(2013) 01 BOM CK 0273

Bombay High Court (Nagpur Bench)

Case No: Letters Patent Appeal No. 49 of 2012 in Writ Petition no. 5121 of 2006

Agricultural Produce Market Committee, Nagpur		APPELLANT
	Vs	
The Hon''ble Member, Industrial Court, Maharashtra (Nagpur Bench), Nagpur and Shri Gunwant Gajanan Kakade		RESPONDENT

Date of Decision: Jan. 30, 2013

Acts Referred:

- Bombay Shops And Establishments Act, 1948 - Section 2(4)
- Central Excises and Salt Act, 1944 - Section 2(f)(v)
- Income Tax Act, 1961 - Section 35B
- Industrial Employment (Standing Orders) Act, 1946 - Section 2(e)
- Payment of Wages Act, 1936 - Section 2, 2(e)(i), 2(f), 2(ii), 2(ii)(a)

Citation: (2013) 2 ABR 1233 : (2013) 4 ALLMR 79 : (2013) 7 BomCR 467 : (2013) LabIC 1565 : (2013) 2 MhLj 509

Hon'ble Judges: Prasanna B. Varale, J; B.P. Dharmadhikari, J

Bench: Division Bench

Advocate: U.S. Dastane, for the Appellant; N.S. Khubalkar, Assistant Government Pleader for Respondent No. 1 and Shri S.R. Bhongade, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

B.P. Dharmadhikari, J.

Admit. Heard finally by consent of the parties. Shri N.S. Khubalkar, learned Assistant Government Pleader waives notice on behalf of respondent No. 1 and Shri S.R. Bhongade, the learned Counsel waives notice on behalf of respondent No. 2. By this appeal filed under Clause 15 of the Letters Patent, the appellant-Agricultural Produce Market Committee, Nagpur has questioned the judgment dated 07th

September, 2011 passed by the learned Single Judge of this Court in Writ Petition No. 5121 of 2006. The learned Single Judge has dismissed the petition filed by the present appellant and upheld the order of the Industrial Court dated 17.12.2005 in Complaint (ULPN) No. 574 of 2002. The Industrial Court has found that the appellant-Market Committee has to pay subsistence allowance in accordance with the provisions of Clause 25 (5-A) of Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946 to its employee-respondent No. 2. The Model Standing Orders and the Industrial Employment (Standing Orders) Act, 1946 are found applicable to the establishment of the appellant by construing definition of "industrial and other establishments" as contained in Payment of Wages Act, 1936 particularly Section 2(ii). It is not in dispute that the provisions of Industrial Employment (Standing Orders) Act, 1946 apply to "industrial establishment" as defined in Section 2(e)(i) thereto and that definition, in turn, adopts the definition of "industrial or other establishments" as contained in Section 2(ii) of the Payment of Wages Act.

2. The learned Single Judge has construed the said definition in Payment of Wages Act particularly Clause (f) therein to hold that use of verb "produce" in said clause in juxtaposition with other words "adapted or manufactured" necessarily indicated a broad meaning and hence act of presentation of vegetables or similar other agricultural produce in establishment i.e. market yard of APMC was sufficient to include it in that clause. It is precisely this observation and finding which has been questioned in present Letters Patent Appeal.

3. Shri Uday Dastane, the learned Counsel appearing for the appellant, at the outset, pointed out that in absence of Model Standing Orders, the service regulations of appellant prescribe payment of only 50 per cent of the salary as subsistence allowance for entire length of period of suspension during pendency of departmental enquiry. The appellant has accordingly paid subsistence allowance. The proportionate increase therein to 75 per cent after expiry of initial 90 days and to 100 per cent after 180 days of suspension contemplated in Model Standing Orders is not relevant. The said stipulation in clause 25(5-A) of Model Standing Orders is attracted only when the Model Standing Orders are found applicable and not otherwise. He submits that as interpretation of clause (f) in definition Section 2(ii) of Payment of Wages Act, 1936 in impugned judgment is unsustainable, said clause has no application.

