no employer. The submission therefore was, the Security Guards are left in the lurch since they cannot avail of the benefits of

the labour legislation in the absence of a named employer. Before the present enactment, they could do so since admittedly the agents or agencies

were their employers. It is therefore contended that the said provisions of the Act are arbitrary and unreasonable and therefore violative of Article

14 of the Constitution. Frankly, it is difficult to understand as to how on that account the Act becomes violative of Article 14. It must be

remembered that this argument is advanced on behalf of the agencies and the employers. It is not an argument on behalf of the Security Guards. It

is well settled that a person whose constitutional rights are not threatened cannot attack a piece of legislation because the constitutional rights of

some other persons are or are likely to be in danger. This argument can be pressed in service and has in fact been pressed in service when the

petitioners have complained of an infringement of their fundamental right under Article 19(1)(f) of the Constitution. However, so far as the attack

on the ground of the alleged violation of Article 14 is concerned, it is difficult to see any merit in the same, since the only persons who can complain

about the same are the Security Guards and not the petitioners. This argument therefore is simply not available to the petitioners.

63. The next provision which is attacked on the ground of violation of Article 14 is that contained in Section 22. Section 22 protects the more

favorable rights or privileges which a registered Security Guard may be entitled to on the date the Act comes into force. It states that if on that date

a registered Security Guard is entitled to rights or privileges which are more favorable to him than those to which he would be entitled to under the

Act and the Scheme, nothing contained in the provisions will affect his such rights or privileges. The argument of the petitioners is that such Security

Guards would be in the pool of registered Security Guards and the Board will be free to allot such Security Guards to any factory or establishment

which it chooses to. There are no guidelines given either under the Act or under the Scheme for allotment of Security Guards and in the

circumstances a registered employer may continue to get such costly Security Guards and will be required to make-corresponding higher

payments. It may also happen that others who are in a better financial position but who are in a position to avoid such costly Security Guards by

one device or the other, may bear lighter financial burden than those on whom such Security Guards may be foisted. It is therefore submitted that in

the absence of proper guide-lines for assignment of Security Guards, this provision is likely to operate unequally on the employers, violating the

equal protection of the laws. This argument no doubt is attractive, prima facie. However, a little scrutiny of the provisions will show that it is only

the rights and privileges of those Security Guards who are employed in any factory or establishment on the date on which the Act came into force

which are protected. It therefore means that the Security Guards who were getting better service conditions would continue to get the same. On

the date the Act came into force, they were undoubtedly working with some factory or establishment and the agency which was supplying them to

such factory or establishment was covering the cost of supplying them from the said factories or establishments. Therefore, on the date the Act

came into force, some factories or establishments were bearing the higher costs of services for the so called costly Security Guards. The Board

which is entrusted with the the task of administering the Scheme and which has the representatives both of the employers and the Security Guards

is not expected to be unmindful of this fact. It is therefore legitimate to presume that such Security Guards, assuming that they are more costly than

others, would continue to be assigned to those who were hitherto engaging them or are in the same financial bracket. Although therefore "it is true

that neither the Act nor the Scheme lays down any guidelines for assignment of the Security Guards to different industrial units, in view of the fact

that the assignment is entrusted to the Board on which the employers are represented, the provisions of Section 22 are not likely to be applied

arbitrarily and to operate unjustly. This is on the assumption that the other Security Guards will be entitled to lesser rights and privileges than those

whose rights and privileges are protected u/s 22 of the Act. There is no evidence on record to substantiate the same. The phase during which the

unequal service conditions will prevail if at all, is bound to be temporary, since in course of time, the rights and privileges of all the registered

Security Guards belonging to the same class or category are bound to become uniform. The provisions of Section 22 are in the nature of things

more of a transitory nature than of a permanent duration. They have been made to ensure that those who are getting higher benefits are not

compelled to accept lesser ones merely because they are covered by the present legislation. The attack on the provisions of Section 22 therefore,

though plausible, is not sustainable.

64. Reliance was placed on behalf of the petitioners on a decision of the Supreme Court reported in The Corporation of Calcutta Vs. Calcutta

Tramways Co. Ltd., in this connection. It is difficult to understand as to what support the petitioners can derive for their present proposition from

this authority. In that case what was under challenge was the provision of the parenthetical clause in Section 437(1Kb) of the Calcutta Municipal

Act, which in terms made the opinion of the Corporation conclusive and non-justiciable on the question whether the use of the premises by a

person was dangerous to life, health or property or was likely to create a nuisance. The argument was in the context of Article 19(1)(g) of the

Constitution and it is while dealing with this provision in that context that the Court held that the conferment of such power on a Municipal body

had the effect of imposing restrictions on carrying on trade of business and that the said restriction was not a reasonable one for the said provision

made the opinion of the Municipal body, however capricious, arbitrary and unreasonable, conclusive and non-justiciable.

65. As against this the respondents relied upon a decision of the Supreme Court reported in Joseph Kuruvilla Vellukunnel Vs. The Reserve Bank

of India and Others, . In that case, the provisions of Section 38(1) and (3)(b)(iii) of the Banking Companies Act, 1949 were challenged as being in

breach of Articles 14 and 19 since it made the Reserve Bank the sole judge to decide whether the affairs of a Banking Company are being so

conducted as to be prejudicial to the interests of the depositors, and the Court had no option but to pass an order winding up the banking

company when an application was made by the Reserve Bank. It was further argued that the said provisions were void, firstly because they

permitted discrimination between Banking Companies on the one hand and non-banking Companies on the other, and also between banking

Companies interest and secondly because they created an unreasonable restriction upon the right to carry on banking and lastly, because the whole

procedure was a denial of the principles of natural justice, chiefly by denying an access to the Courts. It was held there that the provisions were

neither discriminatory nor unreasonable and could not be declared void under Articles 14 and 19. While doing so, the Court in the context of

Article 14 observed as follows (p. 1383 para. 28) :-

A wide difference exists between banking companies and non-banking companies, and there is need for special laws dealing with banking

companies. There being a very clearcut and valid classification, the different procedure provided for in Ss. 38(1) and (3)(b)(iii) cannot be said to

be discriminatory, because it is based on the differences which are related to the end sought to be achieved. Further, the possibility that the

procedure under Ss. 38(1) and (3)(b)(iii) may be invoked in some cases and the procedure of the Companies Act in others, does not make any

difference, because the different procedures will be invoked to suit different situations, and it cannot be said that the Reserve Bank would act

arbitrarily from case to case. The Reserve Bank, apart from its being a reasonable body, is answerable to the Central Government, and the public

opinion is strong and vocal enough for it to heed. If the Reserve Bank were to act mala-fide, the Central Government and in the last resort, the

Courts, will be there to intervene. In this view, the provisions of Ss. 38(1) and (3)(b)(iii) cannot be said to be a bread) of Article 14 of the

Constitution.

66. These observations go counter to the petitioners'' submissions. The question essentially is of prescribing the method of exercising the power. If

there are safeguards in the form of the composition of the body exercising the power, then merely because there is an absence of guidelines for the

exercise of the power it cannot be said that the exercise of power would necessarily be arbitrary or unreasonable. While judging the nature of

power the Court has also to take into consideration the safeguards provided for controlling its exercise. The composition of the Board and of the

Advisory Committee both of which consist of the representatives of the employers, and the obligation of the Board to submit its annual report

which is placed before both the Houses of the legislature are a sufficient protection against the arbitrary allotment of the Security Guards.

67. The next provision under attack on the ground of violation of equality provisions of the Constitution is Section 23. The said provision enables

only the Security Guards to make an application for exemption of all or any of the provisions of the Act. There is no provision made either in the

said section or anywhere in the Act or the Scheme enabling either the employer or the agency to claim such exemption. Without a corresponding

provision in favour of the employer or the agency, even the so-called exemption sought to be given to the Security Guards becomes illusory. The

Act prohibits the employment of Security Guards by any agency or an employer. Even employer seeking to engage a Security Guard otherwise

than as his direct employee has to register himself under the Scheme. Even if therefore a Security Guard or a class of Security Guards gets an

exemption from all or any of the provisions of the Act or the Scheme, it will not be possible for him or them to get an employment anywhere nor

will it be possible for an agency or an employer to engage or continue to engage him or them. It is therefore possible to contend, as the petitioners

have done, that insofar as the Act imposes a blanket restriction and obligation on all agencies and employers irrespective of whether the service

conditions of the Security Guards employed with them are advantageous or not, the Act operates unequally treating unequals as equals. The

petitioners have also attacked this provision on the ground that the State Government has been made the sole judge of the situation and therefore

the provision is likely to be acted upon capriciously.

68. It is true, that as the language of Section 23 stands today, in the absence of a corresponding provision extending the exemption to the

respective agencies and employers, the provision for exemption is meaningless and otiose. Further the exemption to be granted is to all or any class

or classes of Security Guards employed in any factory or establishment or in any class or classes of factories or establishments and it is likely that

the factory or establishment may have Security Guards drawn from more than one agency. As things stand to-day, Security Guards are not the

employees of any factory or establishment. They are the employees of the agencies. The section therefore will have to be construed to mean that

when the State Government decides to grant an exemption under it, it will grant exemption not only to the Security Guards but also to the agencies

employing them and the factories or establishments to which they are supplied. It is only if we construe the said section thus that the provision for

exemption will make sense. Otherwise, the petitioners are right in their contention that Section 23 is as good as absent from the statute. I therefore

prefer to place on Section 23 the construction as above and hold that if and when an exemption is granted it will also extend to the employers and

the agencies as defined under the Act and such exemption will be from the corresponding restrictions and obligations imposed by the Act.

69. It is further true that the power of granting or refusing to grant an exemption has been given to the State Government which is made the sole

judge of the situation. However, it must not be forgotten that Section 23 requires the Government to consult the Advisory Committee. It also

requires the Government to publish a notice of its intention to grant such exemption and to invite objections and suggestions and to consider them

before granting or refusing to grant such exemption. The Advisory Committee as pointed out earlier consists of an equal number of representatives

of the employers, of the Security Guards and of the Legislature of the State, and the members representing the State Government on the

Committee are not in excess of one-fourth of the total number of the members of the Committee, Although the agencies have not been given any

representation on the Advisory Committee, the Security Guards and the employers as well as the members of the Legislature are adequately

represented and if they are satisfied that the conditions of employment in an agency are to the better advantage of the Security Guards, there is no

reason why they should not advise the Government to retain their services with such agency since one of the objects of the legislation is to ensure

better conditions of service to the Security Guards and to prevent their exploitation.

70. It is also correct to say that the exemption can be availed of only at the initial stage and cannot be applied for once the Act becomes applicable

to the factory or the establishment as the case may be. This is inevitable in the nature of things and no fault can be found with the said ''provision on

that account.

71. For all these reasons, it is not possible to accept the argument that the Act is violative of Article 14 of the Constitution. It may further be stated

that it is not necessary that every legislation should have a provision for exemption from its operation. If the evil sought to be suppressed is a

general one and cannot be controlled except by total restriction or prohibition, the grant of exemption in individual cases may defeat the purpose of

the statute. One of the objects of the Act is to abolish the contract labour system and thus to stop trafficking in human labour in this field of

employment. This being so even if we assume that the defective provisions of Section 23 virtually render it nugatory, it will only mean that there is

no exemption available to any of the Agencies, employers or Security Guards. That will not render for the reasons stated above, the present

legislation invalid.

72. The next provision under attack on the ground of a breach of Article 14 was Section 26 of the Act which prohibits any contract or agreement,

whether made before or after the commencement of the Act, whereby a registered Security Guard relinquishes any right conferred by, or any

privilege or concession accruing to him under the Act or any Scheme. It is difficult to conceive a situation where a: registered Security Guard would

contract out of his rights, privileges - or concessions available to him under the Act and the Scheme. After a Security Guard is registered, there is

no question of contracting out any of his rights, privileges etc. Before the Act comes into force, there cannot be any contracting out, since it would

mean that either he ceases to be a Security Guard or he agrees to receive less favorable service conditions than he was entitled to. Such

contracting out can only be with the agency which employed him. The agency is certainly not interested in such contracting out, since its business

comes to an end the moment the Act comes into operation. The employer to whom the Security Guard is supplied by the agency cannot be a party

interested in such contracting out because its contract is with the agency and not with the Security Guard. The provisions of Section 26 therefore,

according to me are redundant and meaningless.

73. However it is difficult to appreciate as to how either the said provision or the Act becomes assailable on the ground of violation of Article 14

on that account. The argument has therefore to be rejected.

74. The last of the arguments on this score was directed against the provisions in general made in the Act and the Scheme whereby all employers

employing the Security Guards through the agencies were sought to be covered by the Scheme prepared under the Act without taking into

consideration the special circumstances of each of the employers and the purpose for which the Security Guards were required for different

establishments. The argument was that establishments such as hotels require Security Guards with specialised training and calibre, and such training

can be imparted only by the agencies specialised in the work. It is not possible for such establishments to conduct their own course of special

training for want of an expertise available with them. They have therefore to rely upon agencies specialised in the task for employment of their

Security Guards. Inasmuch as the present Act treats such establishments on par with the others where no special training is required, the Act and

the scheme operate arbitrarily and unjustly, and violate the petitioner''s fundamental right under Article 14 by treating unequals as equals. In this

connection, reliance was placed on certain decisions of the Supreme Court. The first of the decisions is reported in Jalan Trading Co. (Private

Ltd.) Vs. Mill Mazdoor Union, . This was a case where the provisions of the Payment of Bonus Act, 1965 were under challenge. One such

provision was sub-s (2) of Section 34 of the Act which imposes a liability to pay bonus determined on the gross profits of the base year on an

assumption that the ratio which determined the allocable surplus in the base year was the normal ratio not affected by any special circumstances

and that the same perpetuated for the duration of the Act as the ratio for determining the minimum allocable surplus for each year. The Court held

that if the concept of bonus as allocation of an equitable share of the surplus profits had reality, and condition that the ratio on which the share of

one party computed on the basis of the working of an earlier year, without taking into consideration the special circumstances which had a bearing

on the earning of the profits and payment of bonus in that year, was arbitrary and unreasonable. In this view of the matter, the Court struck down

Section 34(2) of that Act.

75. In K.A. Abbas Vs. The Union of India (UOI) and Another, the observations of the Court in Municipal Committee, Amritsar and Others Vs.

State of Punjab and Others, and A.K. Gopalan Vs. The State of Madras, were explained and it was observed that while it was true that the

principles evolved by the Supreme Court of the United States of America were eschewed in our Constitution and instead the limits of restrictions

on each fundamental right were indicated in the Clauses that follow the first clause of Article 19, it cannot be said as an absolute principle that no

law would be considered bad for sheer vagueness. According to the Court there was ample authority for the proposition that a law affecting

fundamental rights may be considered bad on that account. The Court then stated that the real position of law in that behalf was as follows (at P.

496 Para. 48):

The real rule is that if a law is vague or appears to be so, the Court must try to construe it, as far as may be, and language permitting the

construction sought to he placed on it, must be in accordance with the intention of the legislature. Thus if the law is open to diverse construction,

that construction which accords best with the intention of the legislature and advances the purpose of legislation, is to be preferred. Where

however the law admits of no such construction and the persons applying it are in a boundless sea of uncertainty and the law prima facie takes

away a guaranteed freedom, the law must be held to offend the Constitution as was done in the case of the Goonda Act, This is not application of

the doctrine of due process. The invalidity arises from the probability of the misuse of the law to the detriment of the individual. If possible, the

Court instead of striking down the law may itself draw the line of demarcation where possible but this effort should be sparingly made and only in

the clearest of cases.

76. The next decision is reported in E.P. Royappa Vs. State of Tamil Nadu and Another, This was a case where the petitioner had alleged, among

other things, the violation of the fundamental rights under Article 16 of the Constitution inasmuch as though eligible he was denied the post of the

Chief Secretary of the State and a person junior to him was given the benefit of that post. While discussing the scope of Article 16 and therefore of

Article 14 in this context, the Court observed as follows (at pp. 583, 584, Para 85):

Article 16 embodies the fundamental Guarantee that there shall be equality of opportunity for all citizens in matters relating to employment or

appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a

principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged

in the Constitution, Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words, Article 14 is

the genus while Article 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic

principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of

this great equalising principle? It is a founding faith, to use the words of Bose J., "a way of life, and it must not be subjected to a narrow pedantic

or lexicographic approach. We cannot countenance, any attempt to truncate its all embracing scope and meaning, for to do so would be to violate

its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be ''cribbed, cabined and confined within

traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn

enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it

is implicit in it that it is unequal both according to political, logic and constitutional law and is therefore violative of Article 14, and if it affects any

matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness

and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must

not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action,

as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of

permissible considerations, it would amount to mala-fide exercise of power and that is hit by Articles 14 and 16. Mala-fide exercise of power and

arbitrariness are different lethal radiations emanating from the same vice; in fact the latter comprehends the former. Both are inhibited by Articles

14 and 16.

77. What is important to note from the aforesaid observations is that where the operative reason for the State action, as distinguished from motive,

is not legitimate and relevant, but is extraneous and outside the area of permissible considerations, it would amount to a mala fide exercise of

power and will be hit by Article 14. Both arbitrariness and mala fide exercise of power are vocative of the said article.

78. The next decision is reported in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, In paragraph 56 of this decision, the

requirements of Article 14 of the Constitution as detailed in the earlier decisions have been recapitulated. The substance of these observations is

that the procedure adopted for inquiry should be right, just and fair and not arbitrary, fanciful or oppressive so as to undo the right of personal

hearing. In this case the petitioner''s passport was impounded without giving her a personal hearing. The Court held that the right to hold a passport

being a valuable right, the action was in breach of the principles of natural justice.

79. The principles laid down in the aforesaid decisions for considering the applicability of Article 14 cannot be disputed. The question however is

whether judged by these principles, the present legislation can be said to suffer from a breach of the said article. It has already been pointed out

that merely because the Act is made applicable to all the Agencies and the Security Guards employed by them, the Act cannot be said to be

arbitrary in its application. This is particularly so when the Survey Report shows that a vast majority of the Security Guards has no security of

employment and they are denied even the minimum service conditions stipulated by the different labour enactments and they continue to be

exploited by the middlemen. It is only in exceptional cases that the Security Guards are found to enjoy the benefits of the labour legislation and fair

conditions of service. Since the object of the Act is also to abolish the contract labour system in this field the object cannot be fully accomplished if

exceptions are made in favour of a few middlemen on the ground that the Security Guards supplied by them enjoy favorable conditions of service.

