

(1965) 07 GUJ CK 0007

In the Gujarat High Court

Case No : Special Civil Application No. 836 of 1962

Arvind Mills Ltd., Ahmedabad

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 21-07-1965

Acts Referred:

Factories Act, 1948 — Section 2

Industrial Disputes Act, 1947 — Section 22, 33C(1), 33C(2)

Citation : (1966) 7 GLR 156

Hon'ble Judges : P.N. Bhagwati, J;N.G. Shelat, J

Bench : Division Bench

Judgement

Bhagwati, J.—The petition raises the question of validity of certain provisions of the Bombay Labour Welfare Fund Act, 1953, as amended

by the Bombay Labour Welfare Fund (Gujarat Extension and Amendment) Act, 1961, and the Bombay Labour Welfare Fund (Gujarat Amendment) Act, 1962.

2. The petitioner is a limited company incorporated under the Indian Companies Act, 1913. It is carrying on business of manufacturing cotton

textiles and owns a factory situated in Ahmedabad. In its balance sheet for the year 1961 it showed as one of its liabilities a sum of Rs. 4,38,987

under the heading ""sundry creditors."" This amount included Rs. 2,37,863.85 which was made up of wages earned by the workmen in the factory

but remaining undrawn by them and bonus for which no claim was made by the workmen within the prescribed time to earn the same under the

condition of eligibility laid down in the relevant bonus agreements or awards and represented the total of such assumed liability from year to year

ever since the inception of the company in 1932. The dispute in this petition

relates to this amount of Rs. 2,37,863.85.

3. In 1953 the legislature of the then State of Bombay enacted an Act called the Bombay Labour Welfare Fund Act, 1953 (hereinafter referred to

as the Act), and it came into force on 4 June, 1953. The Act was passed with a view to provide for the constitution of a fund for the financing of

activities to promote welfare of labour in the state of Bombay and for conducting such activities. Section 2(10) defined "unpaid accumulations" to

mean all payments due to the employees but not made to them within a period of three years from the date on which they become due whether

before or after the commencement of the Act including wages and gratuity legally payable. Section 3, Sub-section (1), provided for the constitution

of a fund called the Bombay Labour Welfare Fund and declared that notwithstanding anything contained in any other law for the time being in

force, the sums specified in Sub-section (2) shall be paid into the fund and Clause (b) of Sub-section (2) specified "unpaid accumulations." Section

7, Sub-section (1), enacted that the fund shall vest in and be held and applied by the board as trustees subject to the provisions and for the

purposes of the Act. Section 19 conferred power on the State Government to make rule for carrying out the purposes of the Act and in exercise of

that power the State Government made the Bombay Labour Welfare Rules, 1953. Rules 3 and 4 of these rules provided the machinery for

enforcing the provisions of the Act in regard to fines and unpaid accumulations. The provisions of the Act were sought to be enforced against a

company called the Bombay Dyeing and Manufacturing Company, Ltd., and that company, therefore, preferred a petition in the High Court of

Bombay challenging the validity of the Act. The petition was dismissed by the High Court but on an appeal preferred to the Supreme Court, S.

3(1), in so far as it related to unpaid accumulations specified in S. 3(2)(b), was declared unconstitutional and void. The decision of the Supreme

Court is reported in *Bombay Dyeing and Manufacturing Co. Ltd. Vs. The State of Bombay and Others*, . The attack against the constitutionality of

S. 3(1) read with S. 3(2)(b) was based on Arts. 31(2) and 19(1)(f). The Supreme Court did not decide whether S. 3(1) was violative of the

fundamental right of the employer under Art. 31(2) but held that the section was violative of the fundamental right of the employer under Art. 19(1)

(f) since, on a proper construction the effect of the relevant provisions of the Act was to transfer to the board the debts due by the employer to

employees free from the bar of limitation without releasing the employer from his liability to the employees and the section, therefore, operated to

make away the moneys of the employer without discharging him from his liability to the employees. The Supreme Court also held that in any event

S. 3(1) was unconstitutional as infringing the fundamental right of the employees under Art. 31(2) or at any rate under Art. 19(1)(f). The Supreme

Court observed :

. . as the Act takes over the rights of the employees in respect of wages due to them even when they are not barred without making any provision

for compensation of the same to them, it must, at least to that extent, be held to be unconstitutional whether as contravening Art. 19(1)(f) or 31(2)

it is unnecessary to decide.

4. The attack against the constitutionality of the statute was sought to be repelled on behalf of the State on the ground that the impugned legislation

was one in respect of abandoned property and, therefore, by its very nature it could not be held to violate the rights of any person either under Art.

19(1)(f) or 31(2). But this contention was negated by the Supreme Court which took the view that

the purpose of a legislation with respect to abandoned property being in the first instance to safeguard the property for the benefit of the true

owner and the state taking it over only in the absence of such claims, the law which vests the property absolutely in the state without regard to the

claims of the true owners cannot be considered as one relating to abandoned property.

5. The Supreme Court in the result declared S. 3(1), in so far as it related to unpaid accumulations specified in S. 3(2)(b), as unconstitutional and

void.

6. This decision of the Supreme Court was given on 20 December, 1957. Nothing transpired thereafter until 1 May, 1960 when the states of

Bombay was bifurcated into the States of Maharashtra and Gujarat. The Gujarat Legislature thereafter enacted the Bombay Labour Welfare Fund

(Gujarat Extension and Amendment) Act, 1961 (hereinafter referred to as the first Amendment Act), making various amendments in the Act, some

of them with retrospective effect. The First Amendment Act intended to remedy the defects pointed out in the Act as a result of the decision of the

Supreme Court in Bombay Dyeing case [1958 - I L.L.J. 778] (vide supra) and the main amendments effected by the First Amendment Act

consisted of amendments in the preamble, long title and S. 3 of the Act and introduction of a new S. 6A and these amendments were given

retrospective effect by S. 13 of the first Amendment Act by providing that they shall be deemed always to have been made in the Act. The

definition of establishment in S. 2(4) was also amended but that amendment was not made retrospective. It would be convenient at this stage to

refer to the relevant provisions of the amended Act as it is their validity that is the main point for our determination in this appeal. The preamble to

the Act recites that

it is expedient to constitute a fund for the financing of activities to promote welfare of labour in the State of Gujarat, for conducting such activities

and for certain other purposes.

7. Section 2 is the definition section. Sub-section (2) defines an "employee" to mean any person who is employed for hire or reward to do any

work, skilled or unskilled, manual or clerical, in an establishment. "Employer" is defined in Sub-section (3) to mean any person who employs either

directly or through another person either on behalf of himself or any other person, one or more employees in an establishment, and includes certain

other persons not necessary to mention for the purpose of the present discussion. Then comes the definition of "establishment" in Sub-section (4)

and that sub-section as amended defines an "establishment" as follow :

(4) "establishment" means

(i) a factory;

(ii) a tramway or motor omnibus service; and

(iii) any establishment including a society registered under the societies Registration Act, 1860, and a charitable or other trust, whether registered

under the Bombay public Trusts Act, 1950, or not, which carries on any business or trade or any work in connexion with or ancillary thereto and

which employs or on any working day during the preceding twelve months employed more than fifty persons,

but does not include an establishment (not being a factory) of the central or any state Government; "".

8. The only difference in the unamended definition was that the works ""not being a factory"" were not present then. Sub-section (10) defines

unpaid accumulations"" and the definition as amended runs in the following terms :

(10) ""Unpaid accumulations"" means all payments due to the employees but not made to them within a period of three years from the date on

which they became due whether before or after the commencement of this Act including the wages, and gratuity legally payable but not including

the amount of contribution if any, paid by an employer to a provident fund established under the Employees' Provident Funds Act, 1952.

9. Section 3 which is the next important section is retrospectively amended and the amended section in its material part provides as follows :

3. (1) The State Government shall constitute a fund called the Labour Welfare Fund and notwithstanding anything contained in any other law, for

the time being in force, the sums specified in Sub-section (2) shall, subject to the provisions of Sub-section (4) and S. 6A, be paid into the fund.

(2) the fund shall consist of -

* * *

(b) all unpaid accumulations;

* * *

(3) The sums specified in Sub-section (2) shall be collected by such agencies and in such manner and the accounts of the fund shall be maintained

and audited in such manner as may be prescribed.

(4) Notwithstanding anything contained in any law for the time being in force or any contract or instrument, all unpaid accumulations shall be

collected by such agencies and in such manner as may be prescribed and be paid in the first instance to the board which shall keep a separate

account there for until claims thereto have been decided in the manner provided in S. 6A.

10. Section 6A is a new section introduced retrospectively in the Act and since considerable argument has turned on its provisions, it would be

desirable to set it out in extenso. The section declares :

6A. (1) All unpaid accumulations shall be deemed be abandoned property.

(2) Any unpaid accumulations paid to the board in accordance with the provisions of S. 3 shall, on such payment, discharge an employer of the

liability to make payment to an employee in respect thereof, but to the extent only of the amount paid to the board; and the liability to make

payment to the employee to the extent aforesaid shall, subject to the succeeding provisions of this section, be deemed to be transferred to the

board.

(3) As soon as possible after any unpaid accumulations is paid to the board under Sub-section (4) of S. 3 the board shall, by a public notice, call

upon interested employees to submit to the board their claims for any payment due to them.

(4) such public notice shall contain such particulars as may be prescribed and it shall be -

(a) affixed on the notice-board, or in its absence, of each conspicuous part of the premises, of each establishment in which the unpaid

accumulations were earned,

(b) published in the official gazette, and

(c) published in any two newspaper in the language commonly understood in the area in which such establishment is situated, and circulating therein

or in such other manner as may be prescribed. regard being had to the amount of claim.

(5) After the notice is first affixed and published under Sub-section (4) it shall be again affixed and published from time to time for a period of three

years from the date on which it was first affixed and published, in the manner provided in that sub-section in the months of June and December

each year.

(6) A certificate of the board to the effect that the provisions of sub-secs. (4) and (5) were complied with shall be conclusive evidence thereof.

(7) Any claim received, whether in answer to the notices or otherwise within a period of four years from the date of the first publication of the

notice in respect of such claim, shall be transferred by the board to the authority appointed under S. 15 of the Payment of wages Act, 1936, having

jurisdiction in the area in which the factory or establishment is situated, and the authority shall proceed to adjudicate upon, and decide, such claim.

In hearing such claim, the authority shall have the powers conferred by, and shall follow the procedure (in so far as it is applicable) followed in giving effect to the provisions of, that Act.

(8) If, in deciding any claim under Sub-section (7), the authority allows the whole or part of such claim, it shall declare that the unpaid

accumulations in relation to which the claim is made shall, to the extent to which the claim is allowed, cease to be abandoned property and shall

order the board to pay to the claimant the amount of the claim as allowed by it; and the board shall make payment accordingly :

Provided that the board shall not be liable to pay any sum in excess of that paid under Sub-section (4) of S. 3 to the board as unpaid

accumulations, in respect of the claim.

(9) An appeal shall lie in the city of Ahmedabad to the Court of Small Causes and elsewhere to the District Court against a decision under Sub-

section (7) rejecting any claim or part thereof, if made within a period of sixty days from the date of such decision.

(10) The board shall comply with any order made in appeal.

(11) The decision of the authority, subject to an appeal as aforesaid, and the decision in appeal of the Court of Small Causes, or as the case may

be, the District Court shall be final and conclusive as to the right to receive payment, the liability of board to pay and also as to the amount, if any.

(12) If no claim is made within the time specified in Sub-section (7) or a claim or a part thereof has been rejected under the foregoing provisions,

then the unpaid accumulations in respect of such claim shall accrue to and vest in the state as bona vacantia and shall thereafter without further

assurance be deemed to be transferred to, and from part of, the fund.

* * *

11. We have set out only the first twelve sub-sections of the section since Sub-section (13) did not form part of the section at the time when the

First amendment Act was enacted Section 7, Sub-section (1) provides that the fund shall vest in and be held and applied by the board as trustees

subject to the provisions and for the purposes of the Act and the moneys in the fund shall be utilized by the board to defray the cost of carrying out

measures which may be specified by the State Government from time to time to promote the welfare of labour and of their dependents. Sub-

section (2) of S. 7 specifies various measures for the benefit of employees in general on which the moneys in the fund may be expended by the

board and they include inter alia :

- (a) community and social education centres including reading room and libraries;
- (b) community necessities;
- (c) games and sports;
- (d) excursions, tours and holiday homes;
- (e) entertainment and other forms of recreations;
- (f) home industries and subsidiary occupations for women and unemployed persons;
- (g) corporate activities of a social nature;

* * *

- (i) such other subjects as would in the opinion of State Government improve the standard of living and ameliorate the social conditions of labour;

* * *

12. Section 11 provides for the appointment of an officer called the Welfare Commissioner and defines his powers and duties. Section 19 which

confers the rule-making power on the State Government has already been referred to by us and all that is necessary to mention is that Sub-section

(3) introduced in this section by way of amendment prescribes that the rules made by the State Government shall be laid for not less than thirty

days before the State Legislature. Section 22 empowers the State Government by notification in the official gazette to exempt any class of

establishment from all or any of the provisions of the Act subject to such condition as may be specified in the notification. These are the relevant

provisions of the Act as amended by the First Amendment Act which have a bearing on the determination of the questions before us.

13. On 2 August, 1962 the Welfare Commissioner appointed under S. 11 of the Act sent a notice to the petitioner inviting its attention to the fact

that the First Amendment Act had been brought into force with effect from 1 July, 1962 and as the amendment in respect of unpaid accumulations

were given retrospective effect, the petitioners should pay up the amount of unpaid accumulations held on 24 June, 1953 and during the

subsequent periods from 24 June, 1953 to 30 June, 1962. To this the petitioner

sent a reply on 24 August, 1962 impugning the validity of the First Amendment Act. The Welfare Commissioner, however, persisted in the demand made by him and the petitioner, therefore, filed the present petition on 9 October, 1962 challenging the validity of S. 3(1) in so far as it related to unpaid accumulations specified in Ss. 3(2)(b), 3(4) and 6A of the Act as amended by the First Amendment Act, on various grounds which we shall presently mention.

14. During the pendency of the petition the Gujarat Legislature passed the Bombay Labour Welfare Fund (Gujarat Amendment) Act, 1962, on 5

February, 1963 (hereinafter referred to as the second Amendment Act) introducing Sub-section (13) in S. 6A with retrospective effect from the

date of commencement of the Act. That sub-section ran as follows :

(13) Nothing in the foregoing provisions of this section shall apply to unpaid accumulations not already paid to the board,

(a) in respect of which on separate accounts have been maintained so that the unpaid claims of employees are not traceable, or

(b) which are proved to have been spent before the sixth day of December, 1961, and according such unpaid accumulations shall not be liable to

be collected and paid under Sub-section (4) of S. 3.

