

(1982) 07 GUJ CK 0015
In the Gujarat High Court
Case No : C.R.A. No. 2037 and 2038 of 1981

Kantilal R. Shah and Others	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 05-07-1982

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2
Factories Act, 1948 — Section 7

Citation : (1982) 45 FLR 332 : (1982) GLH 915 : (1982) 2 GLR 771 : (1984) 1 LLJ 99

Hon'ble Judges : V.V. Bedarkar, J

Bench : Single Bench

Judgement

1. Both these revision petitions are filed by Kanti Cotton Mills Private Ltd., Surendranagar and its Managing Director and Manager. Civil Revision

Application No. 2037 of 1971 is filed by three, while Civil Revision Application No. 2038 of 1981 is filed by Kanti Cotton Mills Private Ltd.,

Surendranagar alone. They arise due to different applications under the Payment of Wages Act, 1936 (hereinafter referred to as "the Wages Act").

Application filed by Rashtriya Mill Majdoor Sangh, Surendranagar impleaded Kanti Cotton Mills Private Ltd., Surendranagar (hereinafter referred

to as "the Mill Company") only as the opponent, while Shri R. I. Shah, Inspector under the Wages Act, Surendranagar, filed the application for

payment of wages against all the three i.e. the Managing Director and Director of the Mill Company and the Mill Company.

2. These applications were filed as admitted by the parties round about 10th June, 1981. It is also an undisputed fact that Government of Gujarat

in Labour and Employment Department, issued two notifications under the Bombay Relief Undertakings (Special Provisions) Act, 1958

(hereinafter referred to as "the Act") on 13th October, 1981. The first Notification is No. KH/635-BRU-1081/30804-T. It was issued in exercise

of the powers conferred by S. 3 of the Act declaring the Mill Company to be a relief undertaking for the purpose of the Act. By another

Notification No. KH-1-636-BRU-1081/30804-T, provisions of S. 4(1)(a)(iv) of the Act were made applicable in relation to the Mill Company.

Therefore, before the Payment of Wages Authority at Surendranagar, who happened to be the Civil Judge Senior Division, applications were given

in both the matters, which were No. PWA/2 to 11/1981, filed by Rashtriya Mill Mazdoor Sangh, Surendranagar and No. PWA/1/1981 and

12/81 filed by the State of Gujarat through Inspector for Payment of Wages.

3. Applications were given at Ex. 13 by the Advocate of the petitioners that as two Notifications were issued by Government declaring the Mill

Company as Relief Undertaking under the Act and have further suspended all the proceedings with effect from 13th October, 1981 against the

Mill Company, the Court was requested to stay the proceedings in all the above matters till further orders of Government. These applications were

rejected by the learned Authority by the order dated 22nd October, 1981 holding that so far as Schedule to the Act is concerned it did not

provide for staying or suspending of the provisions of the Wages Act. Being aggrieved by the said order, the present petitioners (original

opponents) have approached this Court by way of these two revision petitions.

4. In order to appreciate the contentions raised before me it would be necessary for me to reproduce the aforesaid two Notifications and also the

relevant provisions of the Act. The said Notifications are to the following effect :

Labour and Employment Department

Notification

Dated 13th October, 1981.

Bombay Relief Undertakings (Special Provisions) Act, 1958. No. KH-1-635-BRU-1081/30804-T : In exercise of the powers conferred by S. 3

of the Bombay Relief Undertakings (Special Provisions) Act, 1958 (Bombay VI of 1958), the Government of Gujarat, hereby declares that the

Kanti Cotton Mills Private Ltd., Surendranagar to which a guarantee of Rs. 2.40 lakhs (Rupees two lakhs and forty thousand) has been provided

by the Government of Gujarat, shall, with effect from 13th October, 1981 be conducted to serve as a measure of unemployment relief and the said undertaking shall accordingly be deemed to be a relief for the purposes of the said Act.

This notification shall have effect for a period of six months from the date herein above specified.

By order and in the name of Government of Gujarat.

(Sd./-)

(J. M. Pandya)

Section Officer

Labour and Employment Department.