In any case as pointed out earlier, Section 23 of the Act provides for exemption to be granted in favour of those of the Security Guards who are in

enjoyment of better service conditions. Since the Act is for the benefit of the Security Guards, it is for them to choose and make an application for

the exemption. What is more, by Section 22 of the Act, the more favorable"" service conditions of the Security Guards are protected by expressly

stating that such Security Guards would continue to receive the same notwithstanding the fact that they are covered hereafter by the provisions of

the Act and the Scheme. As regards the argument that the legislation does not take into consideration the special needs of the employers and the

establishment, it is sufficient to point out that the Security Guards at present engaged by such employers through the Agencies, will hereafter be

engaged by them through the Board. There may not be any change in the personnel. Secondly, the Board which consists of the representatives of

the employers is expected to be alive to the special needs of the special establishments. Thirdly, the Board is not prevented from giving special

training to the Guards. Much less can it be argued that the present legislation has been enacted in the mala fide exercise of power. The petitioners

are on a very weak ground as far as this contention is concerned. The object of the enactment is to abolish the contract labour system in the field,

to regulate the employment of the Security Guards and to better their service conditions. It can hardly be contended that it is not a legitimate and a

relevant consideration for making the Act applicable to ail the middlemen and to the Security Guards employed by them. In the circumstances, the

contention that the legislation is a piece of a malafide exercise of power and therefore violative of Article 14 of the Constitution can hardly be

sustained.

80. That takes me to the second contention viz. that the provisions of the Act and the Scheme are violative of the Agencies'' fundamental rights

under Article 19(1)(g) of the Constitution because the legislation totally stops their business which is legitimate and innocuous. The employers have

also attacked the legislation on the ground of a breach of their fundamental right to carry on their business since the legislation prohibits them from

engaging any person of their choice to work as a Security Guard without making him a part of their establishment. According to the employers, this

is an unreasonable restriction on their said right.

81. It will therefore be convenient first to understand the nature and scope of the fundamental right guaranteed by Article 19(1)(g). The said article

states that all citizens shall have the right to practise any profession, or to carry on any occupation, trade or business subject to the restrictions

placed by Clause (6) thereof. The relevant portion of Clause (6) is as follows: -

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes or prevents the State from

making any law imposing, in the interest of the general public, reasonable restrictions on the exercise of the rights conferred by the said sub-

clause....

82. In other words, the right ''guaranteed by Article 19(1)(g) is subject to the reasonable restrictions that may be placed in the interests of the

general public. According to the petitioners the restrictions are neither reasonable nor in the interest of the general public. The only question

therefore that we have to consider in these petitions is whether the restrictions placed by the Act are reasonable and if so whether they are in the

interest of the general public. The tests to determine what constitutes reasonable restrictions and the interests of the general public have been laid

down by a series of judicial decisions. A brief survey of these authorities will therefore be necessary. The earliest of the authorities is Chintaman

Rao Vs. The State of Madhya Pradesh, In that case the Central Provinces and Beral Regulation of Manufacture of Bidis (Agricultural Purposes)

Act, 1948 was under challange. The Act provided that the Deputy Commissioner may by notification fix a period to be an agricultural season with

respect to such villages which may be specified in the notification and by general order prohibit the manufacture of bidis in such villages during the

agricultural season so fixed. The Act further provided that no person residing in a village in the specified area shall during the agricultural season

engage himself in the manufacture of bidis and that no manufacturer shall during that season employ any person for the manufacture of bidis. An

order was issued by the Deputy Commissioner under the said provisions forbidding all persons residing in such villages from engaging in the

manufacture of bidis during a particular season. The Act was challenged both by the manufacturers of bidis as well as by an employee in a bidi

factory residing in one of the specified villages, under Article 32'' of the Constitution complaining of the breach of their fundamental rights under

Article 19(1)(g), the Court held:

(i) That the object of the statute, namely, to provide measures for the supply of adequate labour for agricultural purposes in bidi manufacturing

areas of the Province could well have been achieved by legislation restraining the employment of agricultural labour in the manufacture of bidis

during the agricultural season without prohibiting altogether the manufacture of bidis. As the provisions of the Act had no reasonable relation to the

object in view, the Act was not a law imposing "reasonable restrictions" within the meaning of Clause (6) of Article 19 and was therefore void.

(ii) The law even to the extent that it could be said to authorise the imposition of restrictions in regard to agricultural labour cannot be held to be

valid because the language employed was wide enough to cover restrictions both within and without the limits of constitutionally permissible

legislative action affecting the right, and so long as the possibility of its being applied for purposes not sanctioned by the Constitution cannot be

ruled out, it must be held to be wholly void.

The phrase ''reasonable restriction'' connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an

excessive nature, beyond what is required in the interests of the public. The word ''reasonable'' implies intelligent care and deliberation, that is, the

choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain, the quality of

reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by

Clause (6) of the Article 19, it must be held to be wanting in that quality.

83. The Court also held

that the determination by the Legislation of ""what constitutes a reasonable restriction is not final and conclusive. The Supreme Court has power to

consider whether the restrictions imposed by the legislature are reasonable within the meaning of Article 19, Clause (6) and to declare the- law

void if in its opinion the restrictions are not reasonable.

84. This authority therefore lays down that (1) if the provisions of the Act have no reasonable relation to the object in view, the restrictions laid

down by the Act cannot be said to be reasonable; (2) if the language of the restriction is wide enough for being applied for purposes not

sanctioned by the Constitution, the restriction will be wholly void; (3) the restriction to be reasonable should not be arbitrary or of an excessive

nature and beyond what is required in the interests of the public; (4) the restriction to be reasonable must be placed after intelligent care and

deliberation and must strike a proper balance between the freedom guaranteed by Article 19(1)(g) and the social control permitted by Article

19(6) and (5) the Court has power to consider whether the restrictions imposed are reasonable or not and to declare the law void if according to

the Court they are not reasonable.

85. In Mohammad Yasin Vs. The Town Area Committee, Jalalabad and Another, the petitioner was a wholesale dealer in fresh vegetables and

fruits, and was carrying on his business for some years at his shop situate in the town of Jalalabad. The vegetable and fruit growers used to bring

their goods to the town, and get them auctioned through any of the vegetable dealers of their choice who used to charge one anna in a rupee as

and by way of commission. The Town Area Committee framed certain bye-laws under which all rights and power to levy or collect commission on

sale or purchase of vegetables and fruits within the limits of Jalalabad Town vested in the Committee or any other agency appointed by the

Committee, and no one except the Committee was authorised to deal in wholesale vegetables and fruits and collect the commission thereof in any

place and in any event. The Committee by auction gave the contract for sale of vegetables and fruits and for collecting the commission to a third

person who held the monopoly as a wholesale dealer. The result was that although there was no absolute prohibition against carrying on business

as wholesale dealer in vegetables and fruits, it brought about a total prohibition of the business of the wholesale dealers. On these facts it was the

contention of the petitioner that by granting a monopoly of the right to do wholesale business to a third person, the Committee had in effect totally

prevented the petitioner from carrying on his business in breach of the fundamental right under Article 19(1)(g). It is while dealing with this

contention that the Supreme Court held that although there was no prohibition from dealing in vegetables and fruits, in effect and in substance there

was a total stoppage of the wholesale dealers'' business in a commercial sense. There was no contention raised on behalf of the Committee that the

said restriction on the business was in the interests of the public or was a reasonable restriction. All that was contended on behalf of the Committee

was that there was no prohibition for carrying on business. The Court pointed out that since a monopoly was created in favour of a third party and

the contractor was authorised to charge one anna in a rupee, the wholesale dealers like the petitioner will have to pay one anna in a rupee to the

said contractor, and in having to pay the said fee to the contractor they will have to recover more from the fruit and vegetable growers which in

effect will mean that no grower of vegetables and fruits will sell his merchandise to the wholesale dealers and instead will flock to the contractor

who will only recover from them one anna in a rupee as his commission. This therefore virtually brought about a closure of the business of the

wholesale dealers. It is in these circumstances that the Court allowed the petition. This decision is an authority for the proposition that it is not the

form but the substance or the effect of the legislation which has to be looked into and if the effect is a strangulation of the right to. carry on

business, unless it is defended on the ground that it is a reasonable restriction and in the interests of the general public, it has to be struck down.

86. The next case is an important land-mark in this branch of law and is reported in State of Madras Vs. V.G. Row, Since the tests of

reasonableness laid down in this case have been quoted with approval in many later decisions, it will be worthwhile to reproduce them verbatim.

What was in issue there was the challenge to Section 15(2)(b) of the Criminal Law Amendment Act, 1908, whereunder the State Government had

declared a Society called the People''s Education Society an unlawful Association. The General Secretary of the Society Mr. Row had challenged

the constitutional validity of the said provisions on the ground that they infringed his fundamental right under Article 19(1)(c) and the said challenge

was upheld by a Full Bench of the Madras High Court. The State of Madras had thereafter preferred an appeal to the Supreme Court and it is

while dealing with the said challenge that the Court in para 15 of the judgment laid down the following tests of reasonableness of restrictions. For

that purpose the Court referred to its earlier decision reported in Dr. N.B. Khare Vs. The State of Delhi, and proceeded to observe as follows: (at

p 199)

This Court had occasion in Dr. N.B. Khare v. State of Delhi to define the scope of the judicial review under Clause (5) of Article 19 where the

phrase "imposing reasonable restrictions on the exercise of the right also occurs, and four out of the five Judges participating in the decision

expressed the view (the other Judge leaving the question open) that both the substantive and the procedural aspects of the impugned restrictive law

should be examined from the point of view of reasonableness; that is to say, the Court should consider not only factors such as the duration and the

extent of the restrictions, but also the circumstances under which and the manner in which their imposition has been authorised. It is important in

this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no

abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been

infringed, the underlying purpose of the restrictions imposed, the extent -and urgency of the evil sought to be remedied thereby, the disproportion

of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their

own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of

the Judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can

only be directed by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of

their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorising the imposition of the

restrictions, considered them to be reasonable.

87. On the facts of that case the Court came to the conclusion that the impugned provisions were unconstitutional and dismissed the appeal of the

State.

88. The next decision is reported in Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others, which

repeats the test of reasonableness laid down in. V. G. Row''s case (supra).

89. In Saghir Ahmad Vs. The State of U.P. and Others, what was under challenge was the creation of a State monopoly in transport of passengers

on the ground that it violated Article 19(1)(g). After repeating the test laid down by the Court earlier, the Court observed that in order to judge

whether State monopoly is reasonable or not, regard must be had to the facts of each particular case in its own setting of time and circumstances.

It is not enough to say that as an efficient transport service is conducive to the interests of the people, a legislation which makes provision for such

service must always be held valid irrespective of the fact as to what the effect, of such legislation would be and irrespective of the particular

conditions and circumstances under which the legislation was passed. It is not enough that the restrictions are for the benefit of the public, they must

be reasonable as well, and the reasonableness could be decided only on a conspectus of all the relevant facts and circumstances. The Court further

observed that although there is a presumption in favour of the constitutionality of a legislation, when the enactment on the face of it is found to

violate a fundamental right guaranteed under Article 19(1)(g), it must be held to be invalid unless those who support the legislation can bring it

within the purview of the exception laid down in Clause (6) of the article. If the State does not place any material before the Court to establish that

the legislation comes within the permissible limits of Clause (6), it is surely not for the petitioners challenging the legislation to prove negatively that

the legislation was not reasonable and was not conducive to the welfare of the community. Since in that case the State had failed to place any

material before the Court to show that the State monopoly in regard to the road transport service in the particular areas would be conducive to the

general welfare of the public, the Court upheld the challenge and issued a Writ of Mandamus to the State restraining it from enforcing the

provisions of the U.P. State Road Transport Act against the appellants and the men working under them. It may be mentioned in this connection

that the Act under challenge was passed before the new clause was added in Article 19(6) which provided that the State can create a monopoly in

its own favour in respect of any trade or business. On this authority therefore what can be said is that merely because the legislation is in the

interests of the general public it cannot be assumed that it is reasonable and secondly the reasonableness of the restrictions has to be shown by the

State since the burden to prove the same lies on the State.

90. In Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others, the Court has reaffirmed the test of

reasonableness, laid down in Chintaman Rao''s case and V.G. Row''s case (Supra).. That was a case where the vires, of the Working Journalists

(Conditions of Service) and Miscellaneous Provisions Act, 45 of 1955 was challenged amongst other things on the ground of a breach of Article

19(1)(g).

91. The decision in Narendra Kumar and Others Vs. The Union of India (UOI) and Others, , assumes importance in the present case since it, in

unmistakable terms, lays down that the word ""restrictions"" in Article 19(6) would mean and include cases of prohibition also. The Court held,

repelling the argument to the countrary, that the contention that a law prohibiting the exercise of a fundamental right is not saved, cannot be

accepted. The Court however added that it was undoubtedly correct that when as in that case the restriction reaches the stage of prohibition,

special care has to be taken by the Court to see that the test of reasonableness was satisfied. The greater the restriction, the more the need for a

strict scrutiny by the Court. The Court then observed as follows: (at p. 387)

In applying the test of reasonableness, the Court has to consider the Question in the background of the facts and circumstances, under which the

order was made, taking into account the nature of the evil that was sought to be remedied by such law, the ratio of the harm caused to individual

citizens by the proposed remedy, to the beneficial effect reasonably expected to result to the general public. It will also be necessary to consider in

that connection whether the restraint caused by the law is more than was necessary in the interests of the general public.

92. The Court thus laid down that the restriction placed on the exercise of the fundamental right should not be more than is necessary in the

interests of the general public.

93. The case of M.C.V.S. Arunachala Nadar etc. Vs. The State of Madras and Others, reiterates the tests laid down in V. G. Row"s case

(supra), while the next case of The Lord Krishna Sugar Mills Ltd. and Another Vs. The Union of India and Another, lays down yet another

proposition of law viz. that while judging the reasonableness of a law, it is permissible to take into consideration other prevailing legislation on the

subject. While dealing with this aspect of the matter, the Court observed as follows: (at p. 1132)

It is, however,"" contended that though one can look at the surrounding circumstances, it is not open to the Court to examine other laws on the

subject, unless these laws be incorporated by reference. In our opinion, this is a fallacious argument. The Court in judging the reasonableness of a

law will necessarily see, not only the surrounding circumstances but all contemporaneous legislation passed as part of a single scheme. The

reasonableness of the restriction and not of the law has to be found out, and if restriction is under one law but countervailing advantages are

created by another law passed as part of the same legislative plan, the Court should not refuse to take that other law into account.

94. The Court in this connection relied upon the decision of the Privy Council in Pillai v. Mudanayake [1953] A.C. 514, It can be concluded from

this authority that since it is the reasonableness of the restrictions which is to be judged on the day the impugned legislation is enacted, the Court

has to take into consideration the surrounding circumstances then existing and one such surrounding circumstance would be the other law or laws

that may be existing as a part of the same legislative place.

95. In Abdul Hakim Quraishi and Others Vs. The State of Bihar, tests of reason ableness laid down in V.G. Row"s case (Supra) have been

repeated.

96. In Rustom Cavasjee Cooper Vs. Union of India (UOI), popularly known as the Bank Nationalisation Case, after referring to Dwarkadas

Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others, the Court held that the restriction imposed upon the right of

the named banks to carry on ""non-banking"" business was plainly unreasonable. No attempt was made, according to the Court, to support the Act

which while theoretically declaring the right of the named banks to carry on ""non-banking"" business, made it impossible for the banks to carry on

any business in a commercial sense. These observations are thus an authority for the proposition that in case of a total prohibition of the business,

the State must prove that the restriction is a reasonable one.

97. The next case is reported in Bhimappa Basappa Bhu Sannavar Vs. Laxman Shivarayappa Samagouda and Others, In that case the provisions

of Sections 365, 366, 367, 368, 372 and 385 of the Bombay Municipal Corporation Act were under challenge, amongst other things, on the

ground that they contravened the provisions of Article 19(1)(f) and (g), and the question of reasonableness of the restriction was considered

against the background of Clause (5) of Article 19. While discussing the validity of the restrictions, the Court observed as follows: (at p. 1162)

A law designed to abate a grave nuisance and for protection of public health is prima facie one enacted for the protection of the interests of the

general public.. But that alone is not sufficient! the restriction imposed by the law must be reasonable i. e., the restriction must not be arbitrary or

excessive, and must not place upon the right of the citizen a limitation which is not calculated to ensure protection of the interests of the general

public.

98. The Court further observed as follows: (at p. 1163)

Reasonableness of restriction imposed by a law has to be adjudged in the light of the nature of the right, danger or injury which may be inherent in

the unbridled exercise of the right and necessity of protection against danger which may result to the public by the exercise of the right. In each the

test is whether the restriction is commensurate with the need of protection of the interest of the public against the exercise of the right. But the fact

that the owner is unable to sell for a price the carcass and is required to pay a fee for removal of the carcass does not, in our judgment, render a

provision which is essentially conceived in the interests of the general public, as indicated earlier, unreasonable. The Corporation has to arrange for

effectively disposing f the carcass, and it would be necessary for effectuating that purpose to provide that the title of the owner in the carcass

should be extinguished. Unless the title of the owner in the carcass is extinguished, various complications may arise in the way of disposal of the

carcass. We are unable to agree with the High Court, that for the purpose of ensuring proper disposal, transfer of ownership to the Municipal

Corporation was not necessary or that the provisions went "far beyond the legitimate purpose of making them.

99. After referring to V. G. Row"s 11 case and Chintaman Rao"s case (Supra), the Court proceeded to observe as follows: (at P. 1163)

Reasonableness of the restriction imposed upon the right to acguire, hold and dispose of property must be evaluated in the light of the nature of the

commodity and its capacity to be detrimental to the public weal. The power of the State to impose reasonable restriction may extend to prohibiting

acquisition, holding or disposal of a commodity if the commodity is likely to involve grave injury to the health or welfare of the people. In adjudging

the reasonableness of restrictions imposed upon the holding or disposal of a carcass which is noxious, maintenance or public health is paramount

consideration. Restriction imposed upon the right of an owner of a carcass to dispose it of in the manner indicated in the Act, being enacted solely

in the interest of the general public, cannot be deemed arbitrary or excessive merely because they involve the owner into a small financial burden.