15. The State Government also thereafter, in exercise of its rule-making power under S. 19 amended the Bombay Labour Welfare Fund Rules,

1953, inter alia, by renaming them as the Labour Welfare Fund (Gujarat) Rules, 1962, amending rule 3 and adding a new rule 3A setting out the

particulars to be contained in the public notice issued under S. 6A(3). Though these amendments were made in the Act and the rules subsequent to

be filling of the petition, they will have to be taken into account in determining the validity of the impugned Act.

16. Sri Porus Mehta, learned advocate appearing on behalf of the petitioner, formulated the following six principal grounds of attack against S.

3(1) in so far as it related to unpaid accumulations specified in Ss. 3(2)(b), 3(4) and 6A of the Act, namely :-

(A) The impugned provisions were beyond the legislative competence of the State Legislature and were, therefore, void. There were two heads

under which this argument was formulated :

(1) The legislation was not justified by any entry in list II or list III of Sch. VII to

the Constitution but was covered by entry 97 in list I and was, therefore, outside the legislative competency of State Legislature.

(2) The legislation was extraterritorial in operation, inasmuch as it sought to take over unpaid accumulations belonging to employees who might be resident outside the State at the material time.

(B) The impugned provisions in so far as they provided that all unpaid accumulations shall vest in the State to the extent to which no claims were made by employees or claim made were rejected wholly or in part, were ultra vires Art. 296 since in respect of unpaid accumulations due to employees resident outside the State, the debts would be situated outside the State and under Art. 296 they could not be made to vest in the State as bona vacantia.

(C) the impugned provisions of the Act which was a State legislation were repugnant to S. 33C(2) of the Industrial Disputes Act, 1947, which in its amended form was introduced in the latter Act by the Industrial Disputes (Amendment) Act, 1964, a Parliamentary legislation which came into force subsequent to the enactment of the impugned provisions and the impugned provisions were, therefore, void under the proviso to Art. 254(2).

(D) The impugned provisions were violative of the fundamental right of the employer under Art. 31(2) or in any event of the fundamental right of the employee under that article.

(E) The impugned provisions infringed the fundamental right of the employer under Art. 19(1)(f) or in any event the fundamental right of the employee under that article.

(F) The impugned provisions and in any event S. 22 violated the equal protection clause contained in Art. 14.

17. The heads of objections thus formulated by Sri Porus Mehta raise constitutional questions of considerable importance and it is necessary to examine closely the argument advanced in support of each of them. We may mention here that Sri Porus Mehta also contended that in any event rules 3 and 4 of the Labour Welfare Fund (Gujarat) Rules, 1962, were void and, therefore, there was no machinery for the enforcement of the provisions of the Act but that was a subsidiary point and we shall refer to it later after we have concluded the examination of the main contentions

urged against the validity of the impugned provisions of the Act.

18. Before we proceed to examine the arguments it is necessary to analyse the relevant provisions of the Act and in order to see what is it that the

legislature has sought to do in enacting the impugned provisions. Now this can be conveniently done while dealing with the arguments advanced on

behalf of the parties in connexion with the construction of the impugned provisions. The first argument on construction related to the true

connotation of the expression ""abandoned property"" in S. 6A(1). The learned Advocate-general argued that there was a distinction between

abandoned property"" and bona vacantia and this distinction was brought out by the legislature by using one expression in S. 6A(1) and the other

expression in S. 6A(12) and he, therefore, pressed upon us not to equate abandoned property with bona vacantia. Sri Porus Mehta, however,

contended that though two different expressions were used by the legislature, there was no distinction between them, and abandoned property

within the meaning of S. 6A(1) meant nothing else but bona vacantia. He urged that by S. 6A(1) a fiction was created for regarding unpaid

accumulations as abandoned property and the character of abandoned property which attached to the unpaid accumulations continued except in

so far as it might be removed by a declaration made by the authority under S. 6A(8) on allowing the whole or part of any claim made by the

employee and if no claim was made within the time specified in S. 6A(7) or a claim made within the specified time was rejected wholly or in part,

the unpaid accumulations which continued to bear the character of abandoned property vested in the State under S. 6A(12) in exercise of its

prerogative to take over bona vacantia. We think there is considerable force in the submission put forward by Sri Porus Mehta. That there is no

distinction between abandoned property and bona vacantia in the context of a legislation such as this is clear from the judgment of the Supreme

Court in *Bombay Dyeing and Manufacturing Co. Ltd. Vs. The State of Bombay and Others*, . There the argument was that the unamended Act

was in substance one in respect of abandoned property and for that purpose the Supreme Court was called upon to examine the basic principles

underlying such a legislation. Dealing with this question, Venkatarama Ayyar, J., made the following observations which are very material :

. . . The expression "abandoned property" or to use the more familiar term bona vacantia comprises properties of two different kinds, those which

come in by escheat and those over which no one has a claim. In Halsbury's Laws of England, 3rd Edn., Vol. 7, p. 536, Para. 1152, it is stated

that

the term bona vacantia is applied to things in which no one can claim a property and includes the residuary estate of persons dying intestate.

19. There is however, this distinction between the two classes of property that while the State becomes the owner of the properties of a person

who dies intestate as his ultimate heir, it merely takes possession of property which is abandoned At common law, abandoned personal property

could not be the subject of escheat, It could only be appropriated by the sovereign as bona vacantia - vide Holdsworth's History of English Law,

2nd Edn., Vol. 7, pp. 495-496.

20. These observations clearly show that there is no real difference between abandoned property and bona vacantia. The sovereign has a

prerogative right to appropriate bona vacantia and abandoned property can be appropriated by the sovereign as bona vacantia. The unpaid

accumulations being regarded as abandoned property, the State would be entitled to take over the unpaid accumulations in virtue of its prerogative

right but, before it does so, it takes possession of the unpaid accumulations and gives an opportunity to the true owner to come forward and claim

them. If no claim is made for certain specified period or if a claim is made but is rejected wholly or in part, the State then appropriates the unpaid

accumulations. It is not as if the unpaid accumulations become bona vacantia on the expiration of the specified period. They are bona vacantia

under S. 6(1) but they are not appropriated as bona vacantia unless and until an opportunity is given to the true owner to come forward to claim

them and it is only when no claim is found that they are appropriated as bona vacantia. This view which we are taking is also in consonance with

what the Supreme Court has stated to be the basic principles underlying a legislation relating to abandoned property. A law relating to abandoned

property first makes the State the custodian of abandoned property for the benefit of the true owners and then vests the abandoned property in the

State when no claim is made with reference thereto by the true owners within a

time limited. There is another reason also which impels us to take this view and that reason springs from the alternative contention of Sri Porus Mehta, namely, that if abandoned property does not mean the same thing as bona vacantia but it means property which is actually abandoned in the sense of being relinquished or given up, the effect of the deeming provision contained in S. 6A(1) would be that the debts or claims due by the employer to the employees which represent the unpaid accumulations would be extinguished but that surely cannot be the right construction of S. 6A(1). If S. 6A(1) has the effect of extinguishing the debts or claims due by the employer to the employees by deeming them as abandoned property, there would be no need to enact the first part of S. 6A(2) providing that on payment of the amount of the unpaid accumulations to the board the employer would be discharged from his liability to the employees and moreover such an assumption would destroy the very basis on which the employer is required under S. 3(4) to make payment of the amount of the unpaid accumulation to the board.

21. The next contention relating to construction urged by the learned Advocate-General was that on a proper reading of the various provisions of the Act what were deemed to be abandoned property under S. 6A(1) were not debts or claims due from the employer to the employees and remaining unpaid for a period of three years from the date on which they became due, but the moneys in the hands of the board which were paid by the employer under S. 3(4). He urged that, on payment of the amount of the unpaid accumulations to the board under S. 3(4), the contract between the employer and the employee was impaired and the liability of the employer to make payment to the employee under the contract was discharged. No debts thereafter subsisted in favour of the employees and there was, therefore, no question of declaring the debts as abandoned property. The learned Advocate-general agreed that the board was laid under an obligation to make payment to the employees to the extent of the amount paid to the board but that was, he contended, not a transfer of the debts due from the employer to the employees but a new liability created by the statute to make payment to the employees out of the moneys in the hands of the board if the employees made their claim within a certain specified period and established it before the authority or the Appellate

Tribunal. This contention is, in our opinion, unsound and must be rejected. It is defective in that it ignores the scheme and language of the provisions enacted in the Act. Section 6A(1) declares that all unpaid accumulations shall be deemed to be abandoned property. If we refer to the definition of unpaid accumulations in S. 2(10), it is clear that they mean debts or claims due by the employer to the employees which have remained unpaid for a period of three years. As soon as debts or claims due from the employer to the employees remain unpaid for a period of three years, they come within the definition of unpaid accumulations and by force of S. 6A(1) they are deemed to be abandoned property. The fictional character of abandoned property attaches to these debts or claims as soon as they remain unpaid for a period of three years and become unpaid accumulations and it is only when these debts or claims acquire the character of unpaid accumulations that they are required to be paid to the board under S. 3(4). It is, therefore, not correct to say that it is only when the moneys are received by the board under S. 3(4) that they are deemed to be abandoned property. Since the debts or claims due by the employer to the employee and remaining unpaid for a period of three years are deemed to be abandoned property, the legislature has provided that they should be paid over to the board and on such payment the liability of the employer to make payment to the employees in respect of these debts or claims should be discharged to the extent of the amounts paid to the board and such liability should stand transferred to the board, subject of course to the provisions of Sub-secs. (3) to (13) of S. 6A. These debts or claims cannot thereafter be enforced against the employer because the employer is discharged from liability in respect thereof but they can be enforced against the board in the manner provided in the relevant sub-sections of S. 6A. There is, in our opinion, clearly a transfer of the debts or claims from the employer to the board though the transfer is subjected to the provisions of Sub-secs. (3) to (13) of S. 6A. The learned Advocate-General is right when he says that the liability of the employer is statutorily discharged but we do not agree with him that a new statutory liability in the State comes into existence which has no relation to the original debts or claims. When the employees go to the board to claim payment of the amount due to them, their claim could be founded on the

same debts or claims which were payable by the employer to them and in respect of which the employer now stands discharged under S. 6A(2).

The debts or claims which were formerly enforceable against the employer are now made enforceable against the board, because the legislature,

on the hypothesis that these debts or claims are abandoned property, has provided that these debts or claims should be paid over by the employer

to the board and these debts or claims should thereafter be investigated and paid to the employees if a claim is made within the specified period

and the claim is allowed.

22. The learned Advocate-General also contended that on a true construction of S. 2(10) read along with the other provisions of the Act, the

definition of unpaid accumulations referred only to those debts or claims which were admittedly due from the employer to the employees but which

had not been paid within a period of three years from the date on which they became due. The argument was that the words used by the legislature

were "all payments due to the employees but not made to them" and these words were appropriate to refer only to payments which were

admittedly due but not made. If the employer disputed any debts or claim alleged to be due to the employee, such debts or claim even if factually

existent would not come within the definition of unpaid accumulations. This contention sought to confine the operation of the impugned provisions

to those debts or claim which were admittedly due by the employer to the employees. We cannot accede to this contention. The construction

suggested on behalf of the state considerably restricts the scope and ambit of the operation of the impugned provisions and confines their

applicability only to debts or claims admittedly due by the employer to the employees. If any the slightest dispute is raised by the employer,

howsoever ill-founded it may be, the debt or claim so disputed would go out of scope and coverage of the impugned provisions of the Act. The

effect of such a construction would be to stultify the impugned provisions and to make the impugned provisions so truncated that they would

virtually cease to serve any useful purpose. But this consideration cannot of itself persuade us to reject the construction suggested on behalf of the

state if that construction otherwise appears to be a right construction. We must, therefore, turn to examine whether this construction is borne out by

the language of the definition clause or by anything contained in any other provisions of the Act. Now it is an elementary rule of construction that

the words used by the legislature must be construed according to their plain natural meaning and full meaning and effect must be given to them

without adding anything to them or subtracting anything from them. Applying this rule of construction, it is clear that the words used in the definition

clause refer to all payments due to the employees but not made to them and all payments due to the employees must mean each and every

payment due to the employees, whether admitted, not admitted or disputed. the word "all" is an all-embracing word intended to bring with the

compass of the definition clause each and every payment due to the employees and to read the definition clause as applying only to payments

admittedly due to the employees would be to refuse to give full effect to the word "all" and to add the word "admittedly" or the words "admitted to

be" in the definition clause after the words "all payments" and before the word "due." Even where a payment is in fact due to an employee but is not

admitted by the employer to be due and is, therefore, not made, such a case would come fairly and squarely within the language employed in the

definition clause. Having examined the language of the definition clause, let us now turn to see whether there is anything in any other provision of the