4. After reading out relevant definition, the learned Counsel has submitted that the beginning of definition of "industrial or other establishments" in Section 2(ii) is very significant. Prior to 1982, said section only employed words "industrial establishment" and proceeded to define it. In 1982, the Amendment Act 38/1982 added words "or other" and since then said section defines "industrial or other establishments". He further submits that though these words are added to main definition in its opening part, clause (f) already had the words "other

establishments" and that clause has not undergone any change. With this, he invited our attention to addition of clause (h) as residuary clause in 1982 by very same amendment to urge that those words "other establishments" added at the beginning of said definition did not envisage "other establishments" contemplated or covered under clause (f) and, therefore, must necessarily be interpreted as referring to any other establishments or class of establishment which appropriate government specifies by notification in exercise of power conferred upon it by residuary clause. He has submitted that APMC has not been specified to be such an establishment by any notification by appropriate government i.e. State Government till date and hence it cannot be construed as an establishment to which provisions of Model Standing Orders become applicable.

5. Without prejudice to this submission, he has further contended that when words "other establishments" appear at the commencement of definition and also in clause (f), the history noted above is sufficient to indicate that "other establishments" covered under clause (f) cannot be of same type or nature as falling under the said words/category in opening para of the definition. According to him, if all establishments are to be read as covered under the words "other establishments" employed in clause (f), addition of said words in 1982 to definition into Section 2(ii) or then a provision in shape of residuary clause vide clause (h) becomes redundant. Any interpretation which renders such amendment and object sought to be achieved thereby redundant, therefore, should be avoided. In this background, his contention when there is no gazette notification under clause (h) of Section 2(ii) of Payment of Wages Act as AMPC is not "other establishment" as required by clause (f), provisions of Model Standing Orders cannot be extended to its employees.

6. Coming to clause (f) of said definition, learned Counsel submits that the entire section and its various clauses proceed on assumption that in the place where activity for which wages are to be paid, is carried out, is managed/controlled by employer. Thus it proceeds on assumption that there is already an employer who is duty bound to pay wages to his employees for activities being carried out at various places as defined in various clauses of Section 2(ii). Attention has been invited to provision of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963, to submit that for activities which the appellant-Market Committee is authorised to regulate, it is not paying any wages to the persons undertaking said activities. At the most with an object to regulate that activity, it issues licences to those persons. Hence, there is no control as and relationship of employer and employee between the persons involved in said activity and the appellant-AMPC. That relationship, therefore, cannot be subjected to the provisions of the Payment of Wages Act and hence to provisions of Model Standing Orders.

7. His next contention is, the learned Single Judge has erred in applying principle of ejusdem generis while interpreting the words "produced, adapted or manufactured"

employed in clause (f). He submits that actually in law when the later process of adaption or manufacture is understood as narrower and word "produced" has been given a wider meaning, there was no room for taking recourse to that principle of interpretation. At the most, the well known principle of noscitur a sociis could have been used and word "produced" could have been interpreted accordingly. If exercise of learned Single Judge is accepted and word "produced" is construed as merely an act of presentation of article within market yard, it curtails the otherwise wider sweep which flows from natural and normal meaning of word "produced". He has submitted that words "workshop" or "other establishments" are not disjunctive but derive colour from each other and, therefore, only the legislature has put same words through they figure at the commencement of definition in its main part. Thus, a small category of "other establishments" which can be said to be carrying activities similar to that of workshop only find mention in clause (f). He submits that wider meaning of said phrase here would result in rendering the exercise of 1982 amendment unnecessarily. Hence, if APMC is to be covered under clause (f), it must be shown that activities undertaken in its premises are akin to or like activities of a workshop and mere act of physically presenting agricultural produce/vegetable within market yard, should not be construed as sufficient to attract said clause. The learned Counsel has further pointed out that the said clause requires articles to be produced "with a view to their use, transport or sale". The APMC is not using the agricultural produce presented by agriculturists in its market yard, it is not transporting the same and it is also not selling the same. Performance of statutory duty of regulating the sale of said commodity by APMC cannot be construed as its "adaption". The learned Counsel states that the words "adapted or manufactured" pre-envisage some technical activity bringing about a change which can be viewed as industrial activity and if that test is satisfied, then only it can be said that the agricultural product is produced or adapted in market yard of the appellant-APMC for its use, transport or sale. He again reiterates that as appellant is not employer or owner, it does not control the use, transport or sale of such articles and hence material ingredients of said definition are not satisfied in the present matter.

8. The learned Counsel has also invited our attention to various judgments to which we will make reference little later to show the circumstances in which the principles of ejusdem generis or noscitur a sociis can be invoked. He reads out entire definition of Section 2(ii) to submit how words having very same meaning have been used in it in order to demonstrate that though various sub clauses of Section 2(ii) may be seen as heterogeneous, each clause within itself uses the words which convey homogenous activity or character. He has, for said purpose, pointed out clause 2(ii)(b) and clause (d) particularly.