Under the Constitution a proper balance is intended to be maintained between the exercise of the right conferred by Article 19(1)(f) and (g) and

the interests of a citizen in the exercise of his right to acquire, hold or dispose of his property or to carry on occupation, trade or business. In

stricking that balance the danger which may be inherent in permitting unfettered exercise of right in a commodity must of necessity influence the

determination of the restrictions which may be placed upon the right of the citizen to the commodity. The law which compels the removal of the

carcass expeditiously from the place where it is lying is not contended to be arbitrary or excessive. The law which compels removal to the

appointed place and disposal of the carcass under the supervision of the Corporation to which is entrusted the power and duty to take steps to

maintain the public health cannot also be regarded as arbitrary or excessive, merely because the enforcement of the law involves some pecuniary

loss to the citizen. We are unable to agree that by compelling disposal of carcasses by leaving to the owner of the carcass to dispose it in any

manner he thinks fit, danger to the public health could be effectively avoided.

100. The provision which was challenged there was the one requiring the owner of a dead cattle to remove the carcass to an appointed place at his

own cost or with the help of the Municipal Corporation by paying the prescribed fee. The provision also made it clear that the carcass was the

property of the Corporation and was to be at the disposal of the Corporation and could be disposed of by the Corporation in .a manner which

was likely to cause the least public nuisance. The Court while repelling the contention that the said provision not only extinguished the title of the

owner to the carcass and involved him into a loss of the value which he would have obtained by sale of the carcass, but also imposed upon him a

liability to remove the carcass at his own expense and therefore was unreasonable, observed as follows: (at p. 1164 para. 14)

We do not think so. If the carcass is likely to be deleterious to public health and its removal from the place where it is lying being in the interests of

the public health, imposition of an obligation upon the owner to remove the carcass at his own expense or to pay for its removal, cannot be

regarded as unreasonable, even'' if the charge which falls upon the owner is in addition to the loss which he suffers by reason of the extinction of his

title in the carcass.

101. This authority, in addition to what is laid down in V.G. Row''s case (supra), states that the reasonableness of the restrictions is to be evaluated

in the light of the mischief sought to be done away with. It further reiterates what is stated in Chintaman Rao''s case (supra) viz. that the reasonable

restriction also extends to total prohibition. The restriction is not to be deemed arbitrary or excessive merely because it involves the owner into a

small financial burden.

102. The authority which is nearer to the facts involved in the present case is the one reported in Gammon India Ltd. and Others Vs. Union of

India (UOI) and Others, . In that case the provisions of the Contract labour (Regulation and Abolition) Act, 1970, were under challenge amongst

others on the ground that they contravened the provisions of Article 14 and art 19(1)(g). While repelling the said challenges, the Court observed as

follows: (at p. 965 para. 24).

The condition of contract labour has been engaging the attention of various Committees for a long time. The benefits conferred by the Act and the

Rules are social welfare legislative measures. The various measures which ate challenged as unreasonable namely, the provisions for canteens, rest

rooms, facilities for supply of drinking water, latrines, urinals, first-aid facilities are amenities for the dignity of human labour. The measure is in the

interest of the public. It is for the legislature to determine what is needed as the appropriate conditions for employment of contract labour. It is

difficult for the Court to impose its own standards of reasonableness. The legislature will be guided by the needs of the general public in

determining the reasonableness of such requirements. There is a rational relation between the impugned Act and the object to be achieved and the

provision is not in excess of that object. There is no violation of Article 14. The classification is not arbitrary. The legislature has made uniform laws

for all contractors.

103. The next decision in Pathumma and Others Vs. State of Kerala and Others, , makes a review of all the earlier decisions on the point and

summarises the guidelines to determine the question of reasonableness of restriction. The guidelines are:

(1) That, in judging the reasonableness of the restrictions imposed by cl (5) or art 19, the Court has to bear in mind the Directive Principles of

State Policy.

(2) That restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirement of the interest of the general public.

(3) That in order to judge the quality of the reasonableness no abstract or general pattern or a fixed principle can be laid down so as to be of

universal application and the same will vary from case to case.

(4) That a just balance has to be struck between the restriction imposed and the social control envisaged by Clause (6) of Article 19.

(5) That there must be a direct and proximate nexus or a reasonable connection between the restriction imposed and the object which is sought to

be achieved; In other words, the Court has to see whether by virtue of the restriction imposed on the right of the citizen the object of the statute is

really fulfilled or frustrated.

(6) That Court must see the prevailing social values whose needs are satisfied by restrictions meant to protect social welfare.

(7) That so far as the nature of reasonableness is concerned it has to be viewed not only from the point of view of the citizen but the problem

before legislature and the object which is sought to be achieved by the statute, in other words, the Courts must see whether the. social control

envisaged in Clause (6) of Article 19 is being effectuated by the restrictions imposed on the fundamental right.

104. It will be apt to round up the discussion of the authorities on this point by reproducing the observations from the last of the authorities on the

subject viz. P.N. Kaushal and Others Vs. Union of India (UOI) and Others, which are as follows: (at p. 1473)

Unchannelled and arbitrary discretion is patently violative of the requirements of reasonableness in Article 19 and of equality under Art 14.

Reasonableness and arbitrariness are not abstractions and must be tested on the touchstone of principle pragmatism and living realism.

105. It is against the background of this position in law that we may now examine the arguments at the bar challenging the provisions of the Act

and the Scheme on the ground firstly that the restrictions are not reasonable and secondly that they are not in the public interests. The argument

which is advanced on behalf of the Agencies is that the provisions of the Act and the scheme prohibit the Agencies completely from carrying on

their business of supplying Security Guards to the factories and establishments in Greater Bombay and Thane. Most of the Agencies are supplying

Security Guards to the factories and establishments in Greater Bombay and Thane areas only. There have no contracts for supplying them to the

factories and establishments, outside these areas. Hence it is contended that in a commercial sense the Agencies are virtually wiped out of their

business.

106. In the first - instance, although it is true that some of the Agencies have their exclusive business in Greater Bombay and Thane areas, it is not

correct to say that they will not hereafter be in a position to carry on their business of supplying Security Guards to factories and establishments

outside Greater Bombay and Thane areas. The Act undoubtedly extends to the whole of the State of Maharashtra and empowers the Government

to bring it into force in any area on such date as the State Government may by notification in the Official Gazettee appoint in that behalf. For the

present however, it is enforced only in Greater Bombay and Thane District on and from June 29, 1981. However, we will proceed on the basis

that some of the Agencies having their exclusive business in Greater Bombay and Thane District are compelled to close down their business and

also further that since the State Government has been empowered to cover all areas of the State, the Act has the potentiality of prohibiting the

business of supplying Security Guards in any part of the State. The question therefore is whether such a prohibition of business is reasonable and in

.the interests of the general public. As has been pointed out earlier, there are no less than 70,000 Security Guards at present employed through the

Agencies in different factories and establishments in Greater Bombay and Thane District. There is further no dispute that the security work for

which they are engaged is a regular work of the factories and establishments where they are employed and is not a work of an intermittent or

casual nature. There is no material on record, further, to show that the Agencies give the Security Guards any special training for the job. The only

role which the Agencies supplying Security Guards play is of the middlemen hiring the services of the Security Guards on a certain remuneration

and in turn hiring them out to the employers at higher charges and appropriating the difference for themselves. This practice is nothing short of

trafficking in human labour. On account of the large unemployment in the country, many able-bodied persons are available for selling their labour at

competitively lower rates. The Agencies are in a position to exploit this situation and to quote competitive rates for hiring them. There is also a

competition between the Agencies to supply the Security Guards at lower rates to the various employers. The employers find it economically

advantageous to hire the services of the Security Guards through the Agencies, since they get them at low bargain-rates without any further

responsibilities attached to them. The situation is further aggravated by the fact that most of the Security Guards are drawn from the ranks of the

retired Army and police personnel who are fit only for the said job and who do not find any other ready employment. They are already trained for

the security work and are forced to supplement their meagre retirement benefits by accepting any work. This inevitably leads to their exploitation at

both ends. The hiring of Security Guards by the employers through the Agencies is therefore nothing but yet another instance of the contract labour

system in operation with all the evils attendant upon it. For years together now there is a demand for abolition of contract labour system particularly

in. trades, processes and occupations which are a regular and an integral part of the industrial and the commercial activity. It is with this view that

the Contract labour (Regulation and Abolition) Act, 1970 was placed on the Statute book by the Central Government as early as in 1970 to

regulate the employment of Contract labour in certain establishments and also to provide for its abolition in certain circumstances. The Act applies

to every establishment in which 20 or more workmen are employed and to every contractor who employs 20 or more workmen. Section 10 of the

Act enables the Government, Central or State as the case may be, to prohibit the employment of contract labour in any process, operation or other

work in any establishment. The Act gives power to the appropriate Government to make rules for providing amenities and facilities such as

canteens, restrooms, first aid, etc. and also to ensure payment of wages to the workers where the contract labour system is permitted. It also

requires the contractors to obtain licences for doing the business of supplying contract labour. This Act with its provisions empowering the

Government to abolish the contract labour system was held valid by the Supreme Court in a decision to which we have already made a reference

earlier viz. Messers Gammon India Ltd. V. Union of India 24(Supra). What is more, a similar Act viz. the Mathadi Act, 1969 was enacted by the

State Government and it applies to the whole of Maharashtra. The Act as its preamble shows, seeks to regulate the employment of unprotected

manual workers employed in certain employments in the State. That Act has been held valid . by this Court. It may be mentioned that the Security

Guards to whom the present legislation... relates. are covered by the Contract labour Act. Under that Act the employment of the Security Guards

on contract labour system can be prohibited by issuing a notification u/s 10 of the Act. In fact as stated earlier, a notification under that provision

was in fact issued by the State Government. It was however invalidated by this Court on the ground that the Notification was not a speaking order.

This attempt on the part of the State Government to prohibit the contract labour system in the employment of the Security Guards only highlights

the need felt by the State Government to abolish the said system. The very same result could also have been achieved by an amendment of the

schedule to the Mathadi Act by including in the employments mentioned therein the employment of the Security Guards. Instead of adopting either

of the said two courses, the State Government thought it necessary to introduce an independent legislative measure to prohibit the contract labour

system in the employment of the Security Guards and that is how the present legislation was born. It is therefore too late in the day to dispute the

necessity of the measure on the ground that the measure is not a reasonable one or in the interests of general public.

107. It is true that the effect of the legislation is to bring about a total stoppage of the Agencies'' business. But this prohibition has a rational

connection with the object sought to be achieved, the object being to abolish the contract labour system with all the evils attendant upon it. Since

the object is to abolish the traffic in human labour, the prohibition of the business of supplying the Guards cannot be said to be in excess of or

disproportionate to the mischief sought to be suppressed. This object cannot be effectively attained except by a total prohibition of the said

business of the Agencies. As regards the contention that the said object can also be attained by requiring the Agencies to provide the workers with

regular employment, payment of wages on days on which they are not offered employment, fixing their remuneration and other service conditions,

placing restrictions on their discharge, dismissal or termination of service and ensuring them adequate fringe and terminal benefits, and other

amenities and facilities, it must be remembered that this would involve strict supervision over the Agencies and the employers. There is sufficient

material on record to show that a mere regulation of the employment of the Security Guards will not effectively achieve the object of the betterment

of the service conditions of the Security Guards and of preventing their exploitation. The record shows that many of the 250 agencies are not even

registered under the Bombay Shops and Establishments Act, 1948, probably because they are a one-man show without any fixed office or

establishment. It is difficult to verify from the records of such middlemen even the number of Security Guards which they supply to the employers.

No regular books of accounts, muster rolls, payment registers, etc. are kept by them. It is easy for such middlemen to escape and/or to circumvent

the provisions of the labour legislation. Further various devices and subterfuges are employed by unscrupulous middlemen to avoid liabilities under

various enactments. This is a widely known evil and labour commissions and surveys have had an occasion to comment upon it from time to time.

The material produced by some of the petitioners itself shows that even for securing the minimum service conditions, the Security Guards had to

approach the labour and Industrial Courts and authorities. One has only to imagine the hardship and inconvenience caused to such workers in

prosecuting their claims and bringing them to a fruitful end. If in these circumstances, the State Government thought it appropriate to abolish the

contract labour system in this field altogether instead of merely regulating'' it as the Contract labour Act has done, it is difficult to find fault .with the

measure and assail it on the ground that it is in excess of the object sought to be achieved. In the circumstances the legislation cannot be said to

suffer from the vice of excessive restriction.

108. As stated earlier, the employers have also attacked the legislation on the ground that it prohibits them from engaging any person of their

choice as Security Guards without making him a part of their establishment and thus interferes with their right to carry on their trade or business.

For this purpose, reference is made by the employer-petitioners to the provisions of Section 3(2)(g) of the ''Act read with Clauses 14, 15 and

26(2) of the scheme. In support of this contention, Shri Rane, the learned Counsel for the employers referred me to Chapter V contributed by Shri

Philip Margetson under the heading ""The Growth of Industrial Security"" in the Book ""Security Attitudes and Techniques for Management"" edited

by Meel Currier-Briggs to which I have already made a reference. This Chapter undoubtedly emphasises the fact that with the great increase in

crime since World War II the situation with regard to the security of industrial establishments has undergone a change and a mere reliance on the

Police for that purpose is no longer sufficient. It also stresses the importance of having efficient guards with clean habits and proper training to face

varied situations like fire and to do the internal detective work. The passage further emphasises that specialised Agencies have stepped in the field

for supplying such guards and that some of the leading Companies in the field have established schools for training such Security Guards,

109. Shri Rane then referred me to certain observations of this Court in The Paper Products Limited v. K.R. Patreary (1970) 73 Bom. L.R. 434.

The case arose out of a direction given by the Industrial Court for abolition of the contract system in respect of watchmen and to make them direct

employees of the petitioner-company which had challenged the said direction under Article 227 of the Constitution. While setting aside the said

direction, this Court observed that exploitation of labour may not be the conclusive test for determining whether contract labour system in a

particular factory or unit should be permitted; but it is an important test. When the Tribunal finds that there is no exploitation of the workers

working under the contract system, it should be slow to prohibit it unless law or justice requires it to be stopped. The Court then went'' on to

observe that there was no law which prohibited the contract labour system at the relevant time. According to the Court the five circumstances cited

by the Tribunal to justify the direction were non-existent. The first assumption that in most of the concerns in all the industries in the region, watch

was maintained by the direct employees and not under the contract system, was wrong. There was further no evidence to support that the

watchmen who were employed elsewhere were without any special training. The third circumstance relied upon by the Tribunal that the special

training given to the watchmen supplied by the agency did not justify the contract system, was also erroneous. There was also no evidence

according to the Court to support the Tribunal''s conclusion that the system generated distrust between the employers and the employees because

the watchmen were trained as spies and the material part of their work was to spy over the trade union activities. The last of the grounds given by

the Tribunal was a theoretical one, viz. that it was necessary in the interests of national peace and harmony to do so. The Court further found that

there was no legal or factual basis for the direction given by the Tribunal. It may however be pointed out that the Contract labour (Regulation and

Abolition) Bill, 1967 was at that time passed by the Rajya Sabha and was pending before the Lok Sabha and a reference was made to the same

by the learned Counsel for the workmen appearing before the Court, With reference to the same, the Court observed that even under the Bill, the

Advisory Board had to advise the State Government as to whether in the particular case the contract labour system should be abolished, and if and

when the Act comes into force and the Advisory Board is of the view that such a contract system should be abolished, the matter may assume a

different colour. While concluding, the Court again emphasised the fact that there was no material before the Tribunal to show at that moment that

the system of employing watchmen under a contract was an evil system which required to be stopped.

110. The Chapter in the Book and the aforesaid observations of the Court are relied upon on behalf of the employers to show firstly that the

security work requires handling by specialised and expert agencies. Secondly, the Security Guards selected must answer the needs of the job

entrusted to them. Thirdly, the exploitation of the Security Guards by the Agencies should not be the only reason, though an important one, for

stopping the contract system and lastly there must be sufficient material on record to prove the evils of the system to warrant a conclusion that the

abolition is in the interests of the general public and reasonable. I am afraid that even after taking into consideration what is stated in the said book

and the observations of this Court, it is not possible to hold that the present legislation prohibiting the contract labour system and requiring the

employers either to employ the"" Security Guards directly or to take the Security Guards from the registered pool can be said to suffer from any

illegality. The book only emphasises the fact that a modern Security Guard must be equipped with a clean character and proper training to meet the

varied needs of the situation. As has been pointed out earlier most of the Security Guards with whom we are concerned in the present case are the

ex-Police or the ex-army personnel who are presumed to possess the right type of character and the necessary training for the job. Assuming it is

not so, there is no material placed on record either by the Agencies or by the employers to show the kind of screening if any done by the Agencies

before the Security Guards are employed by them and the kind of training ""imparted to them. Assuming further that such screening is done and the

training imparted, it is difficult to understand as to why the Board constituted under the Act which consists of the representatives of the employers

will not undertake such screening and training of the Security Guards.

111. The observations of this Court in the case cited were firstly in connection with the directions given by the Industrial Tribunal in its award. They

were not in relation to a legislation enacted for the purpose. The considerations which weigh with an adjudicator for making an award differ from

those which should weigh with the legislature passing an enactment. The Adjudicator has to base his findings strictly on the material placed before

him and relevant between the parties to the dispute. As has been pointed out by this Court, the Tribunal in that case had no material before it to

support the assumptions it made for giving the direction in question. It is however interesting to note that it was not disputed in that case that there

was an exploitation of the watchmen. The Court held that exploitation though an important factor was not the only criterion for deciding as to

whether the contract labour system should be abolished or not. That is a constraint on the Court and not on the legislature. The present legislation

is not confined to any particular employer, agency, Security Guard, factory or establishment. It covers Security Guards employed in all the

factories and establishments in Greater Bombay and Thane District. The history of the legislation further shows that it was proceeded by surveys

and commission reports including a sample survey of the service conditions of the Security Cards in these regions themselves. That report shows

that the service conditions of an average Security Guard are pathetic and various evil practices such as profiteering by the middlemen by

exploitation of the Guards, inhuman conditions of work, evasion of labour legislation and denial of even minimum service conditions prevail, The

report also points out that the work of security was mostly a regular part of the work of the factories or the establishments to which the Security

Guards are assigned and in spite of this, the employers avoid the direct employment of the Security Guards merely to gain pecuniary advantage. In

the circumstances it is not possible to accept the contention that the abolition of the contract system was not justified in the present circumstances

or that it was in excess of the evil sought to be suppressed. It is not suggested that the abolition of the system has no nexus with the objects sought

to be achieved. All that was urged was that it was in excess of the object sought to be achieved.