Act which requires us to confine the applicability of the definition clause to payment admittedly due to the employees. Some reliance was placed in

this connexion on S. 3(4) which says that all unpaid accumulations shall be collected by such agencies and in such manner as may be prescribed

and be paid in the first instance to the board. It was suggested that the use of the word "collected" showed that the unpaid accumulations must be

admittedly due to the employees and all that was required to be done in regard to them was to collect them from the employer. We do not think

that this reliance placed on the use of the word "collected" in S. 3(4) is well-founded. The word "collected" is a neutral and colourless word which

would apply equally to collection of payments in fact due to the employees but disputed as to collection of payment admittedly due to the

employees. If the payments are admittedly due to the employees, it would be possible to collect them straightway without any determination but if

the liability to make payments to any particular employees is disputed by the employer, such liability would have to be determined and in case it is

found to exist, the payments found due to the employees would then be collected. The power to collect conferred under S. 3(4) would carry with it by necessary implication the power to determine the existence and extent of unpaid accumulations, for such a power of determination would be necessary for the effective execution of the main power of collection. No support for the construction suggested on behalf of the state can, therefore, be derived from the language used in S. 3(4). As a matter of fact, far from there being anything in any other provision of the Act which would support the construction of the state, we find that there is ample indication in S. 6A to negative that construction. Section 6A, Sub-secs. (3) to (6), provide for public notice calling upon interested employees to submit to the board their claims for payment due to them and Sub-secs. (7) to 11 of S. 6A lay down an elaborate and careful machinery for adjudication of any claims which might be received whether in answer to the public notice or otherwise within a period of four years from the date of the first publication of the notice. When a claim is received, it is required to be transferred by the board to the authority under the payment of wages Act, 1936, having Jurisdiction in the area in which the factory or establishment is situate and the authority is required to adjudicate upon and decide such claim. Section 6A, Sub-section (7), say that in hearing such claims the authority shall have the powers conferred by and shall follow the procedure (in so far as it is applicable) followed in giving effect to the provisions of the Act. Section 15 of the Payment of Wages Act, 1936, requires that the notice of any application which may be made to the authority under that Act shall be given to the employer and the authority would, therefore, have to give notice to the employer even where a claim is transferred by the board to the authority for adjudication under S. 6A, Sub-section (7). After hearing the parties the authority may allow the whole or part of the claim or may reject the claim wholly or in part. If the claim or any part thereof is rejected by the authority, the claimant may prefer an appeal to the Court of Small Causes in the city of Ahmedabad and elsewhere to the District Court and the decision of the appellate Court would be final and the board would be bound to comply with the order made in such appeal. Now the claim which is adjudicated upon by going through this machinery is a claim in respect of unpaid accumulations paid to the board and the very provision of the machinery for adjudication

of such claim shows that the unpaid accumulations may not necessarily be admittedly due to the employees. The machinery provided in these sub-sections shows that the claim which may be made by a claimant in respect of the unpaid accumulations paid to the board may be contested by the employer and may even be rejected. If the unpaid accumulations included only payments admittedly due to the employees, there would be no point in providing all this elaborate machinery for adjudication of any claim which may be made in respect of the unpaid accumulations and there would be no occasion for the employer to contest the claim and no possibility of the claim being rejected wholly or in part. It was however pointed out by the learned Advocate-General that even where a payment might be admittedly due to an employee, a claimant who makes a claim in respect of the unpaid accumulation representing such payment may be found not entitled to it if he fails to establish his identification as such employee or his connexion as an heir of such employee if such employee is dead and in such a case the employer may successfully contest the claim of the claimant and the claim may be rejected. Now a case like this would certainly be covered by the provisions contained in various sub-sections of S. 6A, but the question is : Is this the only kind of case for which provision is made in these sub-sections ? Is the elaborate machinery of these sub-sections provided only for determination of the identity of the claimant or establishing the connexion of the claimant with the employee by way of hardship or otherwise ? We think not. If such had been the intention of the legislature, there would have been express words indicating that the jurisdiction of the authority shall be limited to the determination of the question of identity of the claimant with the employee or his estate. The words used are, however, wide enough to include the rejection of a claim on any ground including the merits of the claim. Section 6A, Sub-section (11), also throws light on this question. It says that the decision of the authority is subject to an appeal and the decision in appeal of the appellate Court shall be final and conclusive as to the right to receive payment, the liability of the board to pay and also as to the amount, if any. This sub-section clearly shows that a claim may be allowed only to the extent of a part of the amount of unpaid accumulations in respect of which the claim is made but if unpaid accumulations mean only payments admittedly due by the employer, it is difficult to see how the claim may be allowed only to the extent of

a part of the amount and rejected to the extent of the balance. Section 6A, Sub-section (12), also contemplates rejection of a part of the claim

which may be made in respect of the unpaid accumulations paid to the board. The only case which could be suggested on behalf of the State a

s a case to which these provisions could only apply on the construction canvassed on behalf of the State was one in which an employee having

died, claim for the whole of the amount of unpaid accumulations may be made by one of his many heirs. But we are not at all sure that any one heir

cannot represent the estate of the deceased employee and claim payment of the whole of the amount of unpaid accumulations which may be due to

the deceased employee. Moreover, to confine the applicability of these provisions to such solitary and rare cases where a claim may be made by

any one heir of a deceased employee leaving out the other heirs would be to refuse to give full effect to the words used in these provisions and to

read them in a very narrow and constricted sense. We cannot, therefore, accept the contention of the learned Advocate-General that unpaid

accumulations within the meaning of S. 2(10) include only such payments as are admittedly due to the employee but not made to them. They refer

to all payments which are in fact due to the employees but which have not been made to them for any reason whatever, whether it be because of

the employees have not come forward to claim them or because the employer has disputed his liability to make them.

23. Having disposed of these various points in regard to the construction of the relevant provisions of the Act, we will now proceed to consider the

various arguments against the validity of the impugned provisions of the Act.

24. Regarding ground (A). - The contention of Sri Porus Mehta under this head was that the impugned provisions embodied legislation in relation

to abandoned property or bona vacantia and since bona vacantia was not a head of legislation in any entry in list II or list III of Sch. VII to the

Constitutions, it was covered by the residuary entry 97 of list I and the legislation was, therefore, one which it was within the exclusive sphere of

the Parliament to enact and was outside the legislative competency of the State Legislature. The learned Advocate-General answered this

contention by pointing out that bona vacantia was not a separate head of legislation to be found in any of the entries in the three lists but the

legislation, though dealing with bona vacantia, had to be examined for ascertaining its true nature and character and if that was done, it was clear that in its pith and substance the legislation was on the subject of "welfare of labour" covered by entry 24 of list III and was, therefore, within the legislative power of the State Legislature. The learned Advocate General contended in the alternative that in any event even if the subject-matter of the legislation was not within the subject "welfare of labour," the legislation could yet be sustained on the ground that it reflected an exercise of legislative power on a matter ancillary or subsidiary to the primary and main power connoted by the expression "welfare of labour" and contained provisions necessarily incidental to effective legislation on the subject. These contentions raised the question as to what was the entry in the legislative lists under which the legislation really and truly fell.

25. Now it is well-established by decisions of the highest Courts that when a law is impugned as ultra vires the powers of the legislature which enacted it, what has to be ascertained is its pith and substance or its true nature and character [vide AIR 1941 47 (Federal Court) and Prafulla Kumar v. Bank of Commerce, Ltd. (74 Ind. App. 23)]. To do that, one must have regard to the enactment as an organic whole, to its objects and to the scope and effect of its provisions. If on such examination it is found that the legislation is in substance one on a matter assigned to the legislature, then it must be held to be valid in its entirety, even though it might incidentally trench on matter which are beyond its competence. And to determine whether the legislation is in substance one in respect of a subject within the legislative competence of the legislature it must be seen whether the legislation in its pith and substance falls within the express words of the entry conferring legislative power or in any event reflect an exercise of legislative power on an ancillary or subsidiary matter which can fairly and reasonably be regarded as comprehended within the subject of legislation [vide AIR 1941 16 (Federal Court) and Chaturbhai M. Patel Vs. Union of India (UOI) and Others,].

26. We must, therefore, first examine the pith and substance of the impugned provisions and to do that we must look at the impugned provisions in the context of the Act. The true nature and character of the impugned provisions must be examined on the footing that they constitute part of an

organic whole. As observed by Venkatarama Ayyar, J., in *A.S. Krishna Vs. State of Madras*, .

it would be quite an erroneous approach to the question to view such a statute not as an organic whole, but as a mere collection of sections, then

disintegrate it into parts, examine under what heads of legislation those parts would severally fall, and by that process determine what portions

therefore are intra vires, and what are not.

27. The Act must be regarded as an organic whole of which the impugned provisions constitute an integral part and in that view the question must

be judged whether the impugned of legislative power under entry 24 of list III. If we approach the problem in this manner, there is no difficulty at

all in arriving at a proper solution. The long title and the preamble of the Act show that the Act was passed with a view to constitute a fund for

financing of activities to promote welfare of labour in the State of Bombay and for conducting such activities. Section 3(1) provided for constitution

of a fund called the Bombay Labour Welfare Fund and S. 7(1) declared that the fund shall vest in and be held and applied by the board as trustees

subject to the provisions and for the purposes of the Act and moneys therein shall be utilized by the board to defray the cost of carrying out

measures which may be specified by the State Government from time to time to promote the welfare of labour and of their dependents. Section

7(2) authorized the board to utilize the moneys in the fund to defray expenditure on various measures conducive to welfare of labour. But there

could be no fund without moneys and moneys had, therefore, to be found for the fund. To achieve this purpose the legislature first directed its

attention to fines realized from the employees and provided that they shall constitute one of the items going to make up the fund. Then the

legislature found that there were unpaid accumulations which having regard to the fact that they had not been claimed by the employees for a

period of three years could be regarded as abandoned property liable to be taken over by the State in the exercise of its prerogative and the

legislature, therefore, decided to take over the unpaid accumulations and make them a constituent part of the fund. The legislature, for the purpose

of taking over the unpaid accumulations which in its view were abandoned property liable to be taken over by the State, enacted the impugned

provisions providing in the first instance for taking possession of unpaid accumulations and after claims are invited and investigated, for eventual vesting of unpaid accumulations in the State. The impugned provisions by a fiction declared unpaid accumulations to be abandoned property and prescribe the machinery and procedure to be followed before the State can appropriate unpaid accumulations as bona vacantia for the purpose of financing the fund. The impugned provisions thus provide for the taking over of unpaid accumulations which are regarded by the legislature as abandoned property (after following the machinery or procedure set out in those provisions) and such taking over is directed for providing moneys for the fund which is constituted for carrying out various measures and activities for welfare of labour and their dependents. The Act is primarily and principally a legislation for welfare of labour. It provides for constitution of a fund which is to be expanded for welfare of labour. Out of several items which would go to make up the fund, one of the items consists of unpaid accumulations which the legislature regards as abandoned property liable to be taken over by the State in exercise of its prerogative and how that abandoned property should be taken over by the State, in what manner and after following what machinery or procedure is dealt with in the impugned provisions. The impugned provisions, therefore, clearly contain ancillary or incidental legislation in aid of the main topic of legislation, namely, welfare of labour. It may also be noted that unpaid accumulations in regard to which provision is made in the impugned provisions are debts or claims due by the employer to the employees which have not been claimed by the employees for a period of three years and if the legislature enacts a legislation for the purpose of preventing unjust enrichment of the employer which would certainly result from non-interference by the State at least in those cases where the employees do not come forward to claim the unpaid accumulations and providing for giving of an opportunity to employees to come forward and make a claim in respect of the unpaid accumulations and if they do not come forward to make a claim, then taking over of the unpaid accumulations for the purpose of employing them for the benefit of labour generally, it is difficult to content, that such legislation is not incidental or ancillary to the subject of welfare of labour. Looking broadly, the substance of the legislation is that the unpaid accumulations which belong to the employees but which

are not claimed by them over a period of years despite an opportunity given to them to make a claim should be taken over by the State and utilized

for the benefit of the workers as a class. This legislation is, in our opinion, clearly justified by the doctrine of incidental or ancillary legislation and

must be held to be within the legislative competency of the State Legislature under entry 24 of list III.

28. Before we part with this point we must refer to a decision of the Supreme Court cited by Sri Porus Mehta in support of his contention. That

decision is *The Rajahmundry Electric Supply Corporation Ltd. Vs. The State of Andhra*, . In that case the vires of the Madras Electricity Supply

Undertakings (Acquisition) Act, 1949, was challenged on the ground that the State Legislature had no legislative competency to enact it. The

question, therefore, arose under what entry in the legislative lists the legislation could properly be regarded as falling. On an examination of the long

title, the preamble and the sections of the Act, the Supreme Court held that the Act was in pith and substance nothing but an Act to provide

acquisition of electrical undertakings. Now S. 299(2) of the Government of India Act, 1935, contemplated a law authorizing compulsory

acquisition of land as also a law authorising compulsory acquisition of a commercial or industrial undertaking. Section 100 read with entry 9 in list

II authorized the Provincial legislature to make a law relating to compulsory acquisition of land, but there was no entry in any of the three lists

relating to compulsory acquisition of any commercial or industrial undertaking. The Supreme Court, therefore, held that neither the Federal

Legislature nor the Provincial Legislature had the power to enact a law with respect to compulsory acquisition of a commercial or industrial

undertaking unless the Governor-General in his individual discretion acting under S. 104 empowered either of the legislatures to enact such law. Sri

Porus Mehta sought to draw support from this decision on an analogy. He contended that just it was held in this decision that acquisition of land

being specifically enumerated as an item in one of the legislative lists, acquisition of a commercial or industrial undertaking was also to be regarded

as a separate topic of legislation, so also in the present case ""treasure prove,"" which is only a species of bona vacantia, being specifically

enumerated as an item in entry 44 of list II, the other species of bona vacantia must be regarded as a separate topic of legislation and since bona

vacantia was not to be found enumerated in list II or list III, it fell within entry 97 of list I. This contention, as we have pointed out, is based on an analogy drawn from the decision of the Supreme Court and, apart from the fact that in constitutional matters it is most unsafe to decide one case by drawing an analogy from another, we find that the analogy is wholly unjustified. In the Supreme Court case S. 299(2) clearly contemplated a law authorizing compulsory acquisition of land and also a law authorizing a compulsory acquisition of a commercial or industrial undertaking and though compulsory acquisition of land was specifically enumerated as an item in entry 9 of list II, compulsory acquisition of a commercial or industrial undertaking was not enumerated in any of the entries in the three lists. It was in this context that the Supreme Court took the view that a law relating to compulsory acquisition of a commercial or industrial undertaking cannot be made either by the Federal Legislature or by the Provincial Legislature unless power to do so was conferred by the Governor-General under S. 104. Here there is nothing in Art. 296 which contemplates any law relating to bona vacantia as such. All that this article says is that bona vacantia which is situated in a state shall vest in the State and otherwise it shall vest in the Union. It is no doubt true that treasure trove is provided as a separated topic of legislation, but that may be because by its very nature some legislation in regard to that topic might be necessary - as a matter of fact there was on the statute book at the time of the framing of the Constitution the Indian Treasure Trove Act, 1878 - but merely from the existence of that topic in the State list, it cannot be inferred that bona vacantia as such constitutes a separate topic of legislation which must find a place in one of the entries in the three legislative lists. But even if it does, that would make no difference, for, as discussed above, the impugned provisions in their pith and substance constitute ancillary or subsidiary legislation, namely, welfare of labour, and would, therefore, be justifiable under entry 24 of list III, notwithstanding that they might also incidentally trench on the other topic of legislation, namely, bona vacantia. Sri Porus Mehta also cited before us the decisions of the Supreme Court in Diamond Sugar Mills Ltd. and Another Vs. The State of Uttar Pradesh and Another, for the proposition that in construing the entries in the legislative lists we must not extend the limits of the powers of the legislature by way of interpretation by stretching the meaning of the words beyond

their reasonable connotation. This proposition is of course unexceptionable but we do not think that by holding the legislation to be justified by

entry 24 in list III we are stretching the meaning of the words "'welfare of labour'" beyond their reasonable connotation. We must therefore negative

the challenge based on the ground of want of legislative competence.

29. Regarding ground (A)(2). - The next ground of attack against the constitutionality of the legislation was that it was extra-territorial in operation

and was, therefore, beyond the legislative competence of the State Legislature. Now it is indisputable, and indeed it was not disputed on behalf of

the State, that if the law was extra-territorial in operation, it would have to be struck down, but the State contended that such was not the position.