Labour and Employment Department

Notification

Sachivalaya, Gandhinagar,

dated 13th October, 1981

Bombay Relief Undertaking

(Special Provisions) Act, 1958

No. KH-1-636-BRU-1081/30804-T : In exercise of the power conferred by sub-clause (iv) of clause (a) of sub-S. (1) of S. 4 of the Bombay

Relief Undertakings (Special Provisions) Act, 1958 (Bombay XCVI of 1958), the Government of Gujarat hereby directs that in relation to the

Kanti Cotton Mills Private Ltd., Surendranagar, which is declared to be a relief undertaking under Government notification, Labour and

Employment Department No. KHL-635-BRU-1081/30804-T, dated the 13th October, 1981 issued under S. 3 of the said Act, all rights,

privileges, obligations, liabilities accrued or incurred before the said undertaking was declared to be a relief undertaking under the aforesaid

notification and any remedy for the enforcement thereof shall be suspended and all proceedings relative thereto pending before any Court,

Tribunal, Officer or Authority shall be stayed with effect from 13th October, 1981, the date from which the said undertaking has been declared to

be a relief undertaking under S. 3 of the said Act.

By order and in the name of the Government of Gujarat.

Sd/-

(J. M. Pandya)

Section Officer

Labour and Employment Department.

It should be noted that though the first notification under S. 3 of the Act is shown to have effect for a period of six months from 13th October,

1981, I am told at the Bar that the notification is further extended and is still in force.

5. The Act has been enacted with the object of making temporary provisions for industrial relations and other matters to enable the State

Government (to conduct, or to provide loan, guarantee or financial assistance for the conduct of, certain industrial undertakings as a measure of

preventing unemployment relief). Section 4 of the Act, which is material for our purposes, read as under :

4. (1) Notwithstanding any law, usage, custom, contract, instrument, decree, order, award, submission, settlement, order or other provision

whatsoever, the State Government may, by notification in the Official Gazette, direct that -

(a) in relation to any relief undertaking and in respect of the period for which the relief undertaking continues as such under sub-S. (2) of S. 3 -

(i) all or any of the laws in the Schedule to this Act or any provisions thereof shall not apply (and such relief undertaking shall be except therefrom)

or shall, if so directed by the State Government, be applied with such modifications (which do not however affect the policy the said laws) as may

be specified in the notification;

(ii) all or any of the agreements, settlements, awards or Standing Orders made under any of the laws in the Schedule to this Act, which may be

applicable to the undertaking immediately before it was acquired or taken over by the State Government or before any loan, guarantee or other

financial assistance was provided to it by or with the approval of the State Government for being run as a relief undertaking, shall be suspended in

operation or shall, if so directed by the State Government, be applied with such modifications as may be specified in the notification;

(iii) rights, privileges, obligations and liabilities shall be determined and be enforceable in accordance with clause (i) and (ii) and the notification;

(iv) any right, privilege, obligation or liability accrued or incurred before the undertaking was declared a relief undertaking and any remedy for the

enforcement thereof shall be suspended and all proceedings relative thereto pending before any Court, tribunal, officer or authority shall be stayed;

(b) the rights, privilege, obligation or liability referred to in clause (a)(iv) shall on the notification ceasing to have force, revive and be enforceable

and the proceedings referred to therein shall be continued;

Provided that in computing the period of limitation for the enforcement of such right, privilege, obligation or liability, the period during which it was

suspended under clause (a)(iv) shall be excluded notwithstanding anything contained in any law for the time being in force.

(2) A notification under sub-S. (1) shall have effect from such date, not being earlier than the date referred to sub-S. 3, as may be specified

therein, and the provisions of S. 21 of the Bombay General Clauses Act, 1904 (Bom. I of 1904), shall apply to the power to issue such

notification.

6. Mr. J. R. Nanavathi, learned Advocate for the petitioners in both the petitions firstly submitted before me that the learned Authority has

committed a mistake in considering the provisions of sub-cls. (ii) and (iii) of clause (a) of sub-S. (1) of S. 4 of the Act. To appreciate his argument,

it will be worthwhile to consider the ground on which the learned Authority rejected the application. It was the observation that the Schedule to the

Act does not include the Payment of Wages Act and S. 4(a) (i) of the Act says that all or any of the laws in the Schedule to the Act or any

provisions thereof shall not apply or be applied with such modifications as may be specified in the notification. The learned Authority, therefore,

held that the provision of the Act do not apply to laws not included in the Schedule to the Act and, therefore, the notification dated 13th October,

1981 does not apply to the matters arising under the Wages Act or the Workmen's compensation cases.