112. In further support of their contention that the present legislation invaded their right to carry on business, the employers contended that hitherto

they could choose persons required to do the security work by choosing the Agencies through which they were employed or by changing the

Agencies according to their will. Hereafter they will have to be content with the Security Guards assigned to them by the Board and even if they

find their work unsatisfactory, they will have no right to reject them. In any case it was submitted that their choice would be restricted inasmuch as

they would be required to take Security Guards only from these registered with the Board. The right to choose the employees being an integral

part of the right to carry on their business, the legislation is violative of their said fundamental right.

113. This argument as the ones which follow has to be judged in the light of the comparison between a registered Security Guard and a direct

employee on the one hand and between a registered Security Guard and the Security Guard supplied by the Agency as at present, on the other. It

is the unwillingness to compare the two sets of situations which is primarily responsible for these contentions advanced on behalf of the employers.

As regards the present contention viz. that the legislation invades the employer"s right to choose his Security Guard, it must first be borne in mind

that the legislation nowhere prohibits the employers from recruiting Security Guards as their direct employees. Hence those of the employers who

want to employ the Security Guards directly are not prevented from doing so. They have not to look to the registered Security Guards for manning

their security work. Therefore it is not correct to say that the employers are forced to take the Security Guards only from registered Security

Guards. All that happens in the case of direct employment is that the employer incurs a little more expense as he does on every direct employee,

since he has to give the Security Guard the same service conditions as are given to other similarly placed employees of his. The employer cannot

complain of this additional financial burden on account of the direct employment of the Security Guards once it is held, as has been done earlier,

that the security work is a regular and a necessary work in the factory or the establishment where the Security ''Guard is engaged. To keep such

employees on contract basis is nothing short of indulging in an unfair labour practice. It is also not correct to say that if the employer has to employ

a Security Guard directly he will have to maintain a separate establishment by engaging the whole paraphernalia of security staff including a

supervisor to check the work of the Security Guards. As has been stated earlier most of the personnel recruited as Security Guard is drawn from

an ex-army or police staff. There is further no evidence to show that the Security Guards receive any special training from the Agencies supplying

them at present. As regards the supervision on the Security Guards, the only material that has come on record is that some of the persons engaged

as supervisors by the present Agencies pay an occasional surprise visit and keep a check on the Security Guards. Such check can be made even

by the persons connected with the management of the employer''s factory or establishment. The expenses incurred on such supervision will

certainly not be more than what is incurred for the purposes to-day. Even if some more expenses are required to be incurred they will be marginal.

On that account it cannot be said that the employer''s right to carry on his business is affected. Furthermore, without maintaining a separate

establishment for the purpose, the screening and training of the directly employed Security Guards can be got done through the present Agencies

or other institutions which are not prevented from doing the said business. For these reasons it is not possible to subscribe to the view that the right

to choose Security Guards is invaded by the present legislation. On the other hand, if we compare the Security Guards supplied by the present

Agencies with the Security Guards who will be registered with the Board hereafter, it will be at once noticed that the same Security Guards who

are to-day working with the employers would be the registered Security Guards hereafter. It has further to be remembered that in practice, for a

given period of time, the employers have to be content with the Security Guards supplied by an Agency on account of his contract with such

agency. It is true that even during this period, the employer, if he has reserved such right, can terminate the contract. It may be mentioned in this

connection that no agency or employer produced - any agreement before the Court and therefore it was not possible to ascertain what exactly

were the terms of the agreement between the employers and the Agencies. But there is also a provision under Clause 31 of the present Scheme

whereby a registered employer can make a complaint against a registered Security Guard assigned to him and in that event a power is given to the

Chairman of the Board to suspend the concerned Security Guard during investigation and assign to the employer another Guard in his place. A

comparison of the present situation with the situation that will obtain hereafter, does not show that there will be any special handicap encountered

by the employers on account of the present legislation.

114. The next contention raised in this connection was that at present the employers get the supervision of the working of the Security Guards

done by men of their confidence. Hereafter the supervision will be through the supervisors from the registered Security Guards who will not be of

the confidence of the employers. This argument does not appeal to me for there is no reason to believe that the supervisior who will be sent by the

Board to check the working of the Security Guards hereafter will be untrustworthy. Most of them will be persons who have hitherto been doing the

work of supervision through the Agencies. The Board is manned by the representatives of the employers and they will also have a say in the matter

of allotment of Security Guards as well as supervisors. Further, as stated earlier, nothing prevents the employer from arranging supervision or

surprise checks by his other employees or those associated with the management. The cost of such supervision will be negligible.

115. The further grievance was that at present the employers have the benefit of advice from the Agencies with regard to the lay-out and postings

of the security personnel. Hereafter the employers will be deprived of the same. It is difficult to subscribe to this view. Under the Scheme the

employer has to indent for the required number of security personnel. Nothing prevents the employer from seeking advice from such Agencies as

he may choose on the subject of the lay-out and posting of the Security Guards. This will involve him in a little expenditure for the advice sought,

which expense will be non-recurring and can hardly be said to affect his right to carry on business. In any case the expense which he is incurring

today by way of a payment to the Agencies for the supply of Guards, includes the cost of such advice.

116. The next complaint made on behalf of the employers is that during emergency, an employer may require a Security Guard or Guards urgently

to supplement the existing strength. The procedure for indenting of the Guards etc. laid down in the scheme is time-consuming and by the time, the

indented Guard or Guards arrive on the scene, the emergency itself might be over. This grievance proceeds on the assumption that at present

additional Security Guards are at the beck and call of the employers, being readily available with the Agencies. Assuming this is so, there is no

reason to believe that more time will be consumed for, securing additional Security Guards from the Board than is consumed to-day. A suitable

procedure to meet the emergency can always be devised with the Board particularly when the representatives of the employers are on the Board

to safeguard the interests of the employers.

117. It was then contended that the assignment of the Security Guards is in the hands of the Board and in the absence of guidelines it may happen

that the Board may supply to an employer irrespective of his financial condition, those Security Guards who are in receipt of higher emoluments

and other service conditions. To-day the employer concerned may be incurring less expenses on the employment of the Security Guard. This

expense will however increase if costly Security Guards, whose higher service conditions are protected u/s 22 of the Act, are thrust upon him. This

would seriously infringe his right to carry on his business. To expose the fallacy of this argument it is sufficient to point out that at present such

costly Security Guards are being employed with some factories and establishments and they are bearing the burden of their higher service

conditions. The legislation has merely converted these Security Guards into registered Security Guards. The Board which has the representatives of

the employers as well as independent representatives from the Government is not expected to be blind to the situation and is expected to act

reasonably. Hence while allotting Security Guards, it is legitimate to presume that they will do so taking into consideration the employment of the

Security Guards prior to the coming into operation of the present legislation, the financial position of the different employers and the feasibility of

assigning Security Guards to particular employers. The grievance therefore is more imaginary than real.

118. The further grievance is that at present the supervision, direction and control of the working of the Security Guard is with the employer.

Hereafter the same will be with the Board, and the employers will have no say in the matter. This argument has also no force in it, because one of

the obligations of the registered Security Guard as stated in Clause 25(4) of the scheme, is that the registered Security Guard has to carry out his

duty in accordance with the directions of the registered employer or his authorised representative or supervisor and also in accordance with the

rules of the employment or place where he is assigned. Therefore, it is not correct to say that the registered Security Guard will not be under the

supervision, control and direction of the registered employer. If the registered Security Guard does not obey the said directions, the employer will

always have a right to complain about it to the Personnel Officer of the Board who is empowered to take disciplinary action against the Guard as

laid down in Clause 31 of the scheme. The situation in this respect will not be materially different from the one obtaining to-day, since the Security

Guard to-day is an employee of the Agency and the ultimate punishing authority is the Agency and not the employer.

119. Coming now to the specific provisions of the Act which are challenged on the ground of infringement of Article 19(1)(g), the first of such

provisions is Sub-section (4) of Section 3 insofar as it prohibits the principal employer or agency o-r agent from dismissing, discharging or

retrenching or otherwise terminating the services of any Security Guard merely by reason of the liability imposed on the employer under the

Scheme. The argument is that such action on the part of the employer or the agency is made punishable u/s 27 of the Act. The prohibition against

dismissal, discharge, etc. of the Security Guards is during the period from June 29, i981 upto the date the whole Scheme framed under the Act is

applied to such employer and the Security Guard concerned or during the period of one year from June 29, 1981 whichever is earlier. June 29,

1981 is the date on which the Ordinance which was replaced by the Act was promulgated. However there was no provision in the Ordinance

prohibiting such action on the part of the principal employer or the Agency. The penal provisions of Section 27 read with Sub-section (4) of

Section 3 are therefore clearly retrospective in operation insofar as the action taken during the period between June 29, 1981 till the date of

coming into operation of the scheme is made punishable. Any penalty imposed for such action will therefore be clearly violative of Article 20 of the

Constitution and hence the said provision insofar as it seeks to penalise the action taken during the period in question is invalid and therefore

inoperative. There is much force in this contention. Admittedly, the Ordinance dated June 29, 1981 did not prohibit the principal employer or the

Agency from dismissing, discharging, etc. the Security Guards by reason of the employer''s liability under the Scheme. Hence the said provision

insofar as it seeks to penalise the pre-scheme action, is clearly invalid. No act can be made retrospectively penal. Hence the said provision to that

extent is invalid and has to be struck down. It is only the actions taken by the employers or Agencies after the coming into operation of the Scheme

that can be prohibited and penalised. The said sub-section is valid only insofar as the post Scheme actions are concerned.

120. The attack on Sections 22 and 23 of the Act has already been dealt with.

121. The provisions of Section 28 were attacked on the ground that whereas hitherto the Agencies took full responsibility for the actions of the

Security Guards, hereafter not even the Board can be held responsible for their actions since Section 28 grants immunity from any legal

proceedings to the State Government, the Board, the Chairman, Secretary and members of the Board and the Advisory Committee amongst

others. The provisions of Section 28 are the usual provisions of immunity from legal proceedings for the bonafide actions taken under the Act.

They have nothing to do with the immunity of the Board of the actions arising out of the acts of the registered Security Guards. However, even

assuming that the provisions of Section 28 are interpreted as they are sought to be done on behalf of the petitioners, it is difficult to see as to how

the employer''s right under Article 19(1)(g) is infringed because nobody is made responsible for the acts of the Security Guards. The tortious

actions of the Security Guards will at"" best give rise to a claim for damages and will be maintainable against the Security Guard himself. It is

common knowledge that most of the employers take out fidelity insurance policy in respect of the persons engaged for work with them. There is no

reason why the employer should not take out a fidelity insurance policy for the Security Guards working with him.

122. Coming to the challanges to the Scheme, the first group of provisions which is challenged is contained in Clause 6(11)(vi) and 6(11)(xi).

Clause 6(1)(vi) empowers the Board to determine the manner of disbursement of wages and other allowances to the Security Guards. Clause

6(11)(xi) empowers the Board to settle dispute between registered employers and registered Security Guards. The argument directed against

Clause 6(11)(vi) is that it gives an untrammeled power to the Board to decide in which manner the wages and allowances will be disbursed and the

employers have no say in the same. The Board may even require the employers to pay wages and allowances in advance for a period to be

determined by it and there is no appeal against such decision. It is not necessary to emphasise that the Board is a representative body expected to

discharge its functions reasonably keeping in view the interests of both the employers and the Security Guards. Further, this provision only

empowers the Board to determine the manner of disbursement of wages and allowances. Clause 30 of the Scheme on the other hand lays down in

specific terms that the wages and other allowances payable to the Security Guards every month by the registered employers shall be remitted by

the registered employers by cheque to the Secretary of the Board, within such time after the end of the month as may be specified by the Board,

and the Secretary thereafter has to arrange to disburse the wages and other dues, if any, to the registered Security Guards on specified days every

month. The said clause also provides that the Board may, if it thinks fit, also allow the registered employer to pay directly to the Security Guard his

wages and other allowances within such time and in such a manner as may be specified by the Board. In view of this specific provision which

implies that the wages and allowances payable to the Security Guards will become payable only after the end of the month, the apprehension

expressed that Clause 6(11)(vi) would enable the Board to recover the wages and allowances of the Security Guards much in advance of the

services rendered, does not appear to have any substance at all.

123. As far as Clause 6(11)(xi) is concerned, the attack against it is that it gives an arbitrary power to the Board to settle disputes between the

Security Guard and the employer and there is no appeal provided against the decision of the Board in such disputes. This attack also ignores the

specific provision contained in Clauses 31 and 35 of the Scheme. Clause 31 provides for a complaint in writing against a Security Guard to be

made to the Personnel Officer of the Board who is empowered to investigate the matter and warn the Security Guard. Where the Personnel

Officer is of the opinion that the Security Guard deserves higher punishment he is required to report the case to the Chairman and the Chairman

either on the report received from the Personnel Officer or from the employer directly or from any other person, is authorised to investigate the

matter further on his own, and to impose penalties on the Security Guard including that of dismissal. Clause 35 lays down the powers of revision of

the Chairman and in case the registered employer is aggrieved by the decision of the Personnel Officer he can approach the Chairman against the

said decision. There is also a provision made that during the investigation of the dispute, the Chairman can suspend the Security Guard concerned.

It is however true that there is no provision of revision or appeal against the decision of the Chairman. However, the absence of such provision will

not invalidate the Scheme or the disciplinary procedure laid down therein. Even under the Industrial Disputes Act, there is no provision for appeal

against the decision of the authorities mentioned therein. Therefore the petitioner employers will not be worse than what they would be if they

employed Security Guards as their direct employees. If on the other hand they continue to employ the Security Guards through the Agencies, the

only remedy they have is to call upon the Agency to change the Security Guard concerned and in case it fails to do so, to terminate the Agencies''

contract. Compared to the situation in which the employers are at present or would find themselves if they employ the guards directly, it is difficult

to hold that the present provision is unreasonable.

124. The next clause of the Scheme under attack is Clause 14 which requires every employer who had engaged private Security Guards on the

appointed day or at any time thereafter to get himself registered with the Board. The submission was that on the language of this clause, every

employer whether he recruits a Security Guard or not or even if he recruits a Security Guard as his direct employee, is required to register himself

compulsorily. This contention is not borne out by the language of the said clause. The clause requires only those employers who had engaged

Security Guards through the middlemen like the Agencies and who desire to continue to do so hereafter as well as the new employers who desire

to engage Security Guards otherwise than as direct employees to register themselves with the Board. Those employers who do not engage any

Security Guards or who engage Security Guards as their direct employees are not required to register themselves under the Scheme, the attack

must therefore fail.

125. Next Clause 21 which provides that the Personnel Officer of the Board shall maintain a record sheet in respect of each of the registered

employer was challenged on the ground that it was intended to prepare a black list of the registered employers since a confidential record of

disciplinary action taken against the registered employers was to be entered in such sheets. The further attack was that this record sheet may be

used against the employer even to deny him a Security Guard when required or to give him a discriminatory treatment in the allotment of the

Guards. It is difficult to appreciate this argument. There is nothing wrong if the record sheet showing disciplinary action taken against the registered

employer is maintained as long as the said sheet is used strictly for the purposes of the Scheme and the Act. There is nothing in the said clause or

any other provision to suggest that it is meant for discrimination against or victimisation of the employer. The provision appears to be innocuous and

is made for the same purpose as the provision for maintaining the service record of the registered Security Guards in Clause 20 of the scheme. If

and when such record is used by the Board for any such purpose as is feared by the employers, the action may become assailable. The provision

cannot be struck down on imaginary apprehensions.

126. Clause 25 of the Scheme is attacked mainly for the provisions made in Sub-clause (4) thereof which states that a registered Security Guard

will carry out his duty in accordance with the directions of the registered employer. The submission is that without an authority to take disciplinary

proceedings against the Security Guard, such provision is futile and unnecessary. It is also argued that the said provision read with Clause 31 will

create a bottle-neck in the management of the employer. This argument proceeds on the footing firstly, that today, when the employers are

recruiting their Security Guards through the middlemen they have not only a power to direct the Security Guards to discharge their duties in a

particular way but also to take disciplinary action against them. That certainly is not the case. Even today, the same situation obtains viz. that the

Security Guards who are deployed with a particular establishment have to carry out their duties according to the directions of the employers. The

right to take disciplinary action against the Security Guards is vested with the middlemen who are the employers of the Security Guards. There is

therefore no substance in this attack.

127. Clause 26 is challenged because it prohibits the employment of Security Guards other than the Security Guards allotted by the Board. The

implications of the prohibition have already been considered in another context. This prohibition is an integral part of the scheme and necessary to

promote the object of the Act. It will frustrate the purpose of the Act if the employers are permitted to recruit Security Guards other than as their

direct employees. There is therefore nothing unreasonable in the said provision.

128. This Clause was also attacked on the ground that Sub-clause (5) thereof empowers the Board to levy an amount payable by the employer to

the Board. It was contended firstly that it was not a levy but a tax and secondly the Board may impose levies in excess of the requirement since

neither guidelines nor the maximum of the amount to be levied has been laid down in the said clause. Sub-clause (7) of the said clause was also

attacked on the ground that under it the Board has ""been authorised to levy a surcharge on the employer on the ground that the employer is a

persistent defaulter in remitting the amount of wages of the Security Guards. However, the Board is made the sole judge for levying such penalty

and the Board can levy the penalty as high as 10 per cent of the wages. Sub-clause (&) of the said clause gives power to. the Board to suspend

the supply of Security Guards to such employer who is in default of payment. The contention of the employers therefore is that Clause 26 is

unreasonable for the aforesaid reasons since it interferes with the right of the employer to carry on his trade or business.