9. By inviting our attention extensively to the impugned judgment delivered by the learned Single Judge, he has attempted to show how the word "produced" employed in Section 2(ii) clause (f) has been construed in the light of provisions of APMC Act. He submits that the said concept needed to be understood and

appreciated independently and thereafter only the recourse to AMPC Act to find out whether those ingredients are fulfilled is possible. He submits that the reverse exercise undertaken in this matter by the learned Single Judge has vitiated the entire application of mind.

10. Shri N.S. Khubalkar, the learned AGP appearing for respondent No. 1 has invited attention of the Court to Seventh Edition (1999) of Principle of Statutory Interpretation by Justice G.P. Singh. He submits that the scheme of Section 2(ii) of Payment of Wages Act itself is very clear and an unambiguous. The words appearing therein can be given their plain and ordinary meaning and the definition can also be implemented accordingly. As such, there is no question of taking recourse to their principle of ejusdem generis or noscitur a sociis. Spirit and object demands that the words "workshop or other establishments" in clause (f) must be construed disjunctively so as to be mutually exclusive. The one, therefore, cannot draw its colour from other and when the articles are produced, adapted or manufactured in such establishment with a view to their use, transport or sale, ingredients of said clause are satisfied. He submits that the learned Single Judge has accordingly given word "produced" its ordinary and natural meaning by referring to various dictionaries and said exercise, therefore, cannot be faulted with.

11. The learned Counsel further contends that for the purposes of clause (f), the ownership of articles produced by the appellant is not necessary. The said clause does not show any person as a "subject" who produces that article/object or adapts or manufactures it. Similarly, a person who uses or transports or sales the article so produced is not relevant. The wordings in said clause are deliberately kept wide enough to cover all contingencies in which the articles are either presented for their use, transport or sale then are adapted for said purpose or then are manufactured for any of the said purposes.

12. Fairly pointing out that there was no such effort made before the learned Single Judge, he also attempts to demonstrate that the concept of adaption is wide enough to cover the regulation of sale of agricultural committee. For that purpose, he has relied upon the judgment of Allahabad High Court in the case of Food Corporation of India, Agra v. Special Judge/ District and Sessions Judge, Aligarh and others (supra) on which Advocate Dastane has also placed reliance. According to him, authority or person who controls or carries on said "regulation" in market yard is not relevant for understanding clause (f) at all. It is the entire conspectus of various activities of traders, licencees and farmers which assume importance and need to be looked into. He also relies upon the impugned judgment delivered by the learned Single Judge to urge that after correctly arriving at the meaning of word "produced", object of constitution of APMC has been examined and then a finding that the appellant-APMC is other establishment has been reached. He, therefore, prays for dismissal of Letters Patent Appeal.

13. The learned Counsel for the appellant, in his brief reply argument, has submitted that the reliance upon the judgment of Allahabad High Court by the learned AGP is misconceived because their the Division Bench of Allahabad High Court has examined statutory duties of Food Corporation of India Limited. Activities show the sale, storage etc. of food grains and other commodities by Food Corporation of India for itself. Here, as the appellant-APMC has got no ownership of the articles produced and it only controls the sale or auction thereof in accordance with the provisions of APMC Act, the said statutory regulations and discharge of its obligation by APMC cannot be viewed as adaption for the purposes of Section 2(f). He has further contended that as there was no such effort before the Industrial Court, there is no evidence on record for this purpose and also there is no consideration of this aspect by the learned Single Judge. According to him, thus whether statutory act of regulation by itself tantamounts to adaption is a disputed question of fact and hence it cannot be gone into for the first time in this Letters Patent Appeal. He has again reiterated the part of his arguments already reproduced above to urge that disjunctive interpretation of clause (f) militates with 1982 amendment to Section 2(ii) and its object. He, therefore, prays for allowing the Letters Patent Appeal.
14. Provision of Section 2(e) of Industrial Employment (Standing Orders) Act, 1946 defines "industrial establishment" to mean an "industrial establishment" as defined in clause (ii) of Section 2 of the Payment of Wages Act. Section 2(ii) of Payment of Wages Act, 1936 defines "industrial or other establishments" as under:-

Section 2(ii) of the Payment of Wages Act, 1936:

2(ii)-"industrial or other establishments" means any-

(a) tramway service, or motor transport service engaged in carrying passengers or goods or both by road for hire or reward;

(aa) air transport service other than such service belonging to or exclusively employed in the military, naval or air forces of the Union or the Civil Aviation Department of the Government of India;

(b) dock, wharf or jetty;

(c) inland vessel, mechanically propelled;

(d) mine, quarry or oil-field;

(e) plantation;

(f) workshop or other establishments in which articles are produced, adapted or manufactured, with a view to their use, transport or sale.