7. A bare look at the two notifications would clearly show that government did not issue notifications under S. 4(1)(a)(i), (ii) or (iii) of the Act.

Notification No. KHL-636-BRU-1081/30804-T specifically refers to exercise of power by the Government conferred by sub-clause (iv) of

clause (a) of sub-S. (1) of S. 4 of the Act. Therefore, even the operation of the

enactments mentioned in the Schedule to the Act is not made non-applicable. Therefore, recourse to the Schedule, whether it contains the Wages Act or not was called for. Mr. J. M. Panchal, learned Assistant Government Pleaded for the State and Mr. P. M. Raval, learned Advocate for the Rashtriya Mill Majdoor Sangh, fairly conceded to this position. Of course, it was their endeavour to show to me that even if the Schedule to the Act is not applicable in the instant case because undertaking is not covered by the exemption provided under sub-cl. (i), (ii) and (iii) of clause (a) of sub-S. (1) of S. 4(1)(a)(iv) of the Act would cover the operation of the Wages Act. This is what I have to consider.

8. It is the submission of Mr. Nanavati that once the is a accepted that only S. 4(1)(a)(iv) of the Act is applicable, then it is an unrestricted provision whereby any right, privilege, obligation or liability accrued or incurred before the undertaking was declared a relief undertaking and the remedy for the enforcement thereof is suspended and, therefore, all the proceedings relative thereto, pending before any Court, tribunal, officer or authority shall be stayed. It is the submission of Mr. Nanavati that subcls. (i), (ii) and (iii) refer to existing and future liabilities, meaning thereby, operation of the enactment or operation of any agreement, settlement, award or standing order or rights, privileges, obligation and liabilities were to be determined according to sub-cl. (i) and (ii) which clearly show that has nothing to do with the past obligations created but the operation of laws will be stayed and enforcement of agreements etc. was to be suspended in operation. Therefore, so far as past liabilities are concerned, according to Mr. Nanavati it is only under S. 4(1)(a)(iv) of the Act. This argument had to be advanced because at some stage it was felt that if the provisions of the Act which are not mentioned in the Schedule are made applicable then irrespective of the question of amount of payment for the past period, operation of that Act would be suspended even for the present and future. By no stretch of imagination it can be said that the operation of the Act which is enacted to give relief to an Undertaking as a measure of preventing unemployment can never permit an Undertaking to take work and save itself from the operation of the Wages Act. But it is very clear that so far as the case brought out by the petitioners is concerned they oppose the past liability about the payment of wages which is only covered under sub-

clause (iv) and not about the non-operation of the Wages Act for the future period during which the workers would earn wages and which will have to be paid by the Undertaking.

9. Mr. Nanavati has concentrated his argument only on the ground that the applications are for the past arrears of wages which were pending

before the learned Authority at Surendranagar and therefore request was made that the proceedings of those applications be stayed. So, the

liability of the undertaking, i.e. the employer, shall continue to pay wages regularly under the Wages Act. It should also be noted that so far as

Schedule to the Acts are concerned, they are in relation to sub-cls. (i), (ii) and (iii), while so far as sub-clause (iv) is concerned, there is no

reference to the Acts mentioned in the Schedule to the Act and, therefore, consideration of the Schedule was certainly not proper. It is the

submission of Mr. Nanavati that though the Act is to avoid unemployment, the main intention of the Legislature was to keep such sinking

undertakings on board to see that unemployment does not arise and, therefore, Government decided to help such undertakings financially and also

to protect them from the liability which they had incurred due to which the undertakings were on the verge of financial collapse.

10. Mr. Nanavati drew my attention to the decision of the Court in D. S. Patel and Co. v. The Gujarat State Textile Corporation Limited. The

question raised before this Court in that case was whether the provisions of the Act were ultra vires the powers of the State Legislature or whether

there was excessive delegation or that the restrictions are in public interest referable to Art. 41 of the Constitution of India and are therefore,

reasonable. In doing that, this Court examined the entire Scheme of the Act. As pointed out in the body of the judgment, the new Manekchowk

Spinning and Weaving Co. Ltd. was declared to be a Relief Undertaking under S. 3 of the Act with "all rights, privileges, obligations and liabilities

accrued or incurred before the undertaking was declared a relief undertaking and any remedy for the enforcement thereof shall be suspended with

effect from 21st February, 1969". This was, therefore, a notification precisely in terms of sub-clause (iv) of clause (a) of sub-S. (1) of S. 4 of the

Act. While considering the Scheme of the Act, according to Mr. Nanavati in para 19 this Court considered the impact of the provisions of the Act.