The argument in favour of extra-territoriality was that the legislation, in so far as it took over and vested in the State unpaid accumulations due to

employees who might be resident outside the State, affected the contractual as well as property rights of such employees and had, therefore, extra-

territorial operation. It was also urged that in case of such employees the unpaid accumulations which were nothing else but debts were situated

outside the State and since the law operated on these debts, it was extra-territorial in operation. This contention is, in our opinion, entirely without

force. It is now well-settled that to determine whether a law is extra-territorial the doctrine of territorial nexus must be applied. It must be seen

whether the statute has selected some fact or circumstance which provides some real relation or connexion with the territory in respect of which the

legislature is entitled to legislate and has adopted this as the ground of its interference. If the legislation satisfies this test, its validity would not be

open to question. This doctrine which has commonly come to be known as nexus theory has been applied in support of tax legislation in several

cases in Australia as well as in England and an admirable statement of it is to be found in the following passage from the dissenting judgment of

Rich, J., in *Broken Hill South, Ltd. v. Commissioner of Taxation (N.S.W.)* [(1937) 56 C.L.R. 337 at 361] :

I do not deny that once any connexion with New South Wales appears, the legislature of that State may make that connexion the occasion or

subject of the imposition of a liability. But the connexion with New South Wales must be a real one and the liability sought to be imposed must be

pertinent to that connexion.

30. The nexus theory was first applied in this country to support income tax legislation in AIR 1944 51 (Federal Court) (1948) 16 ITR 240 (Privy

Council) and (1949) 17 ITR 63 (Federal Court) . The Supreme Court extended it to sales-tax legislation in Poppatlal Shah Vs. The State of

Madras, and in The State of Bombay Vs. R.M.D. Chamarbaugwala, which was a case concerned with tax on crossword competition, the

Supreme Court applied it to legislation imposing tax on gambling. The principles underlying the nexus theory were explained by the Supreme

Court in the last-mentioned case at p. 711 in the following words :

The doctrine of territorial nexus is well-established and there is no dispute as to the principles. As enunciated by learned counsel for the

petitioners, if there is a territorial nexus between the person sought to be charged and the State seeking to tax him, the taxing statute may be

upheld. Sufficiency of the territorial connexion involves a consideration of two elements, namely :

(a) the connexion must be real and not illusory, and

(b) the liability sought to be imposed must be pertinent to that connexion.

It is conceded that it is of no importance on the question of validity that the liability imposed is or may be altogether disproportionate to the

territorial connexion. In other words, if the connexion is sufficient in the sense mentioned above, the extent of such connexion affects merely the

policy and not the validity of the legislation.

31. These principles were once again affirmed by the Supreme Court in Tata Iron and Steel Company v. Bihar State [A.I.R. 1958 S.C. 452] and

sales-tax legislation of the Bihar State was tested and justified by reference to these principles. Of course it is true that in this case the Supreme

Court observed :

It is not necessary for us on this occasion to lay down any broad proposition as to whether the theory of nexus, as a principle of legislation, is

applicable to all kinds of legislation.

32. But in the subsequent case of The State of Bihar and Others Vs. Charusila Dasi, which was a case dealing with legislation in regard to public

religious and charitable institutions situate in the State of Bihar, any part of the

property of which was situate within the State, the Supreme Court once again adopted the same principles and applied the nexus theory to repel the argument that the law was extra-territorial in operation. The Supreme Court held that the religious endowment being in Bihar and the trustees functioning there, there was sufficient territorial nexus to validate the legislation. It would thus be seen that the theory of nexus as a principle of legislation must now be held to be applicable to all kinds of legislation and the challenge to the constitutionality of the legislation must be tested by reference to this principle.

33. Applying this principle let us examine whether there is any connexion between the legislation and the territories subject to the jurisdiction of the State Legislature and whether such connexion is real or illusory. Now there can be no doubt that there is a connexion and the connexion is ample and very real. The establishments on which the legislation operates are situate within the State and, therefore, obviously the contracts of employment between the employers and the employees giving rise to unpaid accumulations would be made within the State and would also be performed within the State. The unpaid accumulations would be earned by the employees within the State and as we shall presently show, the situs of the unpaid accumulations would also be within the State. These facts, in our opinion, constitute sufficient territorial nexus to entitle the State Legislature to make the impugned law providing for taking over the vesting of unpaid accumulations as bona vacantia even in cases where the employees to whom the unpaid accumulations are due may be resident outside the State at the relevant time. These facts provide a real connexion with the territories of the State over which the State legislature is entitled to legislate and if that connexion is made the occasion for interference by the State Legislature, the legislation cannot be regarded as extra-territorial in operation. This contention of Sri Porus Mehta must, therefore, be rejected.

34. Regarding ground (B). - The argument under this head was that S. 6A was in conflict with Art. 296 in as much as it provided for the vesting of the unpaid accumulations as bona vacantia in the State of Gujarat in all cases including those where the employees entitled to the unpaid accumulations might be resident outside the State. Since this argument was

based on Art. 296, it would be convenient to reproduce here the relevant portion of that article in so far as it has bearing on the question before is. Clause (1) of Art. 296 provided that :

296. Subject as hereinafter provided, any property in the territory of India, which, if this Constitution had not come into operation, would have accrued to His Majesty or, as the case may be, to the Ruler of an Indian State by escheat or lapse, or as bona vacantia for want of a rightful owner, shall, if the property situate in a State, vest in such State, and shall, in any other case, vest in the Union :

* * *

35. The contention based on this provision was a twofold one. In the first place, it was urged that unpaid accumulations being debts or, to use the language of the English law, choses in action, were intangible property and had, therefore, no local situation and could not be said to be "situate in any State," because they were not situate anywhere and hence they vested in the Union of India. Even if debts could have a local situation, it was contended in the alternative, the unpaid accumulations in so far as they were due to employees resident outside the State at the material time, were situate outside the State and could not, therefore, vest in the State as bona vacantia. On both these grounds it was urged that S. 6A was ultra vires Art. 296. On these contentions the question that arises is whether debts are capable of a local situation and if they are, what rule should govern their situation.

36. It is true that incorporeal property has not the attributes of place and substance like a chattel which you can handle and move from one place to other and cannot, therefore, be physically situate anywhere. But debts so, in one form or other, represent property of very considerable value in the modern world and for legal purposes it is not only desirable but also necessary that every property must be assumed to have a local situation even if it is necessary to invest it with local situation by means of a legal fiction. Indeed the task of discovering *secundum fictionem legis* a local situation for an intangible legal conception has long been a familiar one. One example is that of finding a resident for a company. A company is a separate legal entity apart from its members : it cannot eat or sleep - common tests of residence in human beings and yet the Court have found no

difficulty in attributing residence to it and ascertaining its locality. Even in case of debts locality has been attributing for several centuries for

purposes of jurisdiction in the administration of estates. That for purposes of probate and estate duty a simple contract debt is assumed to be

situated where the debtor resides is established by a long series of authorities that stretch by far back into the mists of antiquity. It is not necessary

to refer to the early cases laying down this proposition, but it will be sufficient if we mention only one of the later cases, namely, the case of Royal

Trust Company v. Attorney General for Alberta [1930 A.C. 144] where Lord Merriwell, delivering the opinion of the board, used these words :

The local situation proper to be attributed to the various assets of a deceased person has long been governed under our law by rules, no doubt

somewhat artificial in character, which were evolved when the lawful jurisdiction to direct the administration of such assets dependent upon the

locality in which the assets were found. Many of the Courts concerned had authority within small provincial areas only. A simple contract debt due

from a debtor resident outside the jurisdiction within which the testator resided was not assets within that jurisdiction

and the learned Lord might well have added, as observed by Lord Buckmaster in English, Scottish and Australian Bank, Ltd. v. Commissioners of

Inland Revenue [1932 A.C. 238] ""but within the jurisdiction where the debtor resided."" In cases of wills also gifts of property situate in a particular

place have been held to include simple contract debts due from debtors there resident. These cases clearly recognize that a debt may be localized

somewhere and if debts can have a local situation for purposes of probate and estate duty, there is no reason why it should be regarded as

impossible to attribute local situation to them for other purposes. In Muller & Co.'s Margarine case [1901 A.C. 217] the question arose whether

the goodwill of a German business was locally situate outside the United Kingdom so as to be within the exception mentioned in S. 59(1) of the

Stamp Act, 1891. The Crown advanced the argument that goodwill was incorporeal and could not be situate anywhere. This argument was

rejected by the majority of the House of Lords. Dealing with this argument, Lord Macnaughten said :

I am disposed to agree with an observation thrown out in the course of the argument, that it is not easy to form a conception of property having no

local situation

and Lord Lindlay said :

The legal conception of property appears to me to involve the legal conception of existence somewhere. Incorporeal property has no existence in nature and has, physically speaking, no locality at all. We, however, are dealing not with anything which in fact fills a portion of space, but with a legal conceptions, or in other words, with rights regarded as property. But to talk of property as existing nowhere is to use language which to me is unintelligible.

37. Thus the view expressed was that goodwill though incorporeal could be given a definite locality. The House of Lords also held in the

subsequent case of *English, Scottish and Australian Bank, Ltd. v. Commissioner of Inland Revenue* [1932 A.C. 238] (vide supra) that debts have

a local situation also for the purpose of stamp duty. The principle was extended further by Maugham, J., in *In re Russian Bank for Foreign Trade*

[1933 Ch. 945], where the question was whether the decrees passed by the Soviet Government could have the effect of extinguishing or

transferring to the Soviet Government a certain debt due by a Russian bank to the petitioner. The learned Judge held that a debt must be deemed to

have a local situation and if the debt was situate locally in England, the Soviet decrees could not, according to English law, have the effect of

extinguishing the debt or transferring it to the Soviet Republic. The view taken was that a foreign law cannot discharge a debt locally situate in

England and locality was attributed to a debt for the purpose of determining the applicable law. The same view was taken also by Vaisey, J., in *Re*

Banque De Moscou v. Liquidator [(1952) 1 All E.R. 1209]. We must, therefore, inevitably reach the conclusion that a debt though intangible

property must be regarded like any other property as having a situs or local situation for all purposes including the purpose of Art. 296.

38. The language of Art. 296 also supports this conclusion. The article talks of property in the territory of India and that would mean property

situate within the territory of India and declares that if bona vacantia, the property shall, if situate in a State, vest in such State and in any other case

vest in the Union. If debts are not capable of having a local situation, the result would be that they would go out of the scope and ambit of Art. 296

altogether which surely could not have been intended by the Constitution-makers. Debts in the modern world form a very considerable item of

property and it could not have been intended that they should not be subject to the paramount right of the State or the Union. Debts, being a

species of property, must be held to be within the operation of Art. 296 and if that be so, it is clear that debts must have a local situation.

39. Sri Porus Mehta, in this connexion, placed strong reliance on the decision of the Supreme Court in *The Delhi Cloth and General Mills Co. Ltd.*

Vs. Harnam Singh and Others, . He referred us to the following passage from the judgment of Bose, J., namely :

That a debt is property is, we think, clear. It is a chose in action and is heritable and assignable and it is treated as property in India under the

Transfer of property Act which calls it an "actionable claim" : Ss. 3 and 130. But to give it position in space is not easy, because it is intangible and

so cannot have location except notionally and in order to give it notional position rules have to be framed along arbitrary lines.

40. Now it is undoubtedly true, and that is what we have also pointed above, that since a debt is intangible property, to give it position in space is

not easy and it cannot, therefore, have a location except notionally but for legal purposes notional location has to be given and in fact the law has in

diverse situations not failed in adapting itself to the need to attribute a local situation to a debt. This decision merely points out difficulty of

attributing a situs or locality to a debt and it does not say that a debt cannot be given a local situation.

41. Once it is established that a debt may have a local situation the rules of law by reference to which such situation is to be determined are settled

beyond question. So far back as the reign of Elizabeth in *Byron v. Byron* [a Cro. Eliz. 472], Anderson, J., is reported as saying :

The debt is where the bond is, being upon a speciality; but debt upon a contract follows the person of the debtor; and this difference has been

oftentimes agreed.

42. The earlier cases were of course concerned with the locality of the debt for the purpose of ascertaining whether it was covered by a probate

granted by an ordinary (sic) with a limited local jurisdiction, but the rule has been recognized and applied uniformly in a variety of circumstances

and it may be stated to be that a simple contract debt is situate within the area of the local jurisdiction within which the debtor for the time being

resides. The rule is formulated by Dicey in his Conflict of Laws, 7th Edn., at p. 504, in the following words :

The debt ... is situate in any country where the debtor resides, for it is only in such a place that the creditor can normally enforce payment.

43. Sri Porus Mehta on behalf of the petitioner laid considerable stress on the last few words in Dicey's Statement of the law which furnished the

reason for the rule and contended that that reason itself made the rule inapplicable in the present case and fixed the situs of the debt at the place

where the employee resides, for it is part of the common law applicable in India that the debtor must find the creditor and the debt can, therefore,

always be recovered at the place where the creditor resided. Now it is undoubtedly true that the rule of common law is that the debtor must follow

the creditor and pay him his debt but that rule does not make the place of residence of the creditor and place where the creditor can normally

enforce payment. It may be that by reason of that rule the debtor may be liable to be sued at the place of residence of the creditor under the CPC

or the relevant provision of the Letters Patent but the place where the creditor can normally enforce payment of the debt is the place where the

debtor resides and that is the locality of the debt. The law may now be taken to be well-settled that the test of the situation of a simple contract

debt is to be found in the place of the residence of the debtor and it is immaterial where the debt is payable either under the terms of the contract

or under the general law. That this is the legal position is abundantly clear from the following passage from the unreported judgment of Romer, L.J.,

in *Deutsche Bank and Disconto Gesellschaft v. Banque des Marchands de Moscou* quoted in extenso by Roxburgh, J., in *Re Banque des*

Marchands de Moscou [(1954) 1 W.L.R. 1108 1114] :

As has often been pointed out, a chose in action has not in strictness any locality. But where, as in the present case, a simple contract debt has to

be treated as having some locality, it is deemed by English law to be situated in the place where the debtor resides. The reason for assigning this

locality to a simple contract debt was that the place where the debtor resides was in nearly every case the place where it was recoverable. Even in

earlier times, it might, of course, occasionally have happened that judgment could be obtained against a debtor in a country where he did not

reside. But it was probably thought desirable for sake of uniformity to adopt in all cases the test of residence rather than the test of recoverability.

However, whatever the reason may have been, the rule was laid down, as I have stated it in *Attorney-General v. Bouwens* [(1838) 4 M. & W.

171], and was recognized by this Court as still being the rule in the case of *New York Life Insurance Company v. Public Trustee* [(1924) 2 Ch.

101]. The difficulty in that case was that a corporation, unlike an individual, can be residing in two places at one and the same time, a possibility not

within the contemplation of the authors of the rule, and it became necessary to consider which of the two residences of the insurance company,

London or New York, was to be taken as determining the locality of the debt due from it. As the debt in question was, in terms of the contract

creating it, payable in this country, and in addition was recoverable here, its locality was held to be English.