(g) establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or to the supply of water, or relating to the

generation, transmission and distribution of electricity or any other form of power is being carried on;

(h) any other establishment or class of establishments which the appropriate Government may, having regard to the nature thereof, the need for protection of persons employed therein, and other relevant circumstances, specify, by notification in the Official Gazette.

15. Bare perusal of this definition shows that it employees the word means thereby giving it prima facie an exhaustive meaning. Its clause (a) speaks of tramway service or motor transport service engaged in carrying passengers or goods or both by road for hire or reward. Its later clause then speaks of air transport service. Clause (b) then employees the words "dock, wharf or jetty". These three words, according to the appellant, are synonymous and still have been used together. Clause (d) which then uses the words "mine, quarry or oil-field" again uses synonymous namely mine and quarry. The said fact is brought to the notice of this Court to support the contention that each clause is mutually exclusive and heterogeneous but then within itself it carries various entries which are indicative of activities of same type or character. Effort, therefore, is to urge that the principles of ejusdem generis are not attracted.

16. It is to be noted that clause (g) of said Section again uses the word "establishment" but then it is qualified by pointing out the works like construction, development or maintenance of buildings, roads, bridges or canals etc. Clause (h) is residuary clause which contemplates in other establishments or class of establishment which the appropriate government may add by notification in Official Gazette.

17. When this provision is seen, it is apparent that the residuary clause (h) speaks of establishment or class of establishment which are not covered by earlier clauses i.e. clause (a) to (g). If the establishment or class of establishment is already covered under any of these earlier clauses, appropriate government is not empowered and actually is not required to issue a notification and specify it again as an establishment for the purpose of said provisions. Clause (f), as reproduced above, always carried the words "other establishment" along with word "workshop". The appellant has tried to distinguish between the words "other establishments" added by 1982 amendment in opening part of said Section 2(ii) and these words in clause (f). We find that after amendment the entire section needs to be construed as one integrated provision and mere fact of 1982 amendment thereto is not sufficient to hold that other establishments envisaged in opening part does not cover other establishments as understood in clause (f). Effort to co-relate these 1982 added words and restrict them only to residuary clause (h) cannot be countenanced. The opening part which states what "industrial or other establishments" means also refers to "workshop" which is the first word employed in clause (f) and hence necessarily also refers to latter words "other establishments" which follow the work

"workshop".

18. It is the settled law of interpretation that some words used in same statute need to be governed same meaning unless otherwise constrained by the context. Here, there is no such constraint. Moreover, the words "other establishments" appear in very same clause i.e. Section 2(ii). Hence contention that these words need to be understood differently cannot be accepted.

19. The residuary clause also speaks of other establishment or class of establishment. It is already held by us above that if establishment or class of establishment is already covered under earlier clauses, recourse to residuary power is not open. To us, clause (h) refers to not "other establishments" but it refers to "any other" type of establishments or class of establishments. Thus, mere juxtaposition of word "other" with word "establishment" in clause (h) is not sufficient to restrict it to or co-relate/confuse it with words "other establishments" employed in clause (f). Thus establishments not covered under clause (a) to (g) or class of establishment not covered therein are provided for by legislature in clause (h).