129. A closer scrutiny would show that the grievances are misconceived. The argument against the imposition of the levy is dealt with while dealing

with the attack against Clause 37 a little later. As has been pointed out there, there is nothing arbitrary or unreasonable about the levy. As regards

the action"" that the Board is empowered to take against the registered employer for making defaults in paying the amount of wages, the action is to

be taken only if the payment is not made within the time prescribed, the time being ten days from the date of the order of the Secretary in that

behalf. Similarly the power to impose penalty under Sub-clause (7) is only to be exercised in case of persistent defaults in remitting the amount and

this power is to be exercised by the Board which is a representative body. The ceiling of the penalty is also further laid down as the same being 10

per cent of the amount required to be remitted. The provision is therefore neither -arbitrary nor capable of being abused. Similar is the case with

the power given to the Board under sub-cl. (8) for suspending the supply of registered Security Guards to the employers in addition to the penalty

that may be imposed. There are ample safe-guards against the abuse of the said power since it is to be preceded by a notice which implies a

hearing to be given to the defaulting employer before, an action is taken. The said power is further necessary to effectually implement the provisions

of the Scheme and the Act. For all these reasons, the attack on Clause 26 does not appear to be well conceived.

130. Clause 27 of the Scheme has been attacked on the grounds, firstly because it prohibits a registered employer from employing any Security

Guard other than a registered Security Guard and secondly because the procedure provided for supplying additional Security Guards to meet the

emergency requirements is both unsatisfactory and dilatory tending to cripple the business of the employer. As regards the first ground of attack, it

is unnecessary to emphasise that the provision that in normal circumstances, the employer should be prevented from engaging Security Guards

other than registered Security Guards is a necessary part of the legislation and without it, the object of the legislation itself will be frustrated. If the

legislation is valid, no fault can be found with the said provision. As regards the second ground of attack, the argument is that in case of emergency

the employer has first to write to the Secretary of the Board and if the Secretary is satisfied that there is such an emergency, he may meet the said

requirement from the pool of Security Guards and only if the registered Security Guards are not available, he may allow the employer to employ

unregistered Security Guards. According to this argument of the petitioners, sometimes the emergency may be for a few hours and if the employers

are not permitted to recruit unregistered Security Guards immediately, their business will be affected since some time is bound to elapse before the

Secretary gets himself satisfied and then makes enquires whether registered Security Guards are available or not .and then gives permission to

recruit unregistered Security Guards. This contention has already been dealt with earlier while dealing with the general attack against the legislation.

As has been pointed out there it is a matter of evolving a suitable and expeditious machinery to meet such emergency requirements. There is no

reason to believe that the Board which has the representatives of the employers will fail to evolve such arrangements. Even to-day the employers

have to obtain their emergency requirements, from the middlemen like the Agencies. It cannot be asserted with any certainty that those Agencies

always keep a sufficiently surplus number of Security Guards to meet ail such emergencies. Some time is bound to elapse between the indent for

the emergency requirements and the supply of the Security Guards. Further such occasion will be few and far between. In majority of the cases, it

should be possible for the employers to anticipate the emergencies and indent for additional Security Guards sufficiently in advance. There is

nothing inherently defective in the said provision and hence ii is not possible to accept the contention that the provision is violative of Article 19(1)

(g) of the Constitution because there is a likelihood of a delay in meeting the emergency requirements.

131. The next clause under attack is Clause 29 and a serious grievance is made against the power given to the Board under the said clause to fix

the conditions of service of the Security Guards including the rates of wages, allowances, overtime, hours of work, rest intervals, leave with wages,

etc. The main attack against it is that there is no appeal provided against such fixation by the Board and therefore the decision of the Board would

be final and binding. This contention firstly overlooks the fact that the Board consists of not only the representatives of the Security Guards but also

of employers and of independent representatives of the Government. Secondly, before fixing the service conditions, the Board is required to call

upon the Association of employers, amongst others, to make their representation in the matter. The Board is further required to -take into

consideration all the representations and to examine all the material placed before it before fixing the service conditions. Thirdly, the clause

prescribes guidelines for fixing the service conditions and lays down that while fixing the service conditions, the Board shall have regard to the cost

of living, the prevalent conditions of service in comparable employments in the local area, the capacity of the registered employers to pay and any

other circumstance which may seem relevant to the Board. The fixation, revision or modification of the conditions of service would therefore be

done not arbitrarily but after hearing the parties and on the basis of the well-known principles for prescribing the conditions of service. What is

more, this contention completely ignores the fact that to-day the only other machinery that'' Is available for fixing the conditions of service in the

industrial adjudication under the Industrial Disputes Act and similar legislation. The decision given by such authority is also not appealable. It is true

that the adjudication authority under such legislation is a judicial or quasi-judicial body, while the Board is an executive body. However, it must not

be forgotten that while fixing the service conditions, the Board is required to act like a quasi-judicial body since it has to make its decision after

taking into consideration the representations of the parties and on the basis of the well-known principles for fixing the service conditions which are

taken into consideration by the industrial adjudication as well. Lastly and more important the decision making authority viz. the Board in the present

case will have the representatives of the employers on it in addition to the independent representatives from the Government. It therefore can

hardly be said that the Board is in any way an unsatisfactory or less satisfactory machinery than the one available under the industrial legislation. In

any case the machinery provided for fixing the service conditions can hardly be attacked on the ground that it is arbitrary.

132. The next provision attacked is the disciplinary procedure in Clause 31. It is attacked for two reasons. The first is that when the Personnel

Officer refuses to take disciplinary action against a registered Security Guard, there is no provision for an appeal against the said decision by the

employer and all that is provided is a revision to the Chairman under Clause 35. The second reason is that the right of preferring an appeal to the

Chairman against the order of the Personnel Officer given by Clause 34 is ineffectual because the appeal is from one executive authority to the

other. As regards the contention that there is no appeal provided against the order of the Personnel Officer refusing to take any action against the

Security Guards, there is no doubt that Clause 34 which mentions the right of appeal of the employer states that such an appeal can be filed only

by the employer who is aggrieved by an order of the Personnel Officer taking action against the registered employer. There is no right of appeal

given to the employer against the Personnel Officer refusing the proceed with any complaint against the registered Security Guards. However,

Clause 35 gives powers of revision to the Chairman and the Chairman is authorised to revise any order passed by the Personnel Officer under any

of the provisions of the said Clause 31. The powers of revision are further not limited and if the Chairman is satisfied not only as to the want of

legality but also of the want of propriety of such order, he can interfere with the order passed by the Personnel Officer. This provision sufficiently

makes up for the want of a right of appeal against the decision of the Personnel Officer though one would have thought that there is no reason to

restrict the right of appeal granted by Clause 34 against the decision of the Personnel Officer under Clause 31(1).

133. The further attack on Clause 31 was that during the investigation against a Security Guard, the Security Guard may continue to be employed

with the employer since the exercise of power of suspension during the investigation is solely within the discretion of the Chairman. The employer

has no control over the same. It was also argued in this connection that there is no provision made for payment of suspension allowance during the

period of suspension with the result that the employer may have to pay all the emoluments even during the period of suspension of the registered

Security Guards. It is true that the power of suspension has been given solely to the Chairman. However, it is difficult to believe that the Chairman

who is to be the representative of the Government will act arbitrarily or whimsically while exercising the said power. He is an independent person

and is expected to act reasonably and according to the needs of the particular situation. It will always be open for the employer if he so desires to

impress upon the Chairman the need for suspending the Security Guard concerned, and there is no reason why, if the Chairman is convinced of

such need he will not do so. As regards the subsistence allowances it is true that the scheme does not mention anywhere the payment to be made

to the registered Security Guard while under suspension and in the absence of such express provision the Security Guard may have to be paid all

the emoluments during the period of his suspension. However, nothing prevents the Board from making suitable rules with regard to the payment of

subsistence allowance during the period of suspension. Merely because at present there is no provision made, for such payment it cannot be said

that the provision of Clause 31 is arbitrary.

134. Clause 32 of the Scheme was attacked on the ground that the termination of employment of the Security Guard was solely in the hands of the

Board and the employer had no say in the matter. Apart from the off-repeated fact that the Board consists of the representatives of the employers

as well, it may be stated that this provision is as it should be if it is to be consistent with the rest of the Scheme and the purpose of the Act. It is

further not necessary to have a control over the termination of the employment of the Security Guard so long as there is a provision made for''

making a complaint against the Security Guard and for his removal and replacement. The provision for removal of the delinquent Guard does exist

as is evident from Clause 31 discussed hereinabove and that is a sufficient assurance to the employer.

135. Clause 37 was the last provision of the Scheme challenged. It empowers the Board to impose and collect levy from the employers for

defraying the cost of operating the Scheme and for making a provision for amenities and benefits to the registered Security Guards. The Board is

authorised to collect levy to the extent of 50 per cent of the total wage bill of the Security Guard without the prior approval of the State

Government. Impliedly, therefore, a limitless levy can be collected with the prior approval of the State Government. The larger argument as to

whether the levy is a fee or a tax is being dealt with separately, that being an independent contention raised on behalf of the petitioners. The present

attack confines itself only to the quantum of the amount authorised to be levied. According to this contention, the Board cannot recover any

amount from an employer when the Scheme itself is thrust upon him against his will. In the first instance, it is not correct to say that this is a charge

recovered from an unwilling participant. It must be remembered that an employer is free to engage a Security Guard as his direct employee and if

he does so, he will be outside the purview of the Act and the Scheme, and will not have to pay any charges. It is only if he engages Security

Guards except as his direct employees that he comes within the purview of the present legislation. Since the legislation prohibits engagement of

Security Guard other than as direct employees from any source except the pool of the registered Security Guards, the employer choosing to do so,

has to pay the proportionate costs of maintaining the pool. Far from being a compulsory levy, it is a fee for the services received. Secondly, the

levy is to be in proportion to the services received since it is a certain percentage of the wages the employer pays to the Security Guards whom he

engages. As regards the quantum of levy, since it is in the nature of a fee, it will have to be proportionate to the cost of services rendered. There is

further enough guideline for the amount to be levied. Sub-clause (1) of Clause 37 makes it clear that the levy is to be collected for meeting the

costs of operating the Scheme and for providing different benefits, facilities and amenities to the registered Security Guards. If at any time more

than necessary amount is levied, it will always be open for the employers to complain against it. There is no reason to believe that a representative

body like the Board will indulge in recovering excessive levy.

136. It was also sought to be argued that the Board was authorised to collect an amount in addition to the levy for being paid as provident fund

and gratuity to the Security Guards relying upon Clause 38 of the scheme. However, a reading of Clause 38 shows that the provision made there

only enables the Board to frame and operate rules for Contributory Provident Fund and Gratuity. There is nothing in the said clause to suggest that

an additional amount is to be recovered for the purpose. The language of Sub-clause (1) of Clause 37 is wide enough to cover the payment

towards Provident Fund and Gratuity. As is pointed out on behalf of the respondents, at present they have imposed a levy only of 37 per cent of

the wages payable by the employers for meeting the costs of operating the Scheme and for providing amenities and benefits to the Security

Guards. This includes amounts to be credited towards the Provident and Gratuity Funds. It is not therefore correct to say that Clause 38 imposes

yet another burden on the employers.

137. The next argument advanced on behalf of the employers is that the Security Guards supplied by the Board would make it difficult to guard the

confidentiality of the employers'' business. In a competitive economic world, the secrets of every organisation have to be closely guarded from the

rival organisations. The registered Security Guards being interchangeable and there being no relationship of master and servant between the

employers and the registered Security Guards, it will be difficult for the employers to carry on their business competitively and therefore profitably

by guarding their trade and business secrets. This argument is based on the assumption that at present there is such relationship of master and

servant between the employers and the Security Guards supplied by the Agencies and further that they are not transferable to other establishments.

Facts do not warrant such assumption. What is more, the argument presumes that personnel such as the Security Guards normally come in

possession of the trade secrets of the employers. This assumption is equally unrealistic. . Lastly, if the employer feels that in the normal course of

his business even personnel such as the Security Guards are likely to come in possession of his trade secrets, there is no reason why he should not

employ them as his direct employees and bind them by contracts to maintain secrecy instead of recruiting them as he does to-day through the

middlemen like the Agencies. This argument therefore does not stand even a superficial scrutiny.

138. Lastly, the provisions of the Act and the Scheme together were challenged on a larger ground viz. that neither the Act nor the Scheme spell

out any employer-employee relationship either between the Board and the registered Security Guards or between the registered employers and the

registered Security Guards. The petitioners therefore argued that to that extent the registered Security Guards are left without a remedy at law for

their grievances arising out of their employment. Whereas hitherto there was a definite relationship of employer and employee between the

Agencies and the Security Guards and they could approach the adjudicating machinery under the Industrial Disputes Act and other labour

legislation for enforcing their rights, they are now left without any such remedy, in the absence of an employer against whom proceedings could be

taken. The Security Guards are therefore not benefited by the legislation but are worse off because of the same. It was therefore submitted that the

restrictions imposed on the rights of the Agency-petitioners as well as the employer-petitioners by the legislation are neither in the interests of the

Security Guards nor in the interests of the petitioner''s business. Hence the legislation is neither reasonable nor in the interests of the public. In this

connection a reference is made to Clause 29(2) of the Scheme made under the Mathadi Act where it is expressly laid down that a registered

worker in the pool who is available for work shall be deemed to be in the employment of the Board. There is no such provision either in the

present Act or the Scheme. A reliance was also placed on certain authorities of the Supreme Court to show that the Board in such circumstances

is not the employer of the registered Security Guards, and in view of the various provisions of the Act and the Scheme it cannot be said that the

principal employer is the employer of the Security Guards. In support of the latter, attention is invited to the fact firstly that the registered Security

Guard is assigned by the Board on the indent made by the employer. Such registered Security Guard may work one day with the registered

employer and on the next day with another registered employer and even at different hours on the same day with different employers. The

employer has no right to take any disciplinary action against the Security Guard. Even the amount of his wages is to be remitted to the Board and it

is the Board which will make the payment to the Security Guard unless it directs that the employer should make such payment. In case of

misconduct of the Guard the only right given to the employer is to make a complaint about it to the Board and it is for the Board to take or not to

take action against the Security Guard for the same. In the circumstances the principal employer cannot be said to be the employer of the Security

Guards. Attention is also invited in this respect to the provisions of Sections 19, 20 and 21 of the Act which state that for the purposes of the three

statutes mentioned therein viz. the Workmen"s Compensation Act, 1923, Payment of Wages Act, 1936 and the Maternity Benefit Act, 1961, the

principal employer would be treated as the employer when he makes payment of wages to the Security Guards and the Board is declared to be

the employer where the Board makes the payment.

139. There is no doubt that independently of Sections 19, 20 and 21 of the Act, there is no provision whereby either the principal employer or the

Board is named the employer of the Security Guards. But the contention proceeds on the assumption that there is a need to name an employer in

the present case and without him, the Security Guard will be in the wilderness, so to say This assumption itself is wrong. For, the Act and the

Scheme take care of all matters which can properly arise out of the employment of the Security Guards. They provide for the rights and obligations

arising out of such employment as well as for the remedies and forums to enforce them. No rights and obligations other than these provided for

therein can be insisted upon nor remedies or forums not mentioned therein can be availed of. The"" legislation is a complete code by itself and it is

not open for the parties to look to any other rights and obligations, remedies and forums. Looking to the Act and the Scheme as a whole it cannot

be said that the rights and remedies made available to the Security Guard have placed him in any way adverse or disadvantageous position than

what he was before. The service conditions granted to the Security Guard are adequate and the remedies provided to enforce them are sufficiently

efficacious. In fact, compared to his present rights and remedies, they are better, cheaper and quicker. There is no particular merit in the Industrial

adjudication or the adjudication provided by the other labour legislation. The forum created under the present legislation is exclusive to the Security

Guards. The Board which is the ultimate authority for managing the day to day affairs is a representative body and consists of the representatives of

the Security Guards as well, an advantage which is not available in the forums created under the other enactments. The Board as a whole has a say

in the matter of all service conditions except in cases of disciplinary actions against individual Security Guards. Even in cases of such disciplinary

actions, the Chairman who is an independent Government representative has the final say. This being the case, the presence or absence of an

employer for the Security Guards will not make any difference to their service conditions as detailed in the legislation. The contentions that are

raised however are on the assumption that there are some service conditions available to the registered Security Guards which are not provided for

in the present legislation and to which they can lay a claim legitimately. I am of the view, as at present advised, that there are no such service

conditions and therefore there is no need to identify the employer of the Security Guards in the present case.

140. Assuming however that there are some service conditions of the Security Guards which are not provided for in the Act, the question is, is

there no employer against whom the Security Guard can proceed?

141. To show the nature of relationship between the Security Guard and the Board on the one hand and the Security Guard and the principal

employer on the other, reliance is placed by both sides on certain authorities. Four of the authorities viz. one the Division Bench of the Patna High

Court, the other of the single Judge of the Kerala High Court and two of the Supreme Court concern identical Schemes under the very same Act

viz. the Dock Workers (Regulation of Employment) Act, 1948 (hereinafter called the Dock labour Act).

142. In Sarat Chatterjee and Co. Private Ltd. and Others Vs. Chairman, Central Government Industrial Tribunal and Others, , it was the Calcutta

Dock Workers Scheme which fell for consideration. Under the Dock labour Scheme, registered workers are divided into two classes viz. daily

workers and the monthly workers. Daily workers are defined as those who are not monthly workers and monthly workers are defined as those

who are engaged by the registered employers or group of such employers on monthly basis under a contract which requires for its termination at

least one month''s notice on either side. The monthly workers raised an industrial dispute with regard to the payment of bonus and incremental

scales of pay. The Central Government referred the dispute to the Industrial Tribunal for adjudication and to that dispute the Stevedores were

made parties as their employers. Before the Tribunal, the employer-Stevedores raised a preliminary objection as to the validity of the reference, the

objection being that there could not be any industrial dispute in respect of the two matters since they were covered by the Scheme. The objection

was overruled by the Tribunal. Hence petitions were filed under Article 226 in the High Court. While considering the preliminary objection, the

Court went through the relevant provisions of the Dock labour Act and the Dock labour Scheme and stated as follows: (at p. 475)

It is thus clear that the Board is an autonomous body competent to determine and prescribe the wages, allowances and other conditions of service

of the dock workers. It can deal with almost all matters of importance connected with the employment and service of the dock workers. The

Scheme is a self-contained one. The whole purport of the Scheme seems to be that the entire body of the dock workers should be under the

control and supervision of the Board. The various registered employers are allocated monthly workers by the Administrative Body, and they are

subject to transfer from one stevedoring firm to another. A large number of daily workers are engaged by the stevedoring firms and under Clause

38(5)(i) of the Scheme the gross wages due to daily workers are to be paid by the registered employer to the Administrative Body. The workers

in the reserve pool are considered to be the employees of the Board. They are guaranteed minimum wages. In respect of such workers, under

Clause 53, the Board is to frame and operate rules provided for contributory Provident Fund and the registered employers are to do the same in

respect of their monthly workers. The cost of operating the Scheme is to be met and contributions to the Workers Welfare Fund are to be made

by the registered employers. In this backgroud, there does not seem to be any scope to think that the monthly dock workers employed by the

petitioners are entitled to any bonus or to have incremental scales of pay. Even if they are, the question has to be raised before, and decided by,

the Board itself. In my opinion, there is no scope for taking the view that the two matters referred to above can be the matters of industrial dispute

in respect of which reference can be made to and adjudication can be made by the Industrial Tribunal.