44. These last observations show that a debt cannot be said to be situate at a place where the debtor does not reside merely because the debt may

be payable at that place. It is only when the debtor resides at more places than one at one and the same time the question where the debt is

payable becomes material to the question of situs and of the two places, that where the debt is payable determines the situs of the debt. This view

expressed by the Court of Appeal has been followed by Roxburgh, J., in *Re Banque des Marchands de Moscou* [(1954) 1 W.L.R. 1108] (vide

supra) and by Upjohn, J., in *In re Claim by Helbert Wagg & Co., Ltd.* [(1956) Ch. 323] and it has been quoted with approval by Dicey in his

Conflict of Laws, 7th Edn., at p. 504, and by Cheshire in his *Private International Law* at p. 457 of the edition. These principles, it is undoubtedly

true or evolved to determine the question of situs for the purpose of resolving disputes in Private International Law but they are equally applicable

in determination of situs for the purpose of Art. 296. These principles are not based on any reasons peculiar to Private International Law. They had

to be evolved because according to Private International Law as applied in English Courts the *lex situs* governed the discharge of the debts and

situs was, therefore, required to be determined for the purpose of ascertaining the applicable law and they must, therefore, equally apply whenever

it becomes necessary to determine the situs of a debt. As a matter of fact, these rules were applied to determine the situs of a debt for the purpose

of grant of probate and administration when the power to make the grant was vested in different ecclesiastical bodies having jurisdiction over

different areas within the realm in England and we find that even in Canada these principles have been applied to determine the situs of a debt for

the purpose of ascertaining whether the legislation of any particular State within Canada operates on the debt. [See *The King v. National Trust*

Company - (1933) 4 D.L.R. 465.]

45. Applying these principles in the present case it is clear that since the Act applies only to establishments within the State the debtor-employer

would always be resident within the State and the situs of the debt would also, therefore, be within the State in all cases and if the debt becomes

bona vacantia it would vest in the State under Art. 296. Section 6A cannot, therefore, be attacked as violative of Art. 296.

46. Regarding ground (C). - It was next contended that S. 6A of the impugned Act which was a State enactment was repugnant to S. 33C(2)

which in its amended form was introduced in the Industrial Disputes Act, 1947, by the Industrial Disputes (Amendment) Act, 1964, a

Parliamentary enactment, with effect from 9 December, 1964 and that S. 6A of the impugned Act was by reason of Art. 254(2) void and in any

event must be regarded as impliedly repealed by the Parliamentary enactment contained in the Industrial Disputes (Amendment) Act, 1964. This

contention calls for an examination of the provisions of Art. 254. That article consists of two clauses. Clause (1) lay down the general rule, while

Clause (2) makes an exception to that general rule and the proviso qualifies the exception. The argument in this case was based on the proviso to

Clause (2) and we will, therefore, confine ourselves only to that clause for the purpose of the present discussion. Under that clause, if a law made

by the legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions

of an earlier law made by Parliament or an existing law with respect to that matter, then the law so made by the legislature of the State must prevail

in that State, if it has been reserved for the consideration of the President and has received his assent. But even in such a case the Parliament may

subsequently enact a law with respect to the same matter adding to, amending, varying or repealing the law so made by the State Legislature. If

there is express repeal, there is no difficulty : in such a case no more is necessary than to expound the words of the Parliamentary enactment

according to their plain natural meaning. But express repeal is by its very nature not very common and the question which, therefore, almost always

arises in case of this kind is whether there is any repugnancy between the State Legislation and the Parliamentary Legislation. If there is, the State

legislation would be void to the extent of the repugnancy or in any event would be liable to be regarded as repealed by necessary implication. It,

therefore, becomes necessary to consider what is the exact connotation of the term "repugnancy."

47. Now one cardinal rule that must be remembered while examining the concept of repugnancy is that formulated by N. H. Bhagwati, J., in Ch.

Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others, where the learned Judge observed :

Repugnancy falls to be considered when the law made by Parliament and the law made by the State Legislature occupy the same field because, if

both these pieces of legislation deal with separate and distinct matter though of a cognate and allied character, repugnancy does not arise.

48. The first inquiry which must, therefore, be made when a State Legislation is claimed to be repugnant to Parliamentary legislation is whether the

two pieces of legislation occupy the same field, that is, deal with the same matter or whether they deal with separate and distinct matters. If the

latter is the true answer to the inquiry, there would be no question of repugnancy unless of course there be a direct conflict between particular

provisions of the two statutes. It is only in the former case that the question arises whether one statute is repugnant to the other. Now in such a

case how is repugnancy to be ascertained ? Nicholas in his Australian Constitution, 2nd Edn., p. 303, refers to three tests of inconsistency or

repugnancy, namely :

(1) there may be inconsistency in the actual terms of the competing statutes - R. v. Brisbane Licensing Court [(1920) 28 C.L.R. 23];

(2) though there may be no direct conflict, State law may be inoperative because the Commonwealth law, or the award of the Commonwealth

Court, is intended to be a complete exhaustive code - Clyde Engineering Company, Ltd. v. Cowburn [(1926) 37 C.L.R. 466]; and

(3) even in the absence of intention, a conflict may arise when both State and Commonwealth seek to exercise their powers over the same subject-

matter - Victoria v. Commonwealth [(1937) 58 C.L.R. 618] Wenn v. Attorney-General [(Vict.) (1948) C.L.R. 84)] :

49. The Supreme Court in Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others, accepted these tests as useful guides to

determine the question of repugnancy and these tests were also approved by Subba Rao, J., speaking on behalf of the majority Judges in Deep

Chand Vs. The State of Uttar Pradesh and Others, . It may be noted that direct conflict between two laws is not an essential element of

repugnancy. Even where there is no apparent conflict, the two laws may yet be inconsistent. ""It is now established"" observed Evalt, J., in Stock

Motor Plough, Ltd. v. Forsyth [(1932) 48 C.L.R. 128] :

that State and Federal laws may be inconsistent although obedience to both laws is possible. There may even be inconsistency although each law

imposes the very same duty of obedience. These conclusions have, in the main, been reached, by ascribing "inconsistency" to a State law, not

because the Federal law directly invalidates or conflicts with it but because the Federal law is said to "cover the field".

50. If a competent legislature with superior efficacy expressly or implicitly evinces by its legislation an intention to cover the whole field, the

enactment of the State would be overborne on the ground of repugnance. In such a case the inconsistency is demonstrated not by a detailed

comparison of the provisions of the two statutes but by the mere existence of the two pieces of legislation. The reason behind this rule is explained

by Dixon, J., in Ex parte McLean [(1930) 43 C.L.R. 472 483] to be that by prescribing the rule of conduct to be observed in regard to a

particular subject the paramount legislature shows an intention to cover the subject-matter and provide what the law upon it shall be and once the

paramount legislature has expressed by its enactment, completely, exhaustively, or exclusively, what shall be the law governing the particular

conduct or matter to which its attention is directed. It is inconsistent with such enactment for the law of a State to govern the same conduct or

matter. These then are the principles which govern the determination of the question whether S. 6A of the impugned Act is repugnant to S. 33C(2)

of the Industrial Disputes Act, 1947, as Substituted by the Industrial Disputes (Amendment) Act, 1964.

51. The first question that must arise in the application of these principles is whether there is any direct conflict between the provisions of S. 6A of

the impugned Act and S. 33C(2) of the Industrial Disputes Act, 1947. Section 33C(2) runs as follows :

33C(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of

money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question

may, subject to any rules that may be made under this Act, be decided by such labour court as may be specified in this behalf by the appropriate

Government.

52. The argument on behalf of the petitioner was that there was direct conflict between the provisions of Ss. 6A and 33C(2) in that while S.

33C(2) provided that where any employee was entitled to receive from the employer - and employer included his assigns and also consequently

the board which was a statutory assign of the employer - any money, the employee could make an application to the labour court for payment of

the amount due to him free from the bar of limitation, under S. 6A the employee was bound to make a claim before the board within a period of

four years from the date of first publication of the notice and if he failed to do so, his debt was completely extinguished. This argument was based

on the premise that the word ""employer"" in S. 33C(2) included his assigns and the board was a statutory assign of the employer covered by the

extended meaning of ""employer."" The validity of this premise was disputed by the learned Advocate-General on behalf of the State. He urged that

the word ""employer"" in S. 33C(2) did not include the assigns of the employer and in support of this contention he pointed out that where the

legislature wanted to include assigns, the legislature expressly stated so as in S. 33C(2) and since there was no express reference made to assigns

in S. 33C(2) the assigns of the employer were not within the coverage of that section. It is not necessary for the purpose of the present petition to

decide this question, for even if "employer" includes assigns, we are of the view that the board would not be included within the terms of the section. There is certainly, as we have pointed out above, a statutory assignment of the debt from the employer to the board under S. 6A(2) and board is therefore a statutory assign of the employer but the statutory assignment is subject to the provisions of Sub-secs. (3) to (13) of S. 6A and it is accordingly a condition of the statutory assignment that the employee shall be entitled to recover the amount of his claim only in the manner provided in these sub-sections and if he fails to do so, his debt shall be extinguished. The applicability of S. 33C(2) is thus excluded by the very conditions subject to which the statutory assignment is made in favour of the board. Section 33C(2) cannot, therefore, apply in such a case and there can be no question of any direct conflict between the provisions of Ss. 6A and 33C(2).

53. The question then arises whether Ss. 6A and 33C(2) can be said to operate on the same field. The answer is clearly "no." The field occupied by S. 6A is taking over of unpaid accumulations which are regarded by the legislature as abandoned property and transferring them to the board and as part of the machinery in connexion with the taking over of unpaid accumulations, the legislature has provided for inviting and adjudication of claims by employees. Section 6A does not deal with regulation of relations between employer and employee or enforcement of their mutual rights and obligations and is not intended to provide a remedy to an employee to enforce his claim against the employer. Section 33C(2), on the other hand, occurs in a statute which is made under entry 22 of list III and deals with settlement of industrial and labour disputes and provides a machinery for enforcement of rights of the employees against the employer. Section 33C(2) in terms enacts a remedy which can be pursued by an employee who wants to enforce his claim against the employer. It would thus be seen that the two pieces of legislation deal entirely with distinct and separate matters and do not occupy the same field. There is, therefore, no scope for the application of the doctrine of repugnancy and the contention of Sri Porus Mehta in this behalf must be rejected.

54. Regarding ground (D). - That takes us to the next question, namely, whether the impugned provisions are violative of Art. 31(2). The argument

of Sri Porus Mehta under this head was that the impugned provisions provided for transfer of moneys belonging to the employer to the board without payment of any compensation and they were, therefore, violative of Art. 31(2). He drew our attention to S. 4, S. 5, Sub-section (2), S. 7, Sub-section (1), (3) and (4) and Ss. 8, 10, 11, 12, 15, 16 and 18 that the board was a corporation solely controlled by the State and that the transfer of moneys belonging to the employer to the board fell within Art. 31(2A) and since transfer was without payment of compensation, the impugned provisions providing for such transfer were hit by Art. 31(2). Now there can be no doubt that the board is a corporation controlled by the State and the moneys belonging to the employer are, as a result of the impugned provisions, ultimately transferred to the board. But from that it does not necessarily follow that the impugned provisions would be violative of Art. 31(2). It would still have to be considered whether the impugned provisions otherwise fall within the terms of that article. Now on this point a twofold answer was given on behalf of the State to the contention of the petitioner. The learned Advocate-General first contended that this was not a law providing for compulsory acquisition of property belonging to the employer and the law was, therefore, not required to meet the challenge of Art. 31(2). He also urged in the alternative that in any event money is not property for the purpose of Art. 31(2) and that the impugned provisions, inasmuch as they operated on money, were, therefore, not within the prohibition of that article. Both the answers given by the learned Advocate-General are, in our opinion, well-founded for reasons which we shall immediately proceed to state.

55. It is now well-settled vide the decision of the Supreme Court in *Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman*

Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others, that when an enactment

is impugned on the ground that it is unconstitutional, what is to be ascertained is the true character of the legislation and for that purpose regard

must be had to the enactment as a whole, to its objects, purpose and true intention and to the scope and effect of its provisions or what they are

directed against and what they aim at. Let us, therefore, examine the impugned provisions and see what is the object of the enactment of the

impugned provisions, what is their purpose and true intention and what is it that they seek to achieve. Now it is clear that, so far as the employer is

concerned, all that the impugned provisions do is to require him to pay to the board the amount of unpaid accumulations and on such payment

discharge the employer from his liability to the employee in respect of the unpaid accumulations and statutorily transfer such liability to the board

subject to the provisions of Sub-secs. (3) to (13) of S. 6A. What, therefore, really takes place is if one may use the language of the law of the

contract, a sort of a statutory novatio, the debts due to the employees being transferred from the employer to the board on the employer making

payment of the amount of the debts to the board. It is difficult to see how a provision bringing about a statutory novatio can be regarded as a law

for compulsory acquisition of money belonging to the employer. Of course, as observed in *Bombay Dyeing and Manufacturing Co. Ltd. Vs. The*

State of Bombay and Others, money is property and a person who has money does not cease to be its owner merely by reason of the fact that

he owes debts on satisfaction of which it may have to be applied for until the creditor takes appropriate proceedings under the law for the

realization of his debt and the title of the debtor is extinguished in those proceedings, the title to the property continues in the debtor. But if by any

provision money is taken from the debtor in discharge of the debt owed by him, then such statutory provision cannot be regarded as a law

providing for compulsory acquisition of money. The impugned provisions were therefore not within the inhibition of Art. 31(2).