20. Before proceeding further, we will like to briefly refer to various precedents relied upon by Appellant Agricultural Produce Market Committee. Shri Dastane has relied upon the judgment of the Apex Court in the case of Tribhuban Parkash Nayyar Vs. The Union of India (UOI), to point out the circumstances in which the rule of ejusdem generis can be applied. Perusal of the judgment Tribhuban Prakash Nayyar v. The Union of India (supra) reveals that the Hon''ble Apex Court has noted that whenever there is doubt as to meaning of a provision, recourse may be had to the preamble to ascertain the reasons for the enactment and hence the intention of the Parliament. If the language of enactment is capable of more than one meaning then that one comes nearest to the purpose and scope of the preamble, is to be preferred. Rule of ejusdem generis reflects an attempt to reconcile incompatibility between the specific and general words. All words in a Statute are to be given effect and Statute is to be construed as a whole and that no words in a Statute are presumed to be superfluous. Ejusdem Generis rule like any other rule of interpretation only serves as an aid to discover the legislative intent. It is neither final nor conclusive. The Hon''ble Apex Court lays down that it is attracted only when specific words enumerated, constitute a class, which is not exhausted and are followed by general terms, and when there is no manifestation of intent to give broader meaning to the general words. In facts before it, in paragraph 13 of the report, the Hon''ble Apex Court has noted that Rule 18 of Displaced Persons (Verification of Claim) Supplementary Rules, 1954 did not form a genus or a class and hence Clause (iv) thereof did not attract this principle of interpretation. This judgment is followed in the case of M/s. Siddeshwari Cotton Mills (P) Ltd. v. Union of India and another (supra) where the Hon''ble Apex Court has considered the provisions of Section 2(f)(v) of Central Excises and Salt Act, 1944. Expression ''bleaching, mercerizing, dyeing, printing, water-proofing, rubberizing,

shrink-proofing, organdie processing'' which precedes the expression ''or any other process'' have been construed to indicate a process which impart a change of a lasting character to the fabric. In paragraph 11, the Hon''ble Apex Court has noted that these previous operations are related to concept of manufacture and bring about such a change in cotton fabric to render it a commercially different product. Observations in paragraph 19 show that the preceding words under the particular rule of construction, control and limit the meaning of subsequent words and must represent a genus or a family which admits of a number of species or members. More limited words thus give restricted operation to otherwise wide phraseology.

21. The judgment in the case of Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, shows the construction of word "production" and discussion in paragraph 7 shows that word "production" has a wider connotation than the word "manufacture". In paragraph 8, the Hon''ble Apex Court has observed that when word "production" or "produce" is used in juxtaposition with word "manufacture", it implies bringing into existence new goods by a process which may or may not amount to manufacture. In facts before us, word "produce" is associated not only with "manufacture" but also word "adapt". Thus, these observations by the Hon''ble Apex Court in fact run contrary to effort of operation to restrict the meaning of word "produce". In the Judgment of Life Insurance Corporation of India and Others Vs. Retired L.I.C. Officers Association and Others, , the Hon''ble Apex Court has considered the welfare legislation and principle of purposive interpretation. The observations in paragraphs 24 and 25 of the judgment reveal that a gratuity conferred upon employee is not a bounty and it is payable on successful tenure of service. Words "permanent basic pay" used in Regulation 51 of LIC (Staff) Regulations, 1960 have been found not sufficient to lead to conclusion that once an employee has retired he would not be entitled to any revision of the amount of gratuity. Here in present matter, provisions of Payment of Wages Act, 1936 or the Industrial Employment (Standing Orders) Act are also aimed at welfare of employees & cast some obligations upon employers. Hence, we find that a purposive interpretation in this background is also called for.

22. In the judgment Commissioner of Income Tax, Kerala Vs. Tara Agencies, , phrases manufacture, production, processing are construed in the light of provisions of Section 35B of the Income Tax Act. The respondent-assessee had claimed entitlement to weighted deduction being a small scale exporter and it was disallowed by Income Tax Officer. The appellate Authority allowed his appeal and the ITAT also maintained that benefit. The revenue then approached the High Court and thereafter the Hon''ble Apex Court. The Hon''ble Apex Court has noted that word "manufacture" has not been defined in Income Tax Act and then pointed out its meaning in Central Excise Act. In paragraph 16, dictionary meaning of word "production" has been pointed while in paragraph 19, the term "produced" has been noted. In paragraph 21, meaning of word "process" has been worked out. Thus, we find that this interpretation by Hon. Apex Court is in the background of the spirit of

enactment in which these phrases appeared and purpose thereof.