143. The Court then went on to observe that this being the position, it was clear that there could not be any industrial dispute between the

registered dock employers i.e. the Stevedores and the registered monthly workmen as to whether the latter are entitled to have incremental scale of

wages. Such claim, If possible under the Scheme, has got to be looked into and determined by the Board itself and the Industrial Tribunal was not

competent and had no jurisdiction to adjudicate the dispute. The Court also considered the effect of Sub-clause (o) of Clause 8 of that scheme

which clause was as follows:

The Board...may

(o) endeavour to settle disputes about which a request for adjudication has been made to the Central Government by the parties concerned and

report to the Government the results of such endeavours.

The Court observed that this clause only means that in spite of the scheme there can be disputes for which a request for adjudication can be made

to the Central Government by the parties concerned and the Government in its turn will have to refer the industrial dispute for adjudication to the

Tribunal. The Act and the scheme were not exhaustive and there may be certain types of industrial disputes in respect of which a responsibility was

cast on the Board to settle them. As regards bonus, the Court observed that taking into consideration the concept of bonus as evolved by the

Court, the dispute with regard to it was as much a dispute as a dispute with regard to the rates of wages or salary. The Board was therefore

competent to consider and decide the dispute as to bonus as well. The Court then went on to observe that considering their various provisions, the

Act and the Scheme did not contemplate payment of any bonus to the monthly workers of a particular registered employer. If that were not so, by

a specific provision in the Act or the scheme the Board must have been empowered to deal with and determine the question of bonus also. Even if

such a claim could be made on behalf of the workers, the Board is the competent authority to deal with it under the powers given to it by Clause

8(f) and 41 of that scheme. Even if the said provisions of the scheme are not wide enough to cover the question of bonus and the Government be

of the view that such a claim can and should be entertained, it is competent enough u/s 4 of the Act to amend or vary the scheme and make

provision for it. The Court however felt that in the existing set of things there could not be any industrial dispute in regard to the claim of bonus

made on behalf of the monthly dock workers and the Tribunal was not competent to decide it. The Court therefore issued a Writ of Prohibition

restraining the Tribunal from proceeding with the reference.

144. In the next decision viz. C.V.A. Hydross and Son and Others Vs. Joseph Sanjon and Others, a single Judge of the Kerala High Court was

called upon to decide the relationship between the registered workmen and the Dock labour Board on the one hand and the workmen and the

Stevedores (to whom they were assigned by the Dock labour Board) on the other. The scheme in question was the Cochin Dock Workers

(Regulation of Employment) Scheme, 1959. In that case the workmen were working with the Stevedores. As a result of the scheme made under

the Dock Workers (Regulation of Employment) Act, 1948, the workmen registered themselves as workmen under the Dock labour Board and

filed their applications u/s 33C(2) to the Board for determination of their claim for retrenchment compensation and notice pay. The labour Court

allowed the application. In the writ petition against the labour Court''s order filed by the Stevedores, the learned Judge went through the relevant

provisions of the Act and the Scheme and observed that from the provisions of the Scheme it would appear that a certain amount of control was

exercised by the registered employers when the workers were actually in employment under them. The provisions also showed that the Dock

labour Board was the employer of the workmen and that there was a general relationship of master and servant between the Dock labour Board

and the registered workers. Thereafter the learned Judge referred to three cases viz. (1) Mersey Docks and Harbour Board v. Coggins and

Griffith (Liverpool), Ltd. [1947] A.C.1 Donova v. Laing Wharten and Down Construction Syndicate [1893] 1 Q.B. 629 and (3) Shivchand

Sharma v. Punjab National Bank Ltd. [1955] I L.L.J. 693 and proceeded to observe as follows.

It is rather a difficult question to decide whether the workmen continue to be the employees of the petitioners after they got themselves registered

under the provisions of the Scheme. Petitioners'' Counsel referred to the various clauses in the Scheme to show that the workmen are still in the

employment of the petitioners. But I am not sure whether these provisions would unequivocally indicate that the relationship of master and servant

exists between the petitioners and workmen. If the real test is the control of the manner of work, there is great force in the submission of the

petitioners'' Counsel that the petitioners are the employers of the workmen in question. The fact that the petitioners cannot impose any punishment

for disobedience of their directions in the matter of carrying out the work may not derogate from this proposition. Even assuming that the

petitioners have no power to punish the workmen for disobedience of their lawful directions in the matter of executing or carrying out the work that

may not show that there is no relationship of master and servant between them. If the petitioners make report about the disobedience of their

directions in the manner of doing the work, the Board can take action against the concerned employee on the ground that he has not carried out

the direction given by the employer. The approach made by the labour Court to the question does not appear to be correct. The Court seems to

think that control as to manner of doing the work is not material and that what is important is the question where the power of appointment and

dismissal is lodged. I do not think that 1 need tackle this question in these cases in view of my conclusion on the next point.

145. He then rested his decision on the second question which fell for decision viz. whether the registration of the workmen under the scheme

amounted to retrenchment by the Stevedores and held that retrenchment u/s 2(oo) of the Industrial Disputes Act implied voluntary action taken by

the employers to terminate the employment and since the registration of the workmen under the scheme did not amount to such action on the part

of the Stevedores, the workers could not be said to nave, been retrenched by the Stevedores and therefore they were not liable to the

retrenchment compensation., This authority cannot be said to lay down a definite proposition on the relationship of Stevedores and the workmen

on the one hand and the Board and the workmen on the other.

146. In Vizagapatam Dock Labour Board Vs. Stevedores Association, Vishakhapatnam and Others, , it was the Vizagapatnam Dock Workers

(Regulation of Employment) Scheme, 1959, made under the same Act which came for discussion. In that case the question which fell for.

consideration was whether there was a relationship of master and servant between the Board and the registered workers. The registered workers

had raised an industrial dispute with regard to the payment of bonus and the Central Government referred to the dispute for adjudication to the

Industrial Tribunal. The parties to the reference included the Board, the Vishakhapatnam Stevedores Association, Certain individual Stevedores

and two Unions representing the workers. The Industrial Tribunal had held that it was the Board that was the employer of the Dock Workers and

that the Board was liable to meet the claim for bonus. In appeal the Supreme Court went through the relevant provisions of the Act and the

Scheme and held that the Board was not the employer of the registered workers but it was the Stevedores individually who were the employers

and that they were liable to pay the bonus. In that connection the Court observed as follows: (at p. 1633).

We have rather elabourately gone into the various matters dealt with under the Act and the Scheme as that will give a true picture of the nature of

the functions and duties that the Board discharges in respect of the work carried on the port. From the various provisions of the Act and the

Scheme referred to above, it is evident that the Board is a statutory body charged with the duty of administering the Scheme, the object of which is

to ensure greater regularity of employment for Dock Workers and to secure that an .adequate number of dock workers available for the efficient

performance of dock work. The Board is an autonomous body, competent to determine and prescribe the wages, allowances and other conditions

of service of the Dock Workers. The The purport of the Scheme is that the entire body of workers should be under the control and supervision of

the Board. The registered employers are allocated monthly workers by the Administrative body and the Administrative Body supplies, whenever

necessary, the labour force to the Stevedores from the Reserve pool. The workmen who are allotted to the registered employers are to do the

work under the control and supervision of the registered employers and to act under their directions. The registered employers pay the wages due

to the workers to the Administrative Body and the latter, in turn, as agent of the registered employers, pay them over to the concerned workmen.

All these circumstances, in our opinion, prima facie establish that the Board cannot be considered to be the employer of the Dock labour

Workmen. In fact, the various provisions referred to in the Scheme clearly show that the registered employer to whom the labour force is allotted

by the Board is the employer whose work of loading or unloading of ships is done by the dock worker allotted to them.

Mr. Srinivasamurthy, learned Counsel for the respondents, referred us to certain circumstances to support his contention that the relationship of

employer-employee exists between the Board and the dock workers. Some of these circumstances are recruitment and registration of the dock

labour force, fixation of wages and dearness allowance, payment of workmen''s compensation, taking of disciplinary action and prohibition against

employment of workmen who are not registered with the Board. These circumstances, in our opinion, do not establish a relationship of employer

and employee between the Board ''and the dock labour. The functions referred to above are discharged by the board under the scheme, the

object of which, as mentioned earlier, is to ensure greater regularity of employment for dock workers and to secure that an adequate number of

dock workers is available for the efficient performance of dock work. It is with this purpose in view that the scheme has provided for various

matters and considerable duties and responsibilities are cast on the Board in this regard. But we have also already pointed out that under Sub-

clause (5) of Clause 36 a registered dock worker, when allotted for employment under a registered employer, shall carry out his duties in

accordance with the directions of such registered employer and Clause 11(e) also makes it clear that in the matter of allocation of registered dock

workers in the Reserve Pool to registered employers, the Administrative Body shall be deemed to act as agent for the employer. Though the

contributions for the Dock Workers'' Fund as well as the wages and other earnings due to a worker are paid by the registered employer to the

Board at the rates fixed by it, the latter passes on the same to the dock worker concerned, as agent of their registered employer under Clause

11(f)(iii). further, the definition of the expression "dock worker'' and ''employer'' u/s 2(b) and (c) respectively of the Act and the definition of ''dock

employer'' and ''monthly worker'' in Clauses 3(g) and (k) respectively of the Scheme and the obligation cast under Clause 36(5) of the Scheme on

a registered dock worker, when allocated for employment under a registered employer to carry out his duties in accordance with the directions of

the latter and the provisions contained in Clause 37(5) of the Scheme regarding payment by a registered employer to the Administrative Body of

the gross wages due to the dock worker and the implied condition of contract between the registered dock worker and the registered employer

under Clause 40, read along with the provisions regarding the functions of the Board, in our view, clearly lead to the conclusion that the Board

cannot be considered to be the employer of the dock workmen and there is no relationship of master and servant between the two.

147. The Court also expressly overruled the decision of the learned single Judge of the Kerala High Court cited above viz. G.V.A. Hydross &.

Sons Cochin v. Joseph Sanjon (supra) on the assumption that the said decision had taken the view that the Dock labour Board was the employer.

I have discussed hereinabove the said decision and have already observed that no such specific proposition in that behalf has been laid down there.

Be that as it may, the Court also held that the Board was not carrying on any industry so as to attract the provisions of the Industrial Disputes Act

and negatived the claim of the workers against the Board for bonus on that ground also. What is important further to note is that the Court in terms

held that the claim was maintainable against the Stevedores. The Court then remanded the matter to the Industrial Tribunal for considering the claim

of the workmen for bonus against the Stevedores Association and its members who were parties to the reference.

148. In Workmen of Calcutta Dock Labour Board and Another Vs. Employers in Relation to Calcutta Dock Labour Board and Others, the

scheme for consideration was the Calcutta Dock Workers (Regulation of Employment) Scheme, 1956. In that case, seven Dock workers had

been detained under the Defence of India Rules, five of whom were detained for more than one year and two for comparatively short periods. The

question which was referred for industrial adjudication was whether the demand for reinstatement of the said workers was justified, and if so, to

what reliefs they were entitled. Before the Industrial Tribunal, the Dock labour Board raised a contention that it was not carrying on any industry

within the meaning of the Industrial Disputes Act. Therefore, no reference could be made under the Act against the Board. The Stevedores

Association which was another party to the reference raised a contention that they were not the employers and therefore they ought not to have

been added as parties to the reference. The Tribunal gave a direction that the workers should be taken back on the list or register but that they

should be treated as on leave without pay during the period of their detention. Against the decision both the workmen and the Dock labour Board

preferred appeals. The Supreme Court in Appeal by the Workmen, held relying on its earlier decision reported in Calcutta Dock Labour Board

Vs. Jaffar Imam and Others, that there was no reason why the Tribunal should not have allowed back wages from the period when they reported

themselves for resumption of duty to the date of reinstatement and further held that the workers were entitled to be paid back wages by the

Stevedores Association. In the appeal filed by the Dock labour Board, the court relied upon its decision in Vizagapattam Dock labour Board

(Supra) and held that since the Board was not carrying on an industry the observations made by the Tribunal which are in conflict with the said

view will have no force. There is no indication either of the facts or of the precise issues which fell for consideration in that case. There is no

detailed reasoning also supporting the said conclusions. However, from whatever is possible to glean from the judgement, two propositions can be

said to emerge from this decision. One is that according to the Court the Dock labour Board was not carrying on any industry and therefore a

reference for adjudication is not maintainable against the Board. Secondly, since the Stevedores are held responsible for payment of back wages

to the workers, impliedly the conclusion is that it is the Stevedores who are the employers of the workers.

149. Before we discuss the next two authorities, it will be convenient at this stage to examine the effect of the aforesaid four authorities and the

context in which the conclusion stated there have been arrived at. As regards the decision of Patna High Court reported in Surat Chatterjee & Co.

(Supra), it has not been referred to in any of the other decisions discussed above. However, the view taken by the Supreme Court in Vizagapattam

Dock labour Board (Supra) can be said to have overruled the said decision insofar as the right of the workers to raise an industrial dispute at least

with regard to the claim for bonus is concerned. However, it may be noted that as far as the Patna High Court judgement is concerned, there was

no question raised as to who was responsible for the payment of bonus --whether the Board or the Stevedores and therefore it is not much help to

us in answering the present issue. We have already noted that the finding of the learned single Judge of the Kerala High Court in C.V.A. Hydross

& Sons (Supra) was largely inconclusive on the issue and in any case has been overruled expressly by the Supreme Court in Vizagapattam Dock

labour Board(Supra) so far as it can be construed to have taken the view that the Dock labour Board was the employer. As regards the decision

in Workmen of Calcutta Dock labour Board (Supra), there is no detailed discussion of the facts and the reasons for the conclusions arrived at. It

relies upon the decision reported in Vizagapattam Dock labour Board (Supra). Therefore the only decision that need be closely examined is the

decision of the Supreme Court reported in Vizagapattam Dock labour Board (Supra). What is necessary to note is that all these decisions are

under one Act and under identical Schemes under the said Act. The Act and the Scheme with which we are concerned in the present case have

some provisions which are similar, but both differ from each other in other matters. These differences are relevant and noteworthy. The first

difference is that whereas the Dock labour Act concerns workmen who were never direct and. regular employees, of the Stevedores, the present

Act is concerned with the erstwhile direct and regular employees of the Agencies. Secondly, the thrust of the Dock labour Act is to provide regular

employment and secure better service conditions to the workers who were engaged by the Stevedores. The present Act is concerned not only

with the said aspect, but also with the abolition of the contract labour system and the prohibition of the middlemen from carrying on their business

of supplying the Security Guards. Thirdly, the Dock labour Act regulates the employment of workers engaged by Stevedores who were

themselves the principal employers. Under the present Act, the Security Guards who were the direct employees of the Agencies are sought to be

registered with the Board and the Agencies are prohibited from recruiting them for the purpose of supplying them to the principal employers on

contract basis. Fourthly, although under the Dock labour Act, the Board is made responsible for administering the Scheme, the "scheme itself

provides for the appointment of an Administrative body by the Central Government for the purpose of carrying on the day to day administration

and that Administrative Body is the Association of the Stevedores in the area concerned. Under the said Scheme further, the workers are classified

as daily workers and monthly workers as stated earlier. The Scheme further makes it specifically clear that a registered worker in the reserved

pool who is available for work shall be deemed to be in the employment of the Board. (The very same provision is also found in the scheme

prepared under the Mathadi Act). There is no such provision under the Scheme with which we are concerned. The last important difference that

should be noted is that whereas the Dock labour Act and the Dock labour Scheme are meant for a particular industry the present Act and the

Scheme are not confined to any particular industry but to a particular employment. It covers the employment of the watch and ward personnel in all

the industries wherever the Security Guards are employed. These distinctions in the two legislations should make difference in applying the ratio of

the decision of the Supreme Court reported in Vizagapatnam Dock labour Board (Supra) to the facts of"" the present case. On behalf of the

petitioners it is sought to be argued that when the Supreme Court took the view that it was not the Dock labour Board but the Stevedores who

were the employers and therefore responsible for the payment of bonus, the Court had not noticed the relevant provisions in the Scheme viz. sub-

cl (2) of Clause 36 wherein it is specifically provided that a registered worker in the reserve pool when available for work would be deemed to be

in the employment of the Board. This submission does not appear to be correct because the Court has In terms referred to the said provision while

discussing the provisions of the Scheme and in spite of the same, has taken the view that it is not the Board but the registered employer i.e. the

Stevedore who is the employer of the workers. This being so, in the absence of such a provision in the present legislation, it may be argued that it

should all the more be held that it is the registered employer or the principal employer who. is the employer of the Security Guards.

150. A reference may now be made to the decisions on which the respondents rely. In Silver Jubilee Tailoring House and Others Vs. Chief

Inspector of Shops and Establishments and Another, , the question which fell for consideration was whether the employer and employee

relationship existed between the tailoring firm and its workers. The facts were that all the workers were paid on piece-rate basis. The workers

generally attended the shops every day if there was work. The rate of wages paid to the workers was not uniform and depended upon the skill of

the worker and the nature of the work. When cloth was given for stitching to a worker after it was cut, the worker was told how he should stitch it.