56. The next question is whether money is property for the purpose of Art. 31(2) and a law providing for transfer of money from the owner to the

State can be said to fall within the prohibition of that article. There is considerable authority in the United States that the power of eminent domain

does not extend to the taking of money, the reason being that the compensation in respect of money can only be money and that, therefore, in

substance would be forced loan and no public purpose could possibly be served by such taking. Sri Porus Mehta, however, contended that the

principles of American law should not be applied in the interpretation of the provisions of our Constitution and if Art. 31(2) be construed on its

own terms, there was no reason to exclude the applicability of the article to taking of money. Now, whatever be the merits or infirmities of this

contention, it is not open to us to examine its correctness for we find that there is an expression of opinion by at least three Judges of the Supreme Court in *State of Bihar v. Rameshwar Singh* [1952 S.C.R. 889] which concluded the determination of the Question against the petitioner. In that case the constitutional validity of the Bihar Land Reforms Act, 1950, was challenged on various grounds which included lack of legislative competence and violation of Arts. 14, 19 and 13. The petitions which were originally filed in the High Court of Patna were dismissed and appeals were thereupon preferred to the Supreme Court. During the pendency of the appeals the Constitution (First Amendment) Act, 1951, was passed by the provisional Parliament inserting the new Arts. 31A and 31B and in view of the enactment of these article the validity of the impugned Act could no longer be challenged on the ground of alleged infringement of any of the rights conferred by Part III of the Constitution. The learned counsel appearing on behalf of the appellants, therefore, confined his attack only to the ground based on want of legislative competence. He contended that the impugned enactment was made under entry 36 of list II which related to acquisition or requisitioning of property and since the existence of a public purpose and an obligation to pay compensation were the necessary concomitants of compulsory acquisition of private property, the term "acquisition" in that entry must be construed as importing, by necessary implication, these two conditions. The argument was that neither of these two conditions was satisfied by the impugned Act and the impugned Act was, therefore, beyond the legislative competence of the State Legislature. This was the board attack against the constitutional validity of the entire impugned Act. But special arguments were also advanced in regard to S. 4(b) of the impugned Act which provided that all arrears period prior to the date of the vesting of the estates in Government shall vest and be recoverable by the State. The contention relating to this provision was that arrears of rent being choses in action could not form the subject-matter of acquisition since no public purpose would be served by such acquisition and the provision was, therefore, beyond the legislative competence of the State Legislature in so far as it purported to legislate under entry 36 of list II. Patanjali Sastri, C.J., and S. R. Das, J., did not express any view on the question whether money could form the subject-matter of acquisition under entry 36 of list II but they

held that choses in action could certainly be acquired under a law made under that entry. The other three learned Judges, namely, Mahajan,

Mukherjee and Chandrasekhara Ayyar, JJ., however, held that neither money nor choses in action could form the subject-matter of acquisition

under entry 36 of list II. This view of the majority Judges, conceded Sri Porus Mehta, appeared at first sight to be adverse to his contention but he

urged that in fact it was entry 36 of list II and must, therefore, be confined to that entry and cannot govern the interpretation of Art. 31(2). In order

to appreciate this contention it is necessary to examine a little closely the reason which impelled the majority Judges to take this view. Mahajan, J.,

said, following the American view :

Money, or that which in ordinary use passes as such, and which the Government may reach by taxation, and also rights in action which can only

be available when made to produce money, cannot be taken

under the power of compulsory acquisition for two reasons, namely :

(1) taking of money under the rights of eminent domain when it must be compensated in money afterwards would be nothing more or less than a

forced loan; and

(2) Such taking would be only for the purpose of adding to the revenues of the State and that would not be a public purpose.

57. Mukherjee, J., also accepted the American view that money as such and rights in action cannot be seized and appropriated under the right of

eminent domain and gave the same reasons in support of that view, namely,

(1) that there could be no possible necessity for taking either of them under the power of eminent domain, and

(2) that "taking money under the right of eminent domain when it must be compensated by money afterwards could be nothing more or less than a

forced loan and it is difficult to say that it comes under the head of acquisition or requisitioning of the property as described in entry 36 of list II and

is embraced within its ordinary connotation.

58. Chandrasekhara Ayyar, J., too agreed with this view but he held money and choses in action to be exempted from compulsory acquisition on

the ground that, generally speaking, there could be no public purpose in their acquisition and existence of a public purpose was an essential

condition of the power of compulsory acquisition. It would thus be seen that though these learned Judges were concerned only with the

interpretation of the legislative entry, namely, ""acquisition of property,"" for the purpose of ascertaining whether S. 4(b) was ultra vires the power of

the legislature under that entry, the reasons which prevailed with them for excluding money and actionable claim from the scope and purview of the

legislative power of compulsory acquisition were based on the necessity of existence of a public purpose and the obligation to pay compensation

which are expressly provided for in Art. 31(2) as the necessary concomitants of the power of compulsory acquisition reasons would, therefore, be

equally applicable in the determination of the scope and ambit of acquisition referred to in Art. 31(2). The legislative power to make a law

providing for acquisition of property was provided for in entry 36 of list II at the time when the impugned Act was enacted by the Bihar

Legislature, but subsequently the Parliament deleted entry 36 of list II and instead conferred legislative power to make a law providing for

acquisition of property under entry 42 of list III. We are, therefore, concerned here not with entry 36 of list II but with entry 42 of list III. But the

legal position in regard to the relation between Art. 31(2) and the relevant entry in regard to acquisition of property remains unchanged. The

position seems to be that the legislative power to make a law providing for acquisition of property is to be found in entry 42 of list III and the

limitations or restriction on the exercise of that power are to be found in Art. 31(2). The scope and content of ""acquisition"" in Art. 31(2) is

therefore the same as in entry 42 of list III and if money and choses in action cannot form the subject-matter of acquisition under entry 42 of list III,

equally they would not fall within the prohibition of Art. 31(2).

59. It is, therefore, clear that the employer cannot complain of any violation of his fundamental right under Art. 31(2) since what is taken away

from him is money belonging to him and money is not property for the purpose of Art. 31(2) and equally it must follow that the impugned

provisions cannot be attacked as violative of the fundamental right of the employees under Art. 31(2), since what are taken away from them as a

result of the operation of the impugned provisions are their actionable claims and actionable claims do not come within the prohibition of Art.

31(2). The challenge based on the violation of Art. 31(2) must, therefore, fail.

60. Regarding ground (E). - The next contention urged by Sri Porus Mehta on behalf of the petitioner was that the impugned provisions violated

the fundamental rights of the employer and the employee under Art. 19(1)(f). We will first consider the question as to whether the impugned

provisions infringe the fundamental right of the employee under Art. 19(1)(f) since the question of violation of the fundamental right of the employer

under Art. 19(1)(f) involves a consideration of the larger question as to how far an employer who is a non-citizen is entitled to challenge the vires of

a statute which is unconstitutional as violating the fundamental right of a citizen employer. The argument in regard to the violation of the fundamental

right of the employee under Art. 19(1)(f) was that the impugned provisions had the effect of expropriating the debt to which the employee was

entitled and which the employee could recover at any time under S. 33C(2) of the Industrial Disputes Act, 1947, and this constituted an

unreasonable restriction on the right of the employee to acquire, hold and dispose of property guaranteed under Art. 19(1)(f). Now there is no

doubt that but for the impugned provisions the employee could enforce his debt against the employer without any limitation of time and that as a

result of the operation of the impugned provisions he was required to make a claim before the board within a period of four years from the date of

first publication of the notice under S. 6A, Sub-section (3), and if he failed to do so, his debt was extinguished. The effect of the impugned

provisions on the right of the employee thus was not only to introduce a period limitation but also to extinguish the right on the expiration of such

period of limitation. Now it is well-settled that even total prohibition or extinction is included within the connotation of the expression "restrictions

in Art. 19(5) [see *Mangalbai v. State* - (1964) 5 G.L.R. 329] and the impugned provisions must, therefore, undoubtedly be held to impose

restrictions on the fundamental right of the employee to acquire, hold and dispose of his debt under Art. 19(1)(f). But the question is whether the

restrictions can be said to be reasonable, for if the restrictions are reasonable in public interest, the impugned provisions would be saved under Art.

19(5).

61. The test of reasonable restrictions which can be imposed on the fundamental

right guaranteed under Art. 19(1)(f) has by now been the subject-matter of several decisions of the Supreme Court, but still the most classic statement of it is to be found in the following passage from the judgment of Patanjali Sastri, C.J., in *State of Madras Vs. V.G. Row*, where the learned Chief Justice observed :

This Court had occasion in *Dr. N.B. Khare Vs. The State of Delhi*, to define the scope of the judicial review under Clause (5) of Art. 19 where

the phrase "imposing reasonable restrictions on the exercise of the right" also occurs and four 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 authorized. 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.

62. This criterion was approved in *The State of West Bengal Vs. Subodh Gopal Bose and Others*, where S. R. Das, J., as he then was, further

expressed his opinion that the fact of the statute being given retrospective operation may also be properly taken into consideration in determining

the reasonableness of the restrictions imposed in the interest of the general public. This being the test of reasonableness laid down by the Supreme

Court, let us examine whether the impugned provisions satisfy this test in so far as they affect the right of the employee.

63. There were five grounds on which, it was contended by Sri Porus Mehta, the restrictions imposed by the impugned provisions were

unreasonable. The first ground was that by reason of the impugned provisions the board, a less solvent debtor, was substituted in place of the

employer, a more solvent debtor without the consent of the employee. It is difficult to understand the logic of this argument. In the first place, there is nothing to show that the employer would continue to be sufficiently solvent to meet his liability to the employee whenever the employee might come forward to claim the amount due to him. Secondly, there is no question of substitution of a less solvent debtor in place of the employer. The liability would be transferred to the board only to the extent of the amount of the unpaid accumulations paid to the board and the board would, therefore, always be able to discharge the liability transferred to it. It was then contended and that was the second ground that under the impugned provisions the employee was required to go to the board and make a claim which would be adjudicated upon before he could get payment though the claim might be one which might not be disputed by the employer and in respect of which he would have got payment from the employer without going through the process of adjudication if the impugned legislation had not intervened and this, in the submission of the petitioner, was an unreasonable imposition. We do not agree. A provision which recognizes the debt of the employee and provides for its payment but insists on the debt being properly established before a judicial authority before it can be paid cannot be regarded as unreasonable. The next ground was that the fact that retrospective operation was given to the impugned provisions was a factor introducing an element of unreasonableness in the restrictions. Now it is undoubtedly true, as held by the Supreme Court in *The State of West Bengal Vs. Subodh Gopal Bose and Others*, and *Express Newspapers, Ltd. v. Union of India* [1961 - I L.L.J. 339 at 388] that the fact that a statute is given retrospective operation is certainly a relevant factor but it does not per se make the restrictions imposed by the statute unreasonable. [See *Raghubar Dayal Jai Prakash Vs. The Union of India* (UOI) and *Others*, .] So we must examine in each case whether and to what extent the restrictions are made more excessive by the legislation being given retrospective operation and if we do that in the present case, it is clear that giving of retrospective operation to the impugned provisions does not impose any greater restriction. If the employee has already recovered his debt from the employer prior to the coming into force of the First Amendment Act, there would be no unpaid accumulations in respect of such debt. But if he has not, then it is immaterial whether such debt

acquired the character of unpaid accumulations at the date of the coming into force of the original unamended Act or subsequently because in any

case it would constitute unpaid accumulations at the date of the coming into force of the First Amendment Act. This ground also, therefore, in our

opinion, does not make the restriction unreasonable.

64. That takes us to the last two grounds urged on behalf of the petitioner. One of these grounds was that the notice provided by the impugned

provisions for inviting claims from the employees was inadequate and unreasonable; inasmuch as the only notice provided was a public notice and

not a personal notice to the employees even though the permanent addresses of the employees might be known to the board. Now let us see what

is the provision made in Section 6A in regard to notice. Sub-section (3) requires the board by a public notice to call upon interested employees to

submit to the board their claims for any amount due to them. What the particulars of the public notice shall be is to be prescribed by rules made by

the State Government u/s 19 and we have rule 3A prescribing such particulars. The public notice containing these particulars is required under

Sub-section (4) to be fixed on the notice-board, or in its absence on a conspicuous part of the premises, of each establishment in which the unpaid

accumulations were earned, published in the official gazette, and published in any two newspapers in the language commonly understood in the

area in which the establishment is situate and circulating therein or in such other manner as may be prescribed, regard being had to the amount of

claim. There is no the manner prescribed by the rules and the manner that is required to be followed is, therefore, the manner set out in Sub-section

(4). Then there is provision in Sub-section (5) for repeated affixation and publication of the public notice at the end of every six months for a

period of three years and under Sub-section (7) the employee is required to make a claim within a period of four years from the date of the first

publication of the notice. It will, therefore, be seen that there is no provision for personal notice being given to the employees and the question is

whether the absence of requirement of such personal notice has the effect of making the restrictions unreasonable. The learned Advocate General

contended that the publication of the notice provided for in the section was adequate. The public notice was first required to be affixed on the

notice-board, or on a conspicuous part of the premises of the establishment. If, therefore, the employee goes to the establishment for the purpose

of enforcing his debt against the employer, he would come to know that his debt is transferred and that he is now required to make a claim before

the board. If there is a union of employees in the establishment, the union would also come to know about the public notice seeing it on the notice-

board or on some conspicuous part of the premises and it is reasonable to assume that the union would inform the concerned employee about it.

The publication in the official gazette would of course be a formality but the learned Advocate-General relied strongly on the publication of the

notice in two newspapers in the language commonly understood in the area in which the establishment is situate and circulating in it. He urged that

employees who are working in an establishment would ordinarily be drawn from the surrounding areas and, therefore, if a notice is published in any

two newspapers in the language commonly understood in that area and circulating therein, it would normally be likely to reach the employee

concerned. This way broadly the ground on which the learned Advocate-General contended that the public notice was sufficient and that it was not

necessary to give any personal notice. We find ourselves unable to accept this contention. It must be remembered that what is sought be done by

the impugned provisions is to take away the unpaid accumulations belonging to the employee. Under S. 33C(2) the employee has a right to

proceed against the employer at any time free from the bar of limitation and when not only his remedy but also his right is sought to be taken away,

it is but fair and reasonable that he should have personal notice before his contractual and property rights are extinguished. It is a matter of

common knowledge of that the employees in this country are by far and large illiterate and unable to read or write and publication of notice in

newspapers would not be very likely to reach them in a considerable number of cases. The labour in this part of the country is also migratory and

there is a considerable section of labour which is drawn from outside the State. Even if there is publication of notice in any two newspapers in the

language commonly understood in the area in which the establishment is situate and circulated therein, such notice may not, and in a large number

of cases would not, reach the employees who have left the employer and gone to other areas within the State for employment or gone back to their

permanent homes. Even affixation of the notice on the notice-board or on a conspicuous part of the premises does not help, for the employees, who have left the employment and not gone to the employer for a period of three years, would not be likely to go to the establishment on their own for the purpose of demanding their dues. The union of employees, if there is one, would certainly come to know about the notice, but if the employees have already left the establishment, it is extremely unlikely that the union would go to the length of contacting the employees who are no longer members of the union and help them to receive the amounts due to them. It must, in this connexion, be remembered that unpaid accumulations include not only wages but also bonus and it is not infrequent that awards in regard to bonus for a particular year are made a considerable length of time after the expiration of the year. Even awards in regard to wages and dearness allowance are often given retrospective effect. In these cases the employees might have left the service of the employer at the time when the awards are made and yet they would be entitled to wages and bonus under the awards for the period during which they were in service. Very often the employees having left the service of the employer would not know about the amounts thus due to them and they would, therefore, have no occasion to go to the establishment where they can see the notice on the notice-board. The publication of the notice in the manner provided in the section can, therefore, hardly be regarded as reasonable. Of course, if the permanent address of the employees were not known and consequently it was not possible to effect personal service of the notice on them, it would have been possible to say that the provision in regard to publication of notice contained in the section was reasonable, for in that event that could have been the only mode of the publication of the notice to the employees which could have been adopted. But it is clear from rule 22 and form C which every employer of an establishment is required to maintain under that rule that the employer would know the permanent address of the employees and he must communicate such permanent address to the Welfare Commissioner in the return submitted by him under the rule. The permanent address of the employees would, therefore, necessarily be available to the board and yet we do not find any provision made in the section for giving personal notice to the employees. Having regard to the fact that the labour is illiterate,

migratory and drawn from outside the State, the publication of the notice in the manner suggested in the section would be merely a pretence or an eyewash, for the notice would not ordinarily reach the employees and the debts of the employees would be lost very often without their knowing that the debts were due to them and they were entitled to claim such debts. If personal notice were provided, the employees would come to know about their claims and approach the board for payment of the amounts due to them and if, in spite of such notice, the employees do not come forward to make a claim, it would be perfectly reasonable for the State to appropriate the unpaid accumulations in respect of such claims as bona vacantia. We are, therefore, of the view that the impugned provisions impose unreasonable restrictions on the right of the employee to acquire, hold and dispose of the debt due to him.