23. In the judgment of Dr. Devendra M. Surti Vs. The State of Gujarat, , the Apex Court has interpreted Section 2(4) of the Bombay Shops and Establishments Act, 1948 defining "Commercial Establishment". In paragraph 6, the Hon''ble Apex Court has found that the said definition employed words of very wide import and grammatically could include even a consulting room where a doctor examines his patient with the help of a solitary nurse or attendant. It found it necessary to adopt principle of noscitur a sociis. When two or more words susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense and they take colour from each other. Thus a more general word is restricted to a sense analogous to a less general. Shri Dastane has submitted that word "produce" being a more general word, needed to be construed in the light of later narrower concepts implicit in words namely "adaption" or "manufacture". The Hon''ble Apex Court at the end of its discussion in paragraph 7 has noted that the dispensary of appellant before it would fall within the definition Section 2(4) only if professional activity therein is organized in the manner in which a trade or business is generally organized or arranged and if the activity is systematically or habitually undertaken for rendering material services to the community at large or a part of such community with the help of the employees and if such an activity generally involves cooperation between the employer and the employees. It reached conclusion that these ingredients were not satisfied in matter before it. Commissioner of Customs, New Delhi Vs. M/s. Parasrampuria Synthetics Ltd., is the judgment where the Hon''ble Apex Court considers a provision which employees words having synonymous meaning one after the other. That provision is reproduced in paragraph 2 of the judgment. The Hon''ble Apex Court has in paragraphs 6 to 9 pointed out popular meaning of these three words namely "plan", "drawings" and "designs" and concluded that they convey more or less a common attributes and an identical meaning, though in a larger spectrum, they may have three individual attributes. This prompted legislature to specifically refer to each of them. If words "produce, adapt or manufacture" are held synonymous, it is apparent that this judgment cannot and does not help the appellant. On the contrary, to us it appears that the legislature employed all these three words in Section 2(ii)(f) of Payment of Wages Act not to leave any doubt and to cover the largest possible area.

24. The Division Bench judgment of Allahabad High Court in the case of Food Corporation of India Vs. Special Judge, Distt. and Sessions Judge and Others, explains the words "adapt" used in Section 2(ii)(f) of Payment of Wages Act. Discussion as contained therein reveals again reference to "Legal Glossary" and wide field covered by said word. "Adapt" has been found to mean to put oneself in harmony with changed circumstances, to make more suitable by altering, to fit or suit, to adjust, to alter etc. Thus workshop or other establishment in which articles are made suitable or fitted or adjusted meaning thereby adapted with a view to use,

transport or sale is covered under the said provision. It has been explained that "adaption" need not to be with a view to their use alone. Even if articles are adapted with a view to their transport or sale in workshop or other establishment, such workshop or other establishment would be an industrial or other establishment. In paragraph 13, it is held that Food Corporation of India is primarily required to produce, store, move, transport, distribute and sale food grains and other food stuffs. They are cleaned, segregated, fumigated and quality-wise made salable in the FCI godowns. Thus the Division Bench found that the food grains and other food stuffs are adapted in FCI godown with a view to their transport and sale and hence the establishment is found covered u/s 2(ii)(f) of the Payment of Wages Act. Though in facts before us, APMC itself is not undertaking any such activity, it provides market yard, platform, sheds, warehouses, cold storage etc., where persons licensed by it undertake various activities which ultimately result in either transport or sale of agricultural produce by them. Said sale is also conducted in regulated and controlled manner so as to see that innocent farmers are not cheated and get best consideration for their output. The APMC, therefore, definitely uses agricultural produce and that use is by subjecting it to sell in its market yard in controlled manner. The provisions of APMC Act are intended to safeguard the interest of farmers and sale of agricultural produce, accordingly, through licensed persons in controlled atmosphere or manner is nothing but adaption of that produce by APMC through its licensed vendors/brokers. APMC does this through supervision and by applying various checks & measures. For that, it employees its own independent staff like Clerks, Inspectors and other Supervisory Staff. It regulates the activities of licensed persons and also penalizes delinquents by either suspending or canceling their license. It also has got machinery to resolve disputes between farmers and licensed traders or brokers. The farmers bring their agricultural produce to market yard where that produce is then subjected to process of sale in stipulated or prescribed manner to subserve the interest not only of farmers but of ultimate consumers also. The learned Single Judge, therefore, has rightly found that presentation of agricultural produce is included in word "produce" as employed in Section 2(ii)(f) of the Payment Wages Act.