If he did not stitch it according to the instructions, "the employer rejected the work and he generally asked the worker to restitch the same. When

the work was not done by the worker according to the instructions, normally no further work was given to him. If a worker did not want to go to

the shop for work on any day, he did not make any application for leave, nor was there any obligation on him to inform the employer that he would

not attend for work on that day. The employee was free to leave the shop any time if there was no work. Almost all the workers worked in the

shop, but some were allowed to take cloth for stitching to their homes on certain days with the permission of the proprietor of the shop. On these

facts and after reviewing various decisions on the point, the Court held that the right to control the manner of work was not the exclusive test for

determining the relationship of employer and emplyee. It was also to be considered as to who provided the equipment. It might be that little weight

could be put upon the provisions of tools of minor character as opposed to plant and equipment on a large scale. But so far as tailoring was

concerned, the fact that sewing machines on which the workers did the work generally belonged to the employer was an important consideration

for deciding that the relationship was that of master and servant. Apart from that, when the employer had the right to reject the end product if it did

not conform to the instructions of the employer and to direct the worker to restitch it, the element of control and supervision was also involved. The

fact that the employees took up the work from other tailoring establishments and did that work in the shop which they generally attended for work

and that they were not obliged to work for the whole day did not militate against their being employees of the proprietor of the shop where they

attended for work.

151. In Mangalore Ganesh Beedi Works and Others Vs. Union of India (UOI) and Others, , the validity of the Beedi and Cigar Workers

(Conditions of Employment) Act, 1966 was questioned. While discussing the question of master and servant relationship between the. beedi

manufacturers and the beedi workers, the Court referred to its earlier decision in Silver Jubilee Tailoring House v. Chief Inspector (Supra) and

approved of the test of the said relationship laid down there. It may be mentioned that in that case it was found that the workers were given raw

material for manufacturing beedies, and they manufactured beedis at their homes even with the assistance of their family members. In spite of this,

the Court held that the beedi workers were the employees of the employers.

152. It is in the light of the tests of the master and servant relationship laid down in the aforesaid decisions that we have to answer the question as

to who is an employer of the Security Guards in the present case. Under Sub-clause (4) of Clause 25 of the Scheme, a registered Security Guard

when allotted for employment under a registered employer is under an obligation to carry out his duty in accordance with the directions of such

employer or his authorised representative or supervisor and the rules of the employment or place where he is working. Under Clause 31(2) of the

Scheme, the employer can report any act of indiscipline or misconduct of the guard to the Personnel Officer of the Board who has the power to

warn him. In case of a misconduct deserving higher punishment either the Personnel Officer or the employer may report the matter to the Chairman

of the Board who is authorised even to dismiss the guard. During the pendency of the investigation into the complaint of misconduct, the guard can

be suspended by the Chairman. Further the employer pays the wages of the guard working with him either directly or through the Board. He also

pays in the form of the levy, for the other benefits including the retirement benefits of the guard. Merely because it is not his hand which recruits or

punishes the Guard, the principal employer does not cease to be the employer of the Guard. On the basis of the tests laid down by the Supreme

Court as above, therefore, it will have to be held that the registered employer or the principal employer as defined under the Act is the employer of

the registered Security Guards for the purposes of matters not covered by the Act and the Scheme. The provisions of Sections 19, 20 and 21 of

the Act will have therefore to be construed as being limited to the purposes of the specific statutes mentioned therein. The provisions are not to be

construed negatively to mean that except for the said Acts, neither the Board nor the principal employer is the master of the registered security

guards.

153. In the circumstances, my conclusion is that in the first instance, there is no need to identify an employer in the present case. Assuming

however that there is such a need, for purposes not provided for the legislation, the employer will be the principal employer as defined in the Act.

The present legislation cannot therefore be said to be unreasonable or not in the public interests.

154. The fourth contention raised on behalf of the employer-petitioners is that the provisions of Section 22 of the Act read with Clauses 9(e) and

26(2) of the Scheme are violative of the employers'' fundamental rights under Article 14 of the Constitution inasmuch as the allotment of the

Security Guards is to be made by the Board arbitrarily and there are no guidelines laid down for such allotment. This contention has already been

dealt with earlier while dealing with the first contention. It is not necessary to repeat what is stated there. For the reasons stated there, the

provisions of Section 22 of the Act read with Clauses 9(e) and 26(2) of the Scheme are not violative of Article 14 of the constitution.

155. The fifth contention advanced on behalf of the employer-petitioners is that the Act and the Scheme suffer from excessive delegation of power,

and the target of this attack is the provision of Section 3(2)(k) of the Act read with Clause 37(4) and Clause 6(11)(xii) of the Scheme. The first

provision relates to the imposition of levy on the employers and the second relates to the delegation by the Board of its authority to the Chairman,

the Secretary or to any other Officer of the Board for carrying out any of the functions under the Scheme. We will deal with these provisions

separately.

156. The attack on the provisions of Section 3(2)(k) of the Act read with Clause 37(4) of the Scheme, is that the Legislature has left it to the

Board to determine the quantum of levy to be collected for meeting the costs of operating the Scheme and for providing different " facilities and

benefits to the registered Security Guards. While the Board has been given the authority to sanction levy upto 50 per cent of the total wage bill of

the employer pertaining to his Security Guards, with the prior approval of the State Government the Board is empowered to recover a limitless

amount of levy. The exact amount to be so levied is to be decided by the Board. The imposition of the levy being one of the vital provisions of the

Act and the Scheme, the delegation of the power to decide the quantum of levy amounts to an excessive delegation by the Legislature. A reference

is made in this connection to certain authorities of the Supreme Court. The first of the authorities is Pradyat Kumar Bose Vs. The Hon''ble The

Chief Justice of Calcutta High Court, . In this case it is observed as follows: (at p. 291)

It is true that no judicial tribunal can delegate its functions unless it is enabled to do so expressly or by necessary implication. But the exercise of the

power to appoint or dismiss an officer is the exercise not of judicial power but of an administrative power. It is nonetheless so, by reason of the

fact that an opportunity to show cause and an enquiry stimulating judicial standards have to precede the exercise thereof. It is well recognised that

a statutory functionary exercising such a power cannot be said to have delegated his functions merely by deputing a responsible and competent

official to enquire and report. That is the ordinary mode of exercise of any administrative power. What cannot be delegated except where the law

specifically so provides is the ultimate responsibility for the exercise of such power. A functionary who has to decide an administrative matter, such

as the dismissal of a member of the staff, can obtain the material on which he is to act in such manner as may be feasible and convenient, provided

only the effected party has a fair opportunity to correct or contradict any relevant and prejudicial material. Where therefore, charges are made

against a member of the staff of the"" High Court, the Chief Justice is competent to delegate to another Judge the inquiry into the charges.

157. This authority therefore lays down that administrative powers as distinguished from judicial powers can be delegated. Secondly, if the ultimate

responsibility of the administrative power is retained by the delegating authority, the intermediary functions can well be delegated to a subordinate

or a co-ordinate authority. It is for this purpose that the act of the Chief Justice in delegating to another Judge of the High Court the power to

enquire into the charges against a member of the High Court staff was upheld in this case.

158. In Express Newspapers Pvt. Ltd. case (supra), what was challenged was the constitution of the Wage Board for the working journalists with

the power to fix rates of wages. Referring to this challenge, the Court observed that the Wage Board consisted of an equal number of

representatives of the newspaper establishments and the working journalists with an independent Chairman at its head. Further, the principles for

the guidance of the Wage Board for fixation of the rates of wages were also laid down by directing the Wage Board to take into consideration

amongst other circumstances, the capacity of the industry to pay. The Court then stated that it may be that the decision of the Wage Board might

be arrived at ignoring some of the essential criteria which had been laid down or that the procedure followed by the Wage Board might be contrary

to the principles of natural justice. But that would affect the validity of the decision itself and not the constitution of the Wage Board.

159. In Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others, , the Court has summarised the principles of the delegation of

legislative power in paragraph 15 of its decision and they are as follows: (at p. 190)

The Constitution confers power and imposes a duty on the legislature to make laws. The essential legislative function is the determination of the

legislative policy and its formulation as a rule of conduct. Obviously it cannot abdicate its functions in favour of another. But in view of the

multifarious activities of a welfare State, it cannot presumably work out all the details to suit the varying aspects of a complex situation. It must

necessarily delegate the working out of details to the executive or any other agency. But there is a danger inherent in such a process of delegation.

An overburdened legislature or one controlled by a powerful executive may unduly overstep the limits of delegation. It may not lay down any

policy at all; it may declare its policy in vague and general terms; it may not set down any standard for the guidance of the executive; it may confer

an arbitrary power on the executive to change or modify the policy laid down by it without reserving for itself any control over subordinate

legislation. This self effacement of legislative power in favour of another agency either in whole or in part is beyond the permissible limits of

delegation. It is for a Court to hold on a fair, generous and liberal construction of an impugned statute whether the legislature exceeded such limits.

But the said liberal construction should not be carried by the Courts to the extent of always trying to discover a dormant or latent legislative policy

to sustain an arbitrary power conferred on executive authorities. It is the duty of the Court to strike down without any hesitation any arbitrary

power conferred on the executive by the legislature.

160. The essential function of the legislature is thus to determine the legislative policy, and its formulation as a rule of conduct. However, the

working out of the details have necessarily to be delegated to the executive since the legislature will not be the proper body to discharge this

function. Once it lays down the policy in definite terms and sets down standards for guidance, the working out of the details in that framework can

always be entrusted to other body. What has to be guarded against is the self-effacement of the legislative power while permitting the legitimate

delegation of the working out of the details of the said power.

161. In Municipal Corporation of Delhi Vs. Birla Cotton, Spinning and Weaving Mills, Delhi and Another, the Court had an occasion to refer to

the principles of delegation of legislative power in the context of the provisions of Section 150 of the Delhi Municipal Corporation Act, which

conferred power on the Corporation to levy any of the optional taxes by prescribing the maximum rates of the tax to be levied; fixing class or

classes of persons or describing articles and properties to be taxed and laying down the system of assessment and exemptions, if any, to be

granted. The challenge to the said provisions was similar to the one which has been made in the present case viz. that the delegation was unguided

and that it amounted to an excessive delegation. The Court while repelling the said challenge observed as follows (at p. 1244 para. 28, 29):

The principle is well established that the legislature must retain in its own hands the essential legislative functions and what can be delegated is the

task of subordinate legislation necessary for implementing the purposes and objects of the Act. Where the legislative policy is enunciated with

sufficient clearness or a standard is laid down, the Courts should not interfere. What guidance should be given and to what extent and whether

guidance has been given in a particular case at all depends on a consideration of the provisions of the particular Act with which the Court has to

deal including its preamble. Further the nature of the body to which delegation is made is also a factor to be taken into consideration in determining

whether there is sufficient guidance in the matter of delegation. What form the guidance should take is again a matter which cannot be stated in

general terms. It will depend upon the circumstances of each statute under consideration. In some cases guidance in broad general terms may be

enough. In other cases more detailed guidance may be necessary, in the field of taxation the guidance may take the form of providing maximum

rates of tax upto which a local body may be given the discretion to make its choice, or it may take the form of providing for consultation with the

people of the local area and then fixing also rates after such consultation. It may also take the form of subjecting the rate to be fixed by the local

body to the approval of Government which acts as a watchdog on the actions of the local body in this matter on behalf of the legislature. There

may be other ways in which guidance may be provided. But the purpose of guidance, whatsoever may be the manner thereof, is to see that the

local body fixes a reasonable rate of taxation for the local area concerned. So long as the legislature has made provision to achieve that reasonable

rates of taxation are fixed by local bodies, whatever may be the method employed for this purpose provided it is effective it may be said that there

is guidance for the purpose of fixation of rates of taxation.

162. The Court then pointed out the circumstances which provided a guidance to the Corporation while levying the tax. It is interesting to note the

circumstances so pointed out. They were as follows (at p. 1245):

The first circumstance is that the delegation has been made to an elected body responsible to the people including those who pay taxes. So long as

the power of taxation conferred by Section 150 is exercised by the elected body there will always be a check in the form of the members thereof

having to face the electorate after every four years with the liability of being thrown out if they act unreasonably. Another guide or control on the

limit of taxation is to be found in the purposes of the Act. The Corporation has been assigned certain obligatory functions which it must perform

and for which it must find money by taxation, it has also been assigned certain discretionary functions, if it undertakes any of them it must find

money. Even though the money that has to be found may be large, it is not unlimited for it must: be only for the discharge of functions whether

obligatory or optional assigned to the Corporation. The limit to which the Corporation can tax is therefore circumscribed by the need to finance the

functions, obligatory or optional which it has to or may ''undertake to perform. Another limit and guideline is provided by the necessity of adopting

budget estimates each year as laid down in Section 109 of the Act. The budget will show the revenue and expenditure and these must balance so

that the limit of taxation cannot exceed the needs of the Corporation as shown in the budget to be prepared under the provisions of the Act. Here

again there is a limit to which the taxing power of the Corporation can be exercised in the matter of optional taxes as well, even though there is no

maximum fixed as such in the Act. Then there is the provision in Section 150 itself which says that the maximum rates fixed by the Corporation at

its meeting by a resolution have to be submitted to the Government for its sanction and without such sanction there can be no imposition of tax. The

legislature has made Government the watch-dog to control the actions of the Corporation in the matter of fixing rates and other incidents of the

taxes and that is also a check to see that reasonable rates are fixed by the Corporation when it proceeds to impose taxes u/s 150. In such

circumstances, considering the constitution and set up of the Municipal Corporation, its need for finance to carry out the functions entrusted to it, its

elective character, its responsibility to the electors, the safeguards and controls provided in the Act, procedural and otherwise it is difficult to hold

that the power of taxation conferred on it is either uncanalised, arbitrary or without guidance or policy. Finally, there is another check on the power

of the Corporation which is inherent in the matter of exercise of power by subordinate public representative bodies, such as municipal Boards. In

such case if the Act of such a body in the exercise of the power conferred on it by the law is unreasonable, the Courts can hold that such exercise

is void for unreasonableness.

163. In our case Section 3(2)(k) of the Act read with Clause 37(1) of the Scheme clearly indicates the purpose for which the levy is to be

imposed. The purpose is to meet the costs of operating the Scheme and to provide different benefits, facilities and amenities to the registered

Security Guards as stated in the Act and the Scheme. So long as the amount so levied is expended on the said purposes and for no other, and so

long further the amount recovered does not exceed the said requirements it can always be said that the guidelines for levying the amount are found

in the legislation itself. Secondly, the amount authorised to be levied from each of the employers is not left uncertain. The amount has to be in

proportion to the wages payable by the employers to the Security Guards. Thirdly, the rate at which the levy is to be paid is to vary depending

upon the category of the Security Guards supplied by the Board. Fourthly, the maximum amount that the Board can, on its own, recover from any

employer is fixed at 50 per cent of the total wage bill of the Security Guard supplied to him. If the Board desires to levy any amount in excess, a

prior approval of the State Government is required to be obtained. Fifthly, the amount recovered and spent is subject to the check both of the

State Government and the State Legislature. That is ensured by the provisions of Sections 8 and 9 of the Act. Section 8 requires the Board to

submit to the State Government every year, an annual report on the working of the Scheme during the preceding year and such report is to be laid

before each House of the I legislature. u/s 9 further the Board is also required to submit accounts of the Board together with the audited report

annually to the State Government and the State Government is .given power to issue such directions to the Board as the State Government may

deem fit in the matter of the accounts. Sixthly, the amount to be levied has to have a relation to the expenses involved and it cannot vary according

to the whims and will of the Board. This is ensured by Clause 7 of the Scheme which enjoins upon the Chairman of the Board to present an annual

budget of the Scheme to the Board before the end of February each year, for the year commencing from April of that year. ""It is legitimate to

presume that the rate at which the levy will be imposed will be based on the estimates of the costs and expenses involved in running the Scheme

made in such budgets, Sub-clause (6) of Clause 37 read with Clauses 9(h) and (i) of the scheme further requires that the Secretary shall furnish to

the Board from time to time, such statistics and other information as may reasonably be required in connection with the operation and financing of

the Scheme. It also enjoins upon him to keep proper accounts of the cost of operating the Scheme and of all receipts and expenses under it and to

make and submit to the Board an Annual Report and Audited Balance Sheet and Profit and Loss accounts-statement and frame a budget annually

for" submission to the Board. This further ensures that the Board will keep a close watch on the income and expenditure and the rates of levy that

may be sanctioned by it from time to time. The last and not the least important factor to be borne in mind is that the Board is a representative body

with the representatives of the employers on it. This is an important guarantee that levy imposed will not be in excess of the requirements of the

scheme. Thus both the Act and the Scheme contain sufficient guidelines and safeguards to ensure that the power granted to the Board to impose

the levy is not abused. In the circumstances it is difficult to accept the argument that there is an excessive delegation to the Board of the power to

impose the levy.

164. As regards the provisions of Clause 6(11)(xii) of the Scheme which empower the Board to delegate to the Chairman, Secretary or to any

other Officer of the Board any of its functions under the Scheme, they were challenged on account of the vice of the alleged excessive delegation of

power by relying upon a decision of the Supreme Court in Union of India (UOI) and Another Vs. P.K. Roy and Others, . In that case it is held as

follows (at p. 857 para 10):

The maxim delegatus non potest delegare" deals with the extent to which a statutory authority may permit another to exercise a discretion entrusted

by the statute to itself. It is true that delegation in its genera! sense does not imply a parting with statutory powers by the authority which grants the

delegation, but points rather to the conferring of an authority to do things which otherwise that administrative authority would have to do for itself.

If, however, the administrative authority named in the statute has and retains in its hands general control over the activities of the person to whom It

has entrusted in part the exercise of its statutory power and the control exercised by the administrative authority is of a substantial degree, there is

in the eye of the law no ''delegation'' at all and the maxim ''delegatus non-potest delegate'' does not apply, 1941 Ch. 450 No. 11. In other words,

if a statutory- authority empowers a delegate to undertake preparatory work and to take an initial decision in matters entrusted to it but retains in

its own hands the power to approve or disapprove the decision after it has been taken, the decision will be held to have been validly made if the

degree of control maintained by the authority is close enough for the decision to be regarded as the authority''s own.

165. Relying on these observations it was contended that in the present case the Board is empowered to entrust even the final decision making

power to its Chairman, Secretary or any other Officer in matters which properly fall in the domain of the Board and therefore such delegation is

bad in law. In this connection reference is made by the petitioners to the provisions of Section 8 of the Act which Jay down the powers and duties

of the Board and it is pointed out that this section does not give the Board power to delegate any of its functions to its Chairman or other Officers.

In the first instance, it is not correct to say that because Section 8 does not in terms state that the Board will have power to delegate its duties to

others, it is prevented from doing so. Sub-section (1) of the said section merely declares that it is the Board which shall be responsible for

administering every scheme and shall exercise such powers and perform and discharge such functions as may be conferred on it by the scheme.