While considering S. 3 of the Act, this Court observed :

..... the State Government is expected to render financial assistance to the industry in question. Now, merely providing for financial assistance may not be sufficient for carrying out the main object, namely, the prevention of unemployment. It is very likely that in spite of the financial assistance by the State, the industry cannot go ahead either on account of the heavy wage bill of the labourers or on account of the disproportionate amount of debts incurred by the previous management. Under the circumstances, it would be necessary to make some temporary provisions for suspending these liabilities so that the financial assistance provided by the State with a view to prevent unemployment may not be wasted.

From this, it was argued by Mr. Nanavati that this Court was conscious of the heavy wage-bill of the labourers and also of the fact that would be one of the reasons for the industries not going ahead and, therefore, Legislature has thought it fit to provide to suspend these liabilities, so that there may be proper use of the financial assistance provided by the State.

11. Mr. Nanavati referred to me the fact that the claim in Civil Revision Application No. 2037 of 1981 of more than Rs. 5 lacs, while the claim in Civil Revision Application is of more than Rs. 2 lacs. According to the first notification under S. 3 of the Act, guarantee of only Rs. 2.40 lacs has been granted by Government. It is, therefore, his submission that if such a huge amount is required to be paid in spite of the provisions of the Act, can it be said that this industry will be a viable unit with the aid given by the State ? Now, whatever it may be, this Court would not consider how far the liability covered under the Act would be met by Government, and if it is not met even if the provisions permit the employees to get past payment, on this consideration only the Court should refuse it. Likewise, I would also refer to the argument advanced by Mr. P. M. Raval that if the provisions are considered to be affecting the dues of the workers so far as the past wages are concerned then the basic idea of providing relief to the industry for preventing unemployment would not be served because the workers would remain without wages for the past. Now, the question is to be considered from two aspects. One aspect is that if an undertaking is not given any assistance, it would be liquidated and question

of recovering past arrears and also future employment would also be difficult for the workers if the industry or the employer is not in a position to pay. Secondly, if the industry is helped and the unit is permitted to run, the workers are at least assured of future wages and employment and therefore, it cannot be considered that even if law provides for staying of the proceedings under the Wages Act on this main consideration of the objects and reasons on the Act, this Court should interpret the provisions of law in favour of the workers if the language and spirit behind it would permit either way, the Court shall have to adopt that course.

12. Mr. Nanavati also referred to me para 29 of the aforesaid decision of this Court in case of M/s. D. S. Patel and Co. (supra), wherein the provisions of S. 4 of the Act are considered. The Court specifically observed :

..... Out of these four sub-clause of S. 4(1)(a), first three sub-clause relate to the rights and liabilities arising out of the industrial relations of the undertaking with its workers Now all these sub-cls. give protection to the industrial concern which is covered by the declaration contemplated by S. 3 thereof, from its existing liabilities towards its workers. If this relief is accorded by the notification issued under S. 4, then the relief undertaking would be relieved from existing pressure of its wage bill and some of its other other liabilities to the labour during the period for which the notification under S. 3 remains in force.

So, if the notification is issued under sub-cls. (i), (ii) and (iii), then, as considered by this Court, it refers to existing liabilities and relief from existing pressure of its wage-bill. It does not refer to past. It is further observed :

Sub-clause (iv) contemplates relief from the past liabilities incurred by the past management because it contemplates the suspension of the rights, privileges, obligations or liabilities, accrued or incurred before the undertaking was declared a relief undertaking. The wording of sub-clause (iv) is such that they include the rights, privileges and liabilities of every body including the labour and the undertaking itself.

It is, therefore, very vehemently argued by Mr. Nanavati that in view of the aforesaid decision of a Division Bench of this Court, the matter can be said to have been settled because sub-clause (iv) even covers liability pertaining to labour also.