25. The contention that words "workshop" or "other establishments" are disjunctive or draw colour from each other now needs to be looked into. The definition as looked into by us above clearly shows the legislative wisdom and knowledge that there can be various types of establishments or classes of establishments not provided for in Section 2(ii). Clause (f) can be conveniently read for the present purposes by omitting words "or other establishments". The workshop in which articles are produced, adapted or manufactured with a view to their use, transport or sale, therefore, is definitely covered by clause (f). Similarly, when very same clause is read by deleting the words "workshop or" it follows that other establishments in which same event occurs is also covered. It is, therefore, really unnecessary to find out whether the words are used in disjunctive sense or then has

to draw colour from each other. Emphasis in clause (f) is not on all "workshops" or on all "other establishments". Word "other" has been used only to indicate that establishment in which articles are produced, adapted or manufactured may not be necessarily a workshop. The legislature has placed emphasis on nature of activity namely producing, adaption or manufacturing of articles with a view to their use, transport or sale. The various judgments to which our attention has been invited by the appellant to urge that rule of ejusdem generis must be applied in understanding the scope of these two words sufficiently show that in that event workshop will be a rather narrower activity and other establishments will form a large group or activity. Hence, principles of ejusdem generis are not attracted. Absence of words "or other" in opening part of Section 2(ii) prior to 1982, might/could have been conducive to the narrower construction of words "other establishment" in clause (f) because of use of word "workshop" in it. Before 1982 amendment, Section 2(ii) defined only what is an "industrial establishment". In that situation, association of "other establishments" in clause (f) with "workshop" would have called for curtailing the sweep of these words i.e. "other establishment" while understanding clause (f). An argument that otherwise very opening words limiting the nature of establishment to an industrial establishment are ignored, could have been then propounded. However, when in 1982, legislature amended the definition, it proceeded to define not only "industrial establishment" but also "other establishments". Thus intention was obviously to widen the scope of definition further and addition of residuary clause (h) puts it beyond doubt. When words "other establishments" in opening part cannot be eclipsed by concept of "industrial establishment", we find that reading down said words employed in clause (f) because of their juxtaposition with "workshop" will be defeating the legislative intention. We therefore can not construe said clause (f) to read "workshop or other similar establishments" No case is made out to read word " similar " in said provision.

26. The language of clause (f) also shows that, entire emphasis there is on the nature of activity. In entire definition i.e. Section 2(ii) as also in clause (f) person undertaking that activity either as employer or owner does not find mention and figure as subject. "Subject" as such is, therefore, not given any importance. A dock, wharf or jetty has been made either an industrial or other establishments without reference to any employer or employee. This logic also holds good for all other clauses including clause (f). The idea, therefore, is to extend the provisions of Payment of Wages Act to establishment or place where various types of activities are carried out and for that purpose the "activities" only find mention in said definition. The "employer" or "subject" as such is conspicuous by absence. Thus, fact that the appellant itself does not "produce" or grow/present any agricultural produces or articles within market yard or the appellant does not "adapt" it or the appellant does not "manufacture" it, is not decisive. Contention that appellant does not use, transport or sale such agricultural produces or commodities is also not determinative. The availability of articles is not in dispute. Articles namely

agricultural produce or vegetables are brought or produced in market yard by farmers and then they are sold/auctioned in transparent manner in accordance with the scheme of APMC Act through/by licensed traders and brokers. This activity is undertaken in market yard itself in prescribed manner and is controlled by APMC. The agricultural produce comes to market yard because of statutory obligation and the commodity is presented by them for its sale to get best price. The same is effected either through a licensed trader or then through a broker. The licensed trader or broker gets annual license to operate accordingly from appellant-APMC. Their activities are controlled by the appellant-APMC and for that purpose it employees staff who inspects the premises of such licensed traders or brokers, looks into their accounts and thus indirectly monitor their activities to see that the farmers get best consideration for their produces. APMC enforces compliance with terms and conditions of license. It prohibits delinquents or defaulters from undertaking any activities in relation to such produce. The APMC, therefore, functions only because of agricultural produce which comes within market yard. If the agricultural produce does not come to its market yard and sales are permitted anywhere, the need of its regulations and functioning of APMC etc. will not exist. The APMC thus "uses" said agricultural produces and its existence itself is dependent upon it. This legal control or regulation of the mode & manner of sale is subjecting the farmers produce to a process as per APMC Act and tantamount to its adaption for sale for the purposes of S.2(ii)(f). No disputed question of facts can be said to arise in this regard.