65. The last ground was that the period of seven years provided for vesting of unpaid accumulations in the State as bona vacantia was unreasonable and that this also added to the unreasonableness of the restrictions. Now it must be remembered that the whole basis of this legislation providing for taking over of unpaid accumulations as abandoned property is that unpaid accumulations are deemed to be abandoned property at the expiration of the period of three years from the date on which they become due. Since according to the legislature unpaid accumulations are deemed to be abandoned property, provision is made for taking possession of them, investigation of claims in respect of them and ultimate vesting of them in the State. Now, as observed by the Supreme Court in Bombay Dyeing case [1958 - I L.L.J. 778] (vide supra), the period of three years for raising a presumption of abandoned property cannot be regarded as at all reasonable and the impugned provisions enacted on the basis of such presumption must be held to be unreasonable. The learned Advocate-General contended that even if the period of three years provided for raising a presumption of abandoned property might be unreasonable which of course he disputed, the raising of the presumption did not affect the right of the employee, for the employee was given an opportunity to rebut the presumption by making and establishing his claim in the manner prescribed by the section and it was only at the end of a further period of four years that the right of the

employee was extinguished - if he failed to make a claim or having made a claim failed to establish it. What, therefore, hurt the employees, argued

the learned Advocate-General, was not the raising of the presumption in regard to abandoned property but the vesting in the State and that vesting

took place after a period of seven years which was a reasonable period. This contention, in our opinion, overlooks the scheme of the section. As

we have pointed out, the first step in the scheme and its entire basis in the presumption that unpaid accumulations remaining unpaid for a period of

three years shall be deemed to be abandoned property. The whole object of a legislation dealing with abandoned property is to take possession of

the property when it can properly be regarded as abandoned and then to give an opportunity to the true owner to claim it and to appropriate it

only if the true owner is not forthcoming. If that is done, the true owner cannot, thereafter, claim that his right in respect of the property is violated.

The impugned provisions purport to be such legislation dealing with unpaid accumulations on the basis that having remained unpaid for a period of

three years they are deemed to be abandoned property. Now a presumption that a property is abandoned property can certainly be raised by the

legislature for the purpose of dealing with it when there is substantial ground for believing that the property is abandoned. But the period of three

years can hardly be regarded as adequate for the purpose of raising such a presumption in regard to unpaid accumulations and the Supreme Court

also said the same thing in Bombay Dyeing case [1958 - I L.L.J. 778] (vide supra) and that being the position, the entire superstructure of the

impugned provisions based on the raising of such presumption must be regarded as unreasonable and the impugned provisions must be held as

imposing unreasonable restrictions on the right of the employee. As a matter of fact, we find that even in S. 244B of the Indian Companies Act,

1913, and S. 555 of the Companies Act, 1956, a period of fifteen years is provided to shareholders to claim payment of the amount of dividend or

return of capital due to them before the moneys are paid over into the public revenues of the Union and this period of fifteen years is provided for

shareholders who would in all probability be literate and educated. Even in the American cases which were referred in the course of the arguments,

namely, Anderson National Bank v. Lockett [88 L. Ed. 692] and Connecticut Mutual Life Insurance Company v. Moore [92 L. Ed. 863], the

presumption of abandoned property was raised, in one case after a period of inactivity of ten years for demand deposits and 25 years for

nondemand deposits and the other case after a period of seven years from the date of maturing of endowment policies and after the presumption

was raised and the State took over the amounts of deposits or policies a claim could be made by the owner in one case at any time before judicial

determination of abandoned property and within a period of five years after such judicial determination and in the other case at any point of time.

We are of course not basing our judgment on the analogy of these decisions, but these decisions are certainly helpful in determining the question of

reasonableness. We, therefore, reach the conclusion that the impugned provision imposed unreasonable restrictions on the fundamental right of the

employee under Art. 19(1)(f) and are, accordingly void.

66. That takes us to the next question, namely, whether the impugned provisions are also ultra vires of the fundamental right of the employer under

Art. 19(1)(f). In the present case the petitioner being a company is a non-citizen and cannot, therefore, have any fundamental right under Art.

19(1)(f) and consequently the petitioner cannot complain of any violation of its fundamental right under that article. The petitioner, however,

contended that the impugned provisions violated the fundamental right of a citizen employer under Art. 19(1)(f) and were, therefore, void and could

not accordingly be enforced against the petitioner. Now it is well-settled that in a petition under Art. 226 it is not necessary that the petitioner

should seek to enforce his own fundamental rights. It is sufficient for him to show that he is hurt by the provisions of statute which is unconstitutional

and he can establish the unconstitutionality of the statute by showing that it conflicts with the fundamental rights of another. That this is the correct

legal position is clear from the decision of the Supreme Court in *Dwarkadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co.*

Ltd. and Others, . In that case a preference shareholder challenged the constitutionality of the Sholapur Spinning and Weaving Company

(Emergency Provisions) Ordinance, 1950, on the ground that it violated the fundamental rights of the Sholapur Spinning and Weaving Company,

Ltd., under Art. 31(2), and the majority Judges of the Supreme Court held that the shareholder was entitled to do so, since the provisions of the

Act were sought to be enforced against him and he could resist the enforcement of those provisions by showing that the Act was unconstitutional.

It would, therefore, be open to the petitioner in the present petition to contend that the impugned provisions, though not violative of its own

fundamental rights, infringe the fundamental rights of a citizen-employer and are, therefore, void.

67. Now, even if the impugned provisions are violative of the fundamental rights of a citizen-employer under Art. 19(1)(f), the question arises :

What is the effect of such violation ? Does it render the impugned provisions wholly void or does it make them void only qua citizen-employers ?

The determination of this question depends on the true interpretation of Art. 13(2). Article 13(2) is in the following terms :

The State shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause

shall, to the extent of the contravention, be void.

68. Speaking of this article, Mahajan, J., delivering the majority judgment in *Behram Khurshed Pesikaka Vs. The State of Bombay*, , said :

A mere reference to the provisions of Art. 13(2) and Arts. 245 and 246 is sufficient to indicate that there is no competency in Parliament or a

State Legislature to make a law which comes into conflict with Part III of the Constitution after the coming into force of the constitution.

69. The learned Chief Justice then quoted Art. 13(2) and proceeded to observe what in his opinion was the true meaning and effect of that article :

This is a clear and unequivocal mandate of the fundamental law prohibiting the State from making any laws which come into conflict with Part III

of the Constitution.

70. The learned Chief Justice equated unconstitutionality brought about by lack of legislative power with unconstitutionality brought about by

reason of abridgment of fundamental rights and observed :

Both these declarations of unconstitutionality go to the root of the power itself and there is no real distinction between them. They represent but

two aspects of want to legislative power.

71. The true meaning and effect of Art. 13(2) also came to be considered by the Supreme Court in *Deep Chand Vs. The State of Uttar Pradesh*

and Others, and in that case the majority Judges once again affirmed that the

limitations imposed by Part III on legislative power are on the same level as lack of legislative competence under the distribution of powers contained in Sch. VII to the Constitution and pointed out the distinction between Arts. 13(2) and 13(1) in the following words which clearly show that Art. 13(2) curtails the power of the State by imposing a prohibition on the State from making any law which takes away or abridges any fundamental rights guaranteed under Part III of the Constitution :

Parliament and the legislatures of States have power to make laws in respect of any of the matters enumerated in the relevant lists in Sch. VII and that power to make laws is subject to the provisions of the Constitution including Art. 13, i.e., the power is made subject to the limitations imposed by Part III of the Constitution. The general power to that extent is limited. A legislature, therefore, has no power to make any law in derogation of the injunction contained in Art. 13. Article 13(1) deals with laws in force in the territory of India before the commencement of the Constitution and such laws, in so far as they are inconsistent with the provisions of Part III, shall, to the extent of such inconsistency, be void. The clause, therefore, recognizes the validity of the pre-constitutional laws and only declares that the said laws would be void thereafter to the extent of their inconsistency with Part III; whereas Clause (2) of that article imposes a prohibition on the State making laws taking away or abridging the rights conferred by Part III and declares that laws made in contravention of this clause shall, to the extent of the contravention, be void. There is a clear distinction between the two clauses. Under Clause (1), a pre-constitutional law subsists except to the extent of its inconsistency with the provisions of Part III. Whereas no post-constitution law can be made contravening the provisions of Part III, and therefore the law to that extent, though made, is a nullity from its inception ...

72. The same question once again came up for determination before the Supreme Court in Mahendra Lal Jaini Vs. The State of Uttar Pradesh and

Others, . Explaining the scope and ambit of Art. 13(2), Wanchoo, J., delivering the judgment of the Court, said :

Article 13(2), on the other hand, begins with an injunction to the State not to make a law which takes away or abridges the rights conferred by

Part III. There is thus a constitutional prohibition to the State against making

laws taking away or abridging fundamental rights. The legislative power of Parliament and the legislatures of States under Art. 245 is subject to the other provisions of the Constitution and therefore subject to Art. 13(2), which specifically prohibits the State from making any law taking away or abridging the fundamental rights. Therefore, it seems to us that the prohibition contained in Art. 13(2) makes the State as much incompetent to make a law taking away or abridging the fundamental rights as it would be where law is made against the distribution of powers contained in Sch. VII to the Constitution between Parliament and the legislature of a State.

Further, Art. 13(2) provides that the law shall be void to the extent of contravention. Now contravention in the context takes place only once when the law is made, for the contravention is of the prohibition to make any law which takes away or abridges the fundamental rights. There is no question of the contravention of Art. 13(2) being continuing matter. Therefore, where there is a question of a post-Constitution law, there is a prohibition against the State from taking away or abridging fundamental rights and there is a further provision that if the prohibition is contravened, the law shall be void to the extent of the contravention. In view of this clear provision, it must be held that unlike a law covered by Art. 13(1) which was valid when made, the law made in contravention of the prohibition contained in Art. 13(2) is a still-born law either wholly or partially depending upon the extent of the contravention. Such a law is dead from the beginning and there can be no question of its revival under the doctrine of eclipse ... Article 13(2) consists of two parts : the first part imposes an inhibition on the power of the State to make a law contravening fundamental rights, and the second part, which is merely a consequential one, mentions the effect of the breach ...

73. These observations clearly shows that Art. 13(2) contains an injunction to the State not to make a law which takes away or abridges the fundamental rights and there is thus a constitutional prohibition to the State against making such law. This constitutional prohibition makes the State as much incompetent to make a law taking away or abridging the fundamental rights as it would be where the law is made against the distribution of powers contained in Sch. VII to the Constitution. If, therefore, the impugned provisions have the effect of taking away or abridging the fundamental

right of a citizen-employer under Art. 19(1)(f), the impugned provisions would be beyond the competence of the legislature and having been enacted by a legislature which was not competent to enact the same, they would be void. Now it was not disputed on behalf of the State that the impugned provisions would certainly be void but the contention was that they would be void only to the extent to which they contravened the fundamental rights, and since the contravention was only of the fundamental right of the citizen-employer under Art. 19(1)(f), they would be void only as against the citizen-employer. This contention is, however, unsound in that it fails to give due effect to the first part of Art. 13(2) which imposes an inhibition on the power of the State to make a law contravening fundamental rights. If the impugned provisions contravene the fundamental right of the citizen-employer under Art. 19(1)(f), they cannot be made at all by the State, there being total lack of competence on the part of the State to enact them and they must, therefore, be regarded as wholly void. Of course, the words "to the extent of the contravention" are there in Art. 13(2) and they must be given effect. But the effect which can properly be given to them consistency with the first part of the article is that where there is contravention, not the whole law but only such part of the law as contravenes would be void. The words "to the extent of the contravention" are intended to save so much of the law as does not contravene the fundamental rights. Only that part of the law in the making of which the State has contravened the prohibition against infringement of fundamental rights is declared to be void and that must be held to be wholly void as enacted by a legislature having no legislative power to enact the same and not relatively void qua citizens only to stress the argument in the form of an interrogation : how can it have any force or validity qua non-citizens when the constitutional mandates says that it shall not be made by the State at all ? This is the only way in which effect can be given to the words used in the second part of the article without in any way cutting down the full force of the inhibition contained in the first part. This view as to the interpretation of the words "to the extent of the contravention" has considerable support from the observations of Wanchoo, J., in Mahendra Lal case [A.I.R. 1963 S.C. 1019] (vide supra). It was contended in that case that these words mean "so long as the contravention continues" and, therefore, as soon as the contravention ceases to exist by reason of an

amendment of the Constitution, the law must be held to revive and it should not be necessary to re-enact it. Dealing with this argument, the

Supreme Court had occasion to consider the true meaning and connotation of the words ""to the extent of the contravention"" and this is what

Wanchoo, J., said in that connexion :

. . . Obviously, the Constitution-makers, when they used the words "to the extent of in both clauses, intended that the pre-existing law or the post-

Constitution law should only be void as far as the inconsistency or the contravention went, i.e., if only a part of the law was inconsistent or

contravened the constitutional prohibition, that part alone would be void and not the entire law. The obvious intention behind the use of the words

"to the extent of" was to save such parts of law as were not inconsistent with or in making which the State did not contravene the prohibition

against infringement of fundamental rights and the distinctions may conceivably introduce considerations of severability; it has, in our opinion, no

reference to the time for which the voidness is to continue ... We cannot, therefore, accept the contention that the words "to the extent of" import

any idea of time. In our opinion, they may import the idea that the law may be void either wholly or in part and that only such portions will be void

as are inconsistent with Part III or have contravened Part III and no more.