That is as it should be, for the ultimate responsibility for administering the scheme will be of the Board. On the other hand, the provisions of Sub-

section (2) of Section 8 in terms authorise the Board to take such measures as it may deem fit for administering the scheme. There is no reason to

hold that the power to take appropriate measures for administering the Scheme would not include the power to delegate some of its functions to its

officers for effective implementation of the Scheme so long as the powers delegated are administrative and the ultimate decision making authority

remains vested in the Board. The delegation of power to work out the details of the decisions taken does not amount to a delegation of the

essential function. The provisions of Clause 6(11)(xii) of the Scheme do not warrant the conclusion that what is envisaged therein is a delegation of

the decision making power of the Board. On the other hand, the clause makes it clear that the Board while delegating its powers may specify such

conditions as it thinks fit. However, if and when the power delegated exceeds the legitimate limits, it will be open to objection and can be

challenged at that stage. To read in the clause as it stands to-day the power to delegate anything more than is permissible will however not be

correct. The language of the Clause does not warrant it. Hence the contention that the said cl. is bad in law for an excessive delegation of power,

has to be rejected.

166. The sixth contention advanced on behalf of the petitioner-employers was that what is sought to be imposed under Clause 37 is not a fee but a

tax and the Board has no power to impose such tax. For this purpose it was argued firstly, that the quantum of levy imposed is not linked to the

services rendered by the Board but to the wages payable by the employers to the Security Guards. Secondly, it was submitted that the object of

the levy is to raise funds for the general welfare of the Security Guards and it has nothing to do with the services rendered by the Security Guards

to the employers. Thirdly, it was contended that the benefits to the Security Guards such as Provident Fund and Gratuity are taken care of by

Clause 38 of the scheme and hence the levy is unrelated to the welfare of the Security Guards. Lastly, it was urged that the fact that there is no

maximum rate prescribed for such levy shows that the levy is unrelated to any services as such and is essentially a tax in its nature. Reference was

made in this connection to a decision of the Supreme Court in Kewal Krishan Puri and Others Vs. State of Punjab and Another, which lays down

the tests for distinguishing a tax from a fee. In that case what was under challenge was the validity of the fixation of a market fee under the Punjab

Agricultural Produce Markets Act, 1961. It was argued on behalf of the petitioners there that what was levied under the garb of a market fee was

essentially a tax being unrelated to the services rendered and it is in this context that the Court, after reviewing all the authorities, laid down the

following principles for satisfying the tests for a valid levy of a market fee on the agricultural produce bought or sold by the licensees in a notified

area:

(1) That the amount of fee realised must be earmarked for rendering services to the licensees in the notified market area and a good and substantial

portion of it must be shown to be expended for this purpose.

(2) That the services rendered to the licensees must be in relation to the transaction of purchase or sale of the Agricultural produce.

(3) That while rendering services in the market area for the purpose of facilitating the transactions of purchase and sale with a view to achieve the

objects of the marketing legislation it is not necessary to confer the whole of the benefit on the licensees but some special benefits must be

conferred on them which have a direct, close and reasonable co-relation between the licensees and the transactions.

(4) That while conferring some special benefits on the licensee; it is permissible to render such service in the market which may be in the general

interest of all concerned with transactions taking place in the market.

(5) That spending the amount of market fees for the purpose of augmenting the agricultural produce, its facility of transport in villages and to

provide other facilities meant mainly or exclusively for the benefit of the agriculturists is not permissible on the ground that such services in the long

run go to increase the volume of transactions in the market ultimately benefitting the traders also. Such an indirect and remote benefit to the traders

is in no sense a special benefit to them.

(6) That the element of quid pro quo may not be possible, or even necessary, to be established with arithmetical exactitude but even broadly and

reasonably it must be established by the authorities who charge the fees that the amount is being spent for rendering services to those on whom falls

the burden of the fee.

(7) At least a good and substantial portion of the amount collected on account of fees, may be in the neighbourhood of two-thirds or three-fourths

must be shown with reasonable certainty as being spent for rendering services of the kind mentioned above.

167. It is in the light of these principles for distinguishing a fee from the tax that we have to examine the arguments advanced in the present case. In

the first instance it may be pointed out that the burden is on the petitioners to show, by adducing relevant figures of costs of rendering services and

the amount of levy imposed, that what is levied is disproportionate to the costs of operating the Scheme and therefore is not a fee for services

rendered but has the element either of profit or of the collection of revenue for purposes other than those for which the levy is sought to be

imposed. This the petitioners have not done. On the other hand, the respondents have given figures showing the wages fixed for different categories

of Security Guards and of the rate of levy and the items for which the levy will be expended. The wages for different categories of workers have

been fixed by a resolution of the Board passed on March 31, 1982 and these rates are effective from April 1982. They are as follows:

Sr. No. Category Rate per month

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1. Security Guard Rs. 400.00

2. Head Guard Rs. 500.00

3. Security Supervisor Rs. 650.00

4. Asstt. Security Officer Rs. 750.00

5. Security Officer Rs. 850.00

6. Chief Secretary Officer Rs. 1,000.00

By this very resolution, the rate of levy to be imposed is fixed at 35% of the Wage rates fixed as above. The allocation of the said levy amongst the

different items, is as follows:

Sr. No. Item Percentage

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1. Provident Fund 8.00

2. Bonus 8.33

3. Leave with Wages 6.00

4. Paid Holidays 1.00

5. Compensation 2.00

6. Medical 1.00

7. Gratuity 5.00

8. Administrative Expenses 2.50

9. Miscellaneous 1.17

35.00%

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168. The aforesaid allocation of the levy amongst the different items of expenses will also show that it takes care both of Provident Fund and

Gratuity mentioned in Clause 38 of the Scheme. There is therefore no separate levy to be imposed for Provident Fund and Gratuity and to that

extent the argument advanced on behalf of the petitioners that the benefits of Provident Fund and Gratuity are taken care of by a separate levy is

not correct. It is also not correct to say that the levy is not linked to the services to be rendered by the Board merely because the levy is intended

to be a certain percentage of the wages of the Security Guards supplied to the employers. On the other hand by laying down a percentage of

wages of the Security Guards so supplied, a link between the services rendered and the levy imposed is automatically established. The services

that the Board will render to the employers will be by supplying them the Security Guards as per their requirements. The number and category of

the Security Guards required will vary from employer to employer and from time to time. The different categories of the Security Guards will carry

different rates of wages. Hence, in fixing the levy at a certain proportion of the wages payable to the Security Guards, Clause 37 of the Scheme

has appropriately established the quid pro quo between the amount to be levied and the services to be rendered. It is difficult to understand the

argument that because the quantum to be levied is linked with wages it has no connection with the services sought to be rendered.

169. In support of the contention that the object is to raise funds for the general welfare of the Security Guards and not to levy charges for the

services rendered it is pointed out on behalf of the petitioners that Clause 37 of the Scheme in terms states that the levy is authorised to be imposed

for meeting the cost of operating the scheme and for providing ""different benefits, facilities and amenities to the registered Security Guards."" Clause

6(1)(x) and (xi) of the Scheme states that the Board may take measures for making provisions for the health and safety measures and also for

maintaining and administering the Security Guards Welfare Fund. Section 3(2)(h) of the Act states that the Scheme may provide for the welfare of

the registered Security Guards whereas Section 3(2)(i) states that it may provide for their health and safety measures. According to the petitioners

these provisions may enable the Board to spend amounts collected, for the general welfare of the Security Guards which has nothing to do with the

services actually required to be rendered to the employers. For instance, urged the petitioners, the expression welfare used in the Act and the

scheme may include within its scope such measures as housing, education, canteen facilities, fair-price shops, free food-and sports facilities not

only to the Security Guards but also to their family members. In the first instance, the provisions of the Act and the scheme in that behalf are clear

and do not lend themselves to such extended application. The relevant provisions of Section 3(2)(d), (h), (i), (j) and (k) of the Act state that the

scheme that the State Government will make may provide for the matters mentioned therein and these matters have a bearing on the levy that may

be imposed. These provisions are as follows:

3(2) In particular, a Scheme may provide for all or any of the following matters, that is to say,

(d) for regulating the employment of registered Security Guards and the terms and conditions of such employment, including the rates of wages,

hours of work, maternity benefit, overtime payment, leave with wages, provision for gratuity and conditions as to weekly and other holidays and

pay in respect thereof;

(h) for the welfare of registered Security Guards covered by the scheme, in so far as satisfactory provision therefore does not exist, apart from the

Scheme;

(i) for health and safety measures in places where the registered Security Guards are engaged, in so far as satisfactory provision therefore is

required, but does not exist, apart from the scheme;

(j) for the constitution of any fund or funds, including provident fund for the benefits of registered Security Guards, the vesting of such funds, the

payment and contributions to be made to such funds. Provision for provident fund and rates of contribution being made after taking into

consideration the provisions of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952, and the Scheme framed thereunder,

with suitable modifications, where necessary, to suit the conditions of work of such registered Security Guards and all matters relating thereto;

(k) for the manner in which, the day from which'' (either prospective or retrospective) and the persons by whom, the cost of operating the Scheme

is to be defrayed.

170. The relevant provisions of the Scheme enumerate specific welfare measures for the Security Guards. Sub-clause (x) of the ci. 6(1) of the

scheme enables the Board to take measures for making provision for health and safety measures in places where Security Guards are employed

insofar as such provision does not exist whereas Sub-clause (xi) requires the Board to take measures for maintaining and administering the Security

Guards Welfare Fund and recovering from all the registered employers contributions towards the fund when such fund is constituted and Sub-

clause (xii) enables the Board to maintain and administer provident fund and gratuity fund for the Security Guards. We have already examined the

provisions of Clauses 37 and 38 of the scheme. As has been stated earlier Clause 37 states that the cost of operating the Scheme and for making

provisions for different benefits, facilities and amenities to the registered Security Guards may be defrayed by payment made by the employers and

Clause 38 provides for constitution of Provident and Gratuity Fund for the Security Guards. Thus the purposes for which the levy is to be collected

and expended have been specifically enumerated. None of the said purposes can be said to be unrelated to the services to be rendered by the

Security Guards. The phrase ""different benefits, facilities and amenities"" used in Clause 37(1) has been qualified by the phrase ""as provided in the

Act and under the scheme"". As has been noticed, the provisions under the Act and the scheme are only for the specific measures enumerated for

the benefit of the Security Guards. The only expression to which some exception can be taken is the one used in Sub-clause (xi) of Clause 6(1) viz.

the maintaining and administering ""the Security Guards Welfare Fund"". However, the said sub-clause itself makes it clear that such a fund will be

constituted and administered according to the rules of the fund. The expressions ""Welfare Funds"" and ""Welfare Schemes"" have over the period

acquired some definite and intelligible meaning. The welfare fund envisaged here therefore cannot have a different meaning. It is not suggested that

the workers" Welfare has no connection with his efficiency. There is therefore no scope for extending the meaning of ""Welfare Scheme"" or

Welfare Fund"" beyond the accepted meaning. It is therefore not possible to accept the contention that the levy to be imposed will be expended on

such welfare schemes of the Security Guards as have nothing to do with their services or with the efficiency of their performance as Security

Guards. At the cost of repetition, it may be pointed out that the welfare fund is to be constituted by the Board which is a representative body and if

and when the fund is- constituted and the amount therefrom is spent for a purpose unrelated to the services to be rendered by the Security Guards,

the employers may raise a valued grievance against the same. There is however no reason to strike down the levy on the mere apprehension that it

is likely to be spent for an unrelated purpose.

171. The seventh contention advanced on behalf of the petitioners is that the Legislature is incompetent to enact the present Act and hence the

present legislation is invalid. In support of this contention, Shri Rana for the employers submitted that entry 55 in the Union List reads ""Regulation

of labour and safety in mines and oilfields."" This entry according to him is to be read as ""regulation of labour, and regulation of safety in mines and

oil-fields"" by reading a coma after the word ""labour"" and before the word ""and"" following the same. Thus read it means that the entire field of the

regulation of labour is within the exclusive legislative competence of the Parliament and therefore the State Government has no power to regulate

labour by virtue of entries 22, 23 and 24 in the concurrent list. According to him, further, entries 22, 23 and 24 in the concurrent list are to be read

so as to exclude the field of labour, and if they are so read, the State Legislature will have no competence to legislate on a subject such as the

present one which is essentially that of regulating labour. For this purpose he relied upon a decision of the Supreme Court in State of Orissa Vs.

M.A. Tulloch and Co., . I am afraid that the whole contention is misconceived. In the first instance, the plain grammatical meaning of entry 55 in the

union list is that the subject enumerated there confines itself only to the regulation of labour and safety, in mines and oilfields. It does not deal with

the regulation of labour in general. Shri Rana''s attempt to read the said .entry artificially by reading a non-existing coma after-the word ""labour"" is a

highly laboured one and unwarranted in the circumstances. Secondly, his reliance on the decision of the Supreme Court reported in State of Orissa

v. M.A. Tulloch (supra) is equally misplaced inasmuch as in that decision what fell for interpretation was entry 54 of the Union List which reads as

follows:

Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by

Parliament by Law to be expedient in the public interests.

172. It is while giving an extended meaning to this entry that the Court held that the expression ""Regulation of mines"" in the aforesaid entry would

include ""Regulation of labour in mines."" This interpretation was given independently of entry 55. The said decision nowhere states that entry 55

does not refer to regulation of labour in mines. It is indeed a highly stretched contention to argue that because the Supreme Court interpreted entry

54 to mean that it included regulation of labour in mines, entry 55 excludes it from its ambit and the expression ""regulation of labour"" in mines in

entry 55 should therefore mean regulation of labour in general. The conclusion therefore is that entries 54 and 55 whether together or

independently of each other confine themselves to regulation of labour in mines and do not deal with regulation of labour in general. The regulation

of labour in general is covered by entries 22, 23 and 24 in the Concurrent List. This being so, the State Legislature is competent to enact the law

such as the Maharashtra Act 58 of 1981 when there is no dispute that this present legislation namely Mah. Act 58 of 1981 has received the assent

of the President as required by Article 254 of the Constitution. Shri Rana then contended that the Act occupying the same field viz. the Contract

labour Act was already in the field when the present legislation was enacted and it was possible for the State Government to issue a notification u/s

10 of that Act so as to include within the scope of the Act the employer or employers where the Security Guards are engaged. In this connection

he pointed out that in fact a notification was issued by the State Government covering the Security Guards u/s 10 of that Act but it was struck

down on November 2, 1979 and therefore the Ordinance which is the predecessor of the Act was promulgated on June 28, 1981. It is true that it

was possible for the State Government to issue a notification u/s 10 of the Contract labour Act and to cover the Security Guards by its provisions.

As has been stated earlier, the notification was struck down as it was not a speaking order and not because the present Security Guards cannot be

covered by that Act. Secondly, it is left to the State Government and the Legislature to decide the method and manner of best ensuring the

regulation of the service conditions of the particular ...category of workers. They may do it either by issuing a notification or by an order under the

existing statute; or they may do it by enacting a separate legislation for the purpose. Merely because they follow one rather than the other mode it

cannot be said that their action is invalid. It is further not disputed that the present Act has received the assent of the President under Article 254 of

the Constitution and therefore no grievance can be made that merely because the labour Contract Act occupies the same field, the Mah. Act 58 of

1981 could not have been enacted nor does the Mah. Act 58 of 1981 on that account become invalid.

173. Shri Paranjpe, the learned advocate appearing for some of the petitioners advanced yet another and so to say a novel argument which was

different both in its thrust and content, from the one advanced on behalf of the other petitioners. His contention was that the Act does not intend to

abolish the Agencies or agents supplying the Security Guards at all. On the other hand, according to him, the Act intends to preserve the Agencies

or agents as they are and therefore insofar as the scheme made under the Act seeks to prohibit the Agencies from supplying the Security Guards,

the scheme is ultra vires he Act. It is difficult to accept this argument. Section 3 of the Act in terms empowers the State Government to make a

scheme or schemes for regulating the recruitment and entry into the scheme of Security Guards and for the registration of Security Guards and

employers and for the removal of their names from the register either temporarily or permanently, and also for prohibiting, restricting or otherwise

controlling the employment of Security Guards to whom the scheme does not apply. The Scheme so framed may also contain a provision for

collecting wages of the Security Guards from the employers as well as for imposing a levy on the employers for meeting the costs and expenses for

running the scheme. Such a scheme may also provide for prosecution of those who contravene the scheme and for punishing them adequately.

Section 6 of the Act provides that the State Government may establish a Board for administering the Scheme when framed. These provisions of

the Act therefore show that the Scheme prepared by the State Government may provide for the prohibition of the employment of the Security

Guards otherwise than through the Board. It is therefore not correct to say that the Act does not contemplate prohibition of employment of

Security Guards through the Agencies and inasmuch as the Scheme prepared chooses to do so it is ultra vires the Act. This argument is therefore

only to be stated to be rejected.

174. As regards the last two contentions i.e. contentions Nos. 9 and 10, they are no more than the different facets of the arguments based on

Article 19(1)(g) of the Constitution. They have already been dealt with while dealing with the said contention and therefore it is not necessary to

deal with them separately here. For the reasons stated there, they have been negatived.

175. In the result, (i) the provisions of Sub-section (4) of Section 3 of the Act are struck down insofar as they penalise the action taken by the

principal employer or the Agency or the Agent to dismiss, discharge, retrench or otherwise terminate the appointment of the Security Guard prior

to the coming into operation of the Scheme.

(2) It is declared that the provisions of Section 23 of the Act are to be so read as to extend the exemption to be granted to the Security Guards

also to be Agencies and the principal employers with whom they are and will be employed.

(3) The rest of the provisions of the Act and of the Scheme are upheld as valid.

176. The petitioners therefore succeed only to the limited extent as stated in sub-paragraph (1) and (2) of para immediately preceding above. The

Rule in each of the petitions is discharged subject to what is stated in sub-paragraphs (1) and (2) of para immediately preceding above. In the

circumstances of the case there will be no order as to costs.

177. The counsel for the petitioners in all the petitions apply for continuance of the interim orders passed earlier, for six weeks more. The counsel

for all the respondents strongly oppose the continuance of the interim orders. In view of the fact that the judgment is a little lengthy one and there is

an intervening vacation, it is only just and proper that the petitioners should get sufficient time to prefer an appeal if they intend to. The interim

orders along with the. undertakings given by the petitioners will therefore continue till December 15, 1982.