27. We may here consider case of a person who only makes a facility available say by letting out thresher or crusher or separator. He only maintains these machines with help of minimum staff to keep it in running conditions but does not himself use it for carrying out any of the operations. Customer hiring the service pay charges/fees for using facility, employees his own operator or other staff & uses the machines. Such customer brings in his own material to be processed or adapted & carries it back. Person letting out the facility only takes precaution to see that his machine is properly used & not damaged. The customer does not produce(present) the material in establishment of such person for use by said person or its transport or sale. But then the facility can not run unless such customer comes with commodity. Thus, mere presentation of such commodities for subjecting them to any process or operation constitutes "user" thereof by person providing facility. Its processing in machine is also its adaption. Hence ownership over such articles or relationship as employer with users of such facility is irrelevant in S.2(ii)(f) of the Payment of Wages Act. What appears to us to be decisive is test of control not in depth on actual activity/operation but on establishment & power to regulate the operation/activity therein generally. This appears to be the scheme inherent in entire S.2(ii) of the Payment of Wages Act.

28. Clause (f) contemplates that articles are produced, adapted or manufactured with a view to their use, transport or sale. The transport services are substantively

covered u/s 2(ii)(a) where transport service engaged in carrying passengers, or goods or both by road for hire or reward is expressly included. In spite of that work "transport" has been again used by legislature in this clause (f). It is, therefore, apparent that though the establishment in which article is produced may not itself be engaged in transport service, it may prepare or process (adapt) that commodity for the purpose of transport & thus use it. Thus, preparing an article handed over/produced or presented for its transport or use or sale by somebody else will also be covered under clause (f).

29. When entire definition of industrial or other establishments in Section 2(ii) is looked into, we find that said definition has been deliberately kept very wide and that purpose cannot be defeated by accepting the contention of the appellant-APMC that as it is not the owner of agricultural produce presented or brought within market yard or then as it is not employer of the persons who are engaged in various activities undertaken within its market yard on such agricultural produce, it should be excluded from the said definition. The contention that words which specify various actions and used one after other in clause (f), therefore, should be understood either by applying the principles of noscitur a sociis and the concept of ejusdem generis should not be invoked to interpret it, in fact derogates from legislative intent to keep the definition wide. The practical experience shows that articles may be produced (presented) with a view to their use and nothing more. They may be produced (presented) for transport and nothing more. Similarly, they can be produced (presented) only for sale also. Thus further processing either manual or technical of such agricultural produce is not envisaged in said definition. If law requires it to be sold in market yard in regulated manner for giving best return to farmers, there is no reason to exclude the establishment where auction is conducted from the definition. The article is presented in market yard for its regulation by APMC Act & Appellant uses that article accordingly. Establishment where auction or sale takes place belongs to it, it supervises all activities undertaken in it on such article through its employees and receives market fees or supervision charges therefor. This goal is achieved with the help of its manual or clerical staff by APMC. It controls the activities in its market yard ie establishment. This act of regulating sale statutorily is also covered under Clause 2(ii)(f) of Payment of Wages Act. The learned Single Judge has in this situation correctly understood the intention of legislature and thereafter has arrived at the meaning of verb "produce" by looking into dictionary. The unnecessary duplication by holding that word "produce" contemplated something more than mere manufacture has been avoided and the normal dictionary meaning has been accepted. When the clause itself contemplates "non-workshop" establishments in which also articles can be produced and used etc., the application of mind by learned Single Judge can not be faulted with. The interpretation so put does not result anything absurdity. Thus the said meaning of verb "produce" cannot be held to be unwarranted or contrary to the spirit of definition of "industrial or other establishments" in Section 2(ii) of Payment of

Wages Act read with its clause (f). The agricultural produce is adapted for sale through the control & supervision of the Appellant in its market yard.

30. Shri Dastane, the learned Counsel for the appellant had also invited our attention to Hindi version of Section 2(ii) which he has reproduced in paragraph 9 of memo of Letters Patent Appeal. Said version shows that in Hindi clause (f) reads as under:-

The said version shows that the words "produced" employed in clause (f) has been shown in Hindi as However, the said Hindi word is thereafter followed by subsequent words which show "adaption or manufacture". When these three Hindi words are read together, we do not see anything inconsistent with the interpretation which we have arrived at above in relation to the use of word "produced" in clause 2(f). It is the argument of Appellant before us that learned Single Judge has overlooked the word "adaption" in this clause. Even though there be any inconsistency in Hindi version and English version, the English version should normally prevail.

As the normal and natural meaning of word does not in any way militate with that scheme and does not bring about any absurdity, we find no case is made out warranting interference in present LPA. Letters Patent Appeal is dismissed.