74. It is, therefore, clear that if the impugned provision infringe the fundamental right of the citizen-employer under Art. 19(1)(f), so much of the

impugned provisions as contravene that fundamental right would be void and it would not be correct to say that they would be void only qua citizen

employers and would have life and force qua non-citizen-employers. The effect of taking this view would certainly be that even non-citizen-

employers would be entitled to contend that the impugned provisions are void, though they have no fundamental right under Art. 19(1)(f) but that

result would be brought about not by the interpretation which we are putting upon Art. 13(2) but by reason of the fact that the legislature in

enacting the legislation has chosen to make it generally applicable to citizen and non-citizens alike.

75. We must, therefore, proceed to consider as to whether the impugned provisions are wholly or in part violative of the fundamental right of the

citizen-employer under Art. 19(1)(f). Now the position in regard to the employer

is that, if the employee does not come at all to claim payment of the amount due to him, the employer would be entitled to retain the moneys with him and would have the use of the moneys. Even if the employee comes to make a claim which, having regard to the terms of S. 33C(2), he may do at any time, the employer would have the use of the moneys until such time. But now at the expiration of the period of three years the moneys of the employer are taken possession of from him on the strength of a presumption of abandoned property in regard to unpaid accumulations, a presumption which, as we have pointed out above, is unreasonable and unjustified. The employer is thus deprived of his moneys on the expiration of a period of three years from the date on which the unpaid accumulations become due to the employees. Of course, the employer does get a discharge from his liability to the employees, but that does not necessarily make the deprivation of the moneys of the employer reasonable, for, as we have pointed out above, the employee might not come at all and even if he comes, he might come at any time after the expiration of the period of three years and the employer would have the use of the moneys till then. The board is undoubtedly liable to make payment of the amount due to the employee out of the moneys paid to the board by the employer if the claim is made by the employee within a period of four years, but until the employee makes the claim and the claim is allowed, the board would have the use of the moneys and the employer would be deprived of the use of the moneys for that period. Moreover, if the claim in respect of unpaid accumulations is rejected wholly or in part, the unpaid accumulations to the extent of the claim rejected vest in the State. The result of this provision is that, even if the claim of the employee is rejected on merits and it is found that there is no debt or claim due to the employee, the amount paid to the board in respect of such claim is not returned to the employer but becomes vested in the State. This would clearly be deprivation of the employer of his moneys without payment of compensation. Furthermore, S. 3, Sub-section (4), provides that all unpaid accumulations shall be collected by such agencies and in such manner as may be prescribed and rule 4 says that the Welfare commissioner may, after making such enquiries as she may deem fit, and after calling for a report from the inspector, if necessary, serve a notice on any employer

to pay any portion of fines realized from the employees or unpaid accumulations held by the employer which the employer has not paid in

accordance with the rule 3 and the employer is bound to comply with the notice within fourteen days from its receipt. The Welfare Commissioner is

thus given the power to determine what are the unpaid accumulations due from the employer to the employees which the employer is liable to pay

to the board and the Welfare Commissioner can make this determination after merely holding a subjective inquiry and without affording an

opportunity to the employer to show whether any particular unpaid accumulations are due from him to the employee or not and there is no appeal

against the determination. It may well happen that the determination of the Welfare Commissioner may be wrong and in fact no unpaid

accumulations may be due to a particular employee and no claim in respect of such unpaid accumulations may therefore be made by the employee.

In such a case the employer would be clearly deprived of his moneys on an ex parte subjective determination of the Welfare Commissioner which

would not be liable to be tested in appeal. The impugned provisions, in our opinion, clearly impose unreasonable restrictions on the fundamental

right of the employer under Art. 19(1)(f) and must, therefore, be regarded as void on that count also.

76. Regarding ground (F). - The last ground of attack against the constitutionality of the impugned provisions was based on violation of Art. 14. It

was contended by Sri Porus Mehta on behalf of the petitioner that there was no intelligible differential distinguishing establishments grouped

together under the definition of "establishment" in S. 2(4) and establishments left out of the group and that in any event the differentia had no

rational relation or nexus with the object sought to be achieved by the Act and that the impugned provisions affecting the rights and liabilities of

employers and employees in respect of establishment defined in S. 2(4) were, therefore, violative of the equal protection clause contained in Art.

14. The argument was that the classification made by the definition for the purpose of applicability of the impugned provisions was arbitrary and

unreasonable inasmuch as establishments which were factories within the meaning of S. 2(m) of the Factories Act, 1948, were brought within the

purview of the impugned provisions, though they might be employing not more than fifty persons, while other establishments employing not more

than fifty persons were left out and then again out of this latter establishments an exception was made and establishments carrying on business of a tramway or motor omnibus service were included and though Government establishments which were factories were included, other Government establishments were excluded and there was no rational principle underlying this classification which could be reasonably related to the object and purpose of the Act so as to satisfy the test of permissible classification.

77. Now the scope and effect of the provisions of Art. 14 can no longer be the subject matter of any doubt or dispute. It is well settled that though

Art. 14 forbid reasonable classification for the purpose of legislation. When any statutory provision is assailed on the ground that it contravenes

Art. 14, its validity can be sustained if two tests are satisfied. The first test is that the classification on which it is founded must be based on an

intelligible differentia which distinguishes persons or groups grouped together from others left out of the group and the second as that the differentia

in question must have a reasonable relation to the object sought to be achieved by the statutory provision. As the decisions of the Supreme Court

show, the classification on which the statutory provision may be founded may be referable to different considerations. It may be based on

geographical considerations or it may have reference to objects of occupations or the like. In every case there must be some nexus between the

basis of the classification and the object intended to be achieved by the statute. [See *Budhan Choudhry and Others Vs. The State of Bihar*, and

Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, .] It is in the light of these principles that we must now proceed to examine

whether the impugned provisions violate the fundamental right guaranteed under Art. 14.

78. The Act operates on employers and employees in establishments defined in S. 2(4). The definition of "establishment" includes a factory, a

tramway or motor omnibus service and any establishment carrying on business or trade and employing more than fifty persons and also ropes in a

Government factory but excludes an establishment carrying on business or trade and employing not more than fifty persons (other than a tramway

of motor omnibus service) and a Government establishment carrying on business or trade whether employing more than fifty persons or not more

than fifty persons. Now factory has the meaning which is given to it in S. 2(m) of the Factories Act, 1948, and it means any premises where a

manufacturing process is carried on and where ten or more workers are working in case where power is used and twenty or more persons are

working in case where no power is used. A factory is, therefore, an establishment which carries on manufacturing process and employs ten or

more workers or twenty or more workers depending on the fact whether power is used or not and the definition includes all such establishments.

So far, however, as establishments carrying on business or trade are concerned, the definition includes only such of the establishments as employ

more than fifty persons and excludes the rest of the establishments. One of the grounds of attack was directed against this classification and it was

urged that there was no rational basis on which establishments which were factories employing not more than fifty persons were included in the

definition while establishments carrying on business or trade and employing not more than fifty persons were excluded. Now there is certainly this

difference between factories and other establishments, namely, that factories are establishments where manufacturing operations are carried on

while in the other establishments business or trade is carried on, but that cannot by itself furnish any valid reason for a making a differentiation for

the purpose of applicability of the Act. The object of the Act being to take over unpaid accumulations which are abandoned property and to use

them for the benefit of employees generally including employees even of establishments left out of the definition, it would be immaterial whether the

establishments in respect of which the unpaid accumulation are taken over are establishments carrying on manufacturing operations or

establishments carrying on other business or trade. The unpaid accumulations would be abandoned property in both cases and there would appear

to be no reason why they should be taken over in one case and not in another particularly when they are going to be utilized for the benefit of all

employees. Moreover, the fact that the nature of the operations carried on by the establishment is irrelevant to the object of the Act is clearly

recognized by the legislature by including within the ambit of the Act establishments carrying on business or trade other than manufacturing

operations though with a complement of not less than fifty persons. It was however, pointed out in the affidavit of Sri Brahmabhatt, Deputy

Secretary to Government, Education and Labour Department, that this differentiation was made because the turnover of labour is more in factories than in establishments other than factories by reason of the fact that industrial labour frequently changes employment for a variety of reasons and for this reason a higher limit was placed in relation to what may, for the sake of convenience, be referred to as commercial establishment as distinguished from factories which are industrial establishments. But we do not think this reason has any relevance to the object of the Act. It may be that in case of commercial establishments employing not more than fifty persons, the turnover of labour in commercial establishments being less, the unpaid accumulations may be small. But whether unpaid accumulations are small or large is an immaterial consideration for the purpose of the enactment of the impugned provisions. The object of the impugned provisions being to get at the unpaid accumulations and to utilize them for the benefit of labour, the extent of the paid accumulations with any particular establishment can never be a relevant consideration. Of course, a possible argument could be that were the unpaid accumulations are small, the legislature might not have considered it worthwhile to go through the entire procedure of S. 6A for the purpose of taking over those unpaid accumulations but if that were so, we should have expected the classifications to be based on the quantum of the unpaid accumulations with an establishment, for even in the case of factories, particularly small ones, in numerous cases the unpaid accumulations may be very small. But, apart altogether from this, the most complete answer showing that this reason does not seem to really form the basis of the classification at all and has been put forward merely as an afterthought in a futile attempt to discover some basis for the classification which does not exist is provided by the fact that even from commercial establishments an exception is made and commercial establishments running a tramway or motor omnibus service are included within the definition irrespective of the number of persons employed by them. An establishment carrying on a tramway or motor omnibus service would be within the definition even if it employs less than fifty persons or for the matter of that even less than ten persons. It is impossible to discern any reason for this differentiation made between an establishment carrying on a tramway or motor omnibus service and an establishment carrying on other trade or business. We have scanned through

the affidavit of Sri Brahmbhatt, but we do not find in the affidavit any reason suggested for this differentiation. There is nothing to show as to why an establishment carrying on a tramway or motor omnibus service should be within the preview of the impugned provisions while an establishment carrying on, for example, a goods transport service should not be unless it employs more than fifty persons. Apart from the difficulty of finding a rational basis for classification between a factory and an establishment carrying on other business or trade for the purpose of the applicability of the Act, the introduction of an establishment carrying on a tramway or motor omnibus service within the definition makes it impossible to find a rational principle underlying the classification which has any relation to the object of the Act. Then again a further difficulty is created by the clause which provides that Government factories shall be within the definition but not Government establishments other than factories. The learned Advocate-General pointed out that the Government is a distinct class by itself and can be treated separately for the purpose of legislation and in support of that contention he relied on the decision of the Supreme Court in *Manna Lal and Another Vs. Collector of Jhalawar and Others*, and the decision of this Court in *Laljimal Premasukhdas v. B. K. Kombrabail* [I.L.R. 1965 Guj. 501]. We agree that the Government can form a separate class by itself for the purpose of legislation but the question is whether having regard to the fact that Government factories are included in the definition and only Government establishments other than factories are excluded, it would have been possible to contend that having regard to the object of the Act the Government could legitimately be treated as a separately class by itself, for if there are any unpaid accumulations with the Government, the Government could always be excepted to use them for the benefit of employees and it would not be necessary to transfer the unpaid accumulations from the Government to the board to effectuate that purpose. But we find that Government factories are included in the definition while only Government establishments other than factories are excluded and the entire basis of classification is thus destroyed. The only answer which was given in the affidavit of Sri Brahmbhatt was that there are hardly any establishments of the Central or State Governments which carry on business or trade or any work in connexion with or ancillary thereto and it was, therefore, felt that no useful purpose would be served by extending the

purpose of the Act to such establishments. This in our opinion, is not a valid answer to the argument under the Art. 14. It is not as if there are no

establishments of the Government which would otherwise fall within the definition. If that were the position, it could have been possibly contended

that in fact there was no discrimination. But if there are establishments of the Government howsoever few they be, they cannot be excluded on any

valid principle of classification having regard to the considerations behind the enactment of the legislation once Government factories are included

[vide State of Rajasthan Vs. Mukanchand and Others,]. We are, therefore, of the view that discrimination is writ large on the definition of

establishment and since the definition permeates through every part of the impugned provisions and is an integral part of the impugned provisions,

the impugned provisions are violated of Art. 14 and must be declared to be void.

79. In this view of the matter it is not necessary for us to discuss the question whether in any event S. 22 is violative of Art. 14 on the ground that it

confers unguided and unfettered discretion on the State Government to exempt any class of establishments from the provisions of the Act and we

do not, therefore, express any opinion on the validity of that contention.

80. That leaves only the last contention of Sri Porus Mehta in regard to the validity of rules 3 and 4 of the Labour Welfare Fund (Gujarat) Rules,

1962. Of course, if the impugned provisions are void as we hold they are, rules 3 and 4 must also fall along with them, but we are proceeding to

decide the question relating to the validity of rules 3 and 4 on the assumption that the impugned provisions are valid. Rules 3 and 4 were made by

State Government in exercise of its power under S. 19 of the unamended Act and barring an inconsequential amendment these rules continued to

form part of the Labour Welfare Fund (Gujarat) Rules, 1962. The argument of Sri Porus Mehta was that these rules were made for the purpose of

carrying out the provisions of S. 3(1) of the unamended Act in so far as it related to unpaid accumulations specified in S. 3(2)(b) and since S. 3(1)

read with S. 3(2)(b) was declared unconstitutional and void by the Supreme Court in Bombay Dyeing case [1958 - I L.L.J. 778] (vide supra)

these rules were also void from their inception and they could not be revitalized by a mere amendment of the Act but were required to be re-

enacted. This contention was sought to be supported by reference to the

decisions of the Supreme Court in Deep Chand Vs. The State of Uttar Pradesh and Others, and Mahendra Lal Jaini Vs. The State of Uttar Pradesh and Others, . We have carefully considered this contention and we are of the view that it is not well-founded. Rules 3 and 4 were undoubtedly void from their inception since S. 3(1) read with S. 3(2)(b) of the unamended Act was unconstitutional and void and they could not, therefore, be revitalized by a mere prospective amendment of the Act. If the impugned provisions had been enacted in the Act with prospective effect, it would have been necessary to re-enact rules 3 and 4 but the impugned provisions were introduced in the Act with retrospective effect and the Act, therefore, always was as if it contained the impugned provisions. The validity of rules 3 and 4 must, consequently, be judged by reference to the provisions of the amended Act on the footing that when the rules were made the Act which was on the statute book was the Act as amended. If that be done, it would be clear that rules 3 and 4 were within the rule-making power of the State Government under S. 19 and are accordingly valid and binding.

81. We, therefore, allow the petition, make the rule absolute and declare S. 3(1) in so far as it relates to unpaid accumulations specified in S. 3(2) (b), 3(4) and 6A of the Act and rules 3 and 4 of the Labour Welfare Fund (Gujarat) Rules, 1962, in so far as they relate to unpaid accumulations, unconstitutional and void. The State will pay the cost of the petition to the petitioner. The learned Advocate-General on behalf of the State and the board applies for leave to appeal to the Supreme Court under Art. 133(1)(c) of the Constitution. Leave is guaranteed to the state and the board to appeal to the Supreme Court under Art. 133(1)(c).