13. As against this, Mr. J. M. Panchal for the State submitted before me that

whatever liabilities pertaining to labour were considered by this Court in case of M/s. D. S. Patel and Co. (supra), refer to the provisions of sub-cl. (i), (ii) and (iii) and not that of sub-clause (iv), because, according to him, if the provisions of those sub-clauses are not applicable, and if Government finds that the wage bill of the labourers would be too heavy in such a way that in future also the industry could not run, then Government would bring in operation the provisions of first three sub-clauses so that agreement, settlement, award or standing order (referred to in sub-clause (ii) which would put heavy burden on the industry would be suspended. But when, according to him, these three sub-clauses are not made applicable, but refer to heavy wage bill of the labourers, the decision of this Court would not have any relevance, so far as sub-clause (iv) is concerned. But the entire string of his argument has been taken out by the last three lines of para 29 referred to earlier. Still, however, Mr. Panchal vehemently persisted in his submission and referred to me the second portion of para 33 on page 59 of the aforesaid judgment of this Court. This Court observed :

.... If in a particular case the Government finds that the industry cannot stand on its legs without getting some temporary relief in the payment of its huge wage bill, then the Government would issue notification under any of first three sub-clauses of S. (1)(a). But if the Government finds that the payment of the wage bill is not much of a financial problem for the industry and that it is the protection from its creditors which the industry requires then instead of taking action under sub-cl. (i), (ii) and (iii), the Government may well take action under sub-clause (iv) and suspend all or any of the rights, liabilities and obligations under that clause.

From this Mr. Panchal wanted to impress upon me that this Court has made two distinctions inasmuch as sub-cl. (i), (ii) and (iii) are considered applicable to wage-bills, while sub-clause (iv) is made applicable to the creditors who are not labourers, i.e. general indebtedness of the industry.

But I must say that in reading this Mr. Panchal forgets the important aspect that so far as sub-cl. (i), (ii) and (iii) are concerned they are applicable mainly to the existing and future liabilities, while sub-clause (iv) refers to the past liabilities. Can it be said that such past liability would only be applicable to the creditors otherwise than the labourers who have to get the

amount under the Act ? The answer to this question is not so simple, because for that it will be necessary to consider how the liability under the Act arises, and who is responsible for the payment of those wages and whether it can be said to be independent of the industry which has been notified under the Act ? It of course should be mentioned that sub-clause (ii) refers to the existence of agreements, settlements awards, or standing orders made under any of the laws in the Schedule to the Act, which were applicable to the undertaking immediately before it was acquired or taken over by Government, shall be suspended in operation or shall be applied with such modifications as may be specified in the notification. Therefore, this certainly refers to the agreements, settlements, awards or standing orders under the specified laws made prior, but the operation would be applicable in present or in future.

6.7.1982 :

14. Before considering the provisions of the Wages Act and the liability under it, I would refer to the decision of the Supreme Court in *Inderjit C.*

Parekh and Others Vs. Shri V.K. Bhatt and Another, . That has been relied on by Mr. Panchal to show that when there is individual liability of the

Manager or the Managing Director or any person so specified, the exemption granted by the Act would not be applicable. In that case, there was

question of prosecution of the appellants before the Supreme Court for not paying contribution towards the provident fund which amounted to Rs.

1,39,419.50 paise. The undertaking in that case which was Rajnagar Spinning and Weaving Manufacturing Co. Ltd. Ahmedabad, was declared a

relief undertaking under the provisions of the Act. It was, therefore, urged before the Magistrate to stay the prosecution in view of S. 4 of the Act.

The Magistrate took a view that the operation of S. 4 of the Act is restricted to the statutes mentioned in the Schedule to the Act, and sub-clause

(iv) of S. 4(1)(a) did not contemplate stay of criminal proceedings. The High Court of Gujarat also summarily rejected the revision application filed

by the appellants against the judgment of the learned Magistrate and, therefore, appeal was carried to the Supreme Court. After considering the

provisions of sub-clause (iv), the Supreme Court observed :

The words "all proceedings relative thereto" patently mean all proceedings relating to "any right, privilege, obligation or liability accrued or

incurred before the undertaking. The obligation or liability which sub-clause (iv) speaks of is an obligation or liability incurred by the under taking

before it was declared a relief undertaking. In other words sub-clause (iv) concerns itself with the pre-existing obligations and liabilities of the

undertaking and not of its Directors, Managers and other Officers.

So, one thing is definite that sub-clause (iv) was considered to be concerning itself with the pre-existing obligations and liabilities of the undertaking

and not of its Director, Managers and other Officers. It was further observed :

The obligation of liability of these persons is not comprehended within the words of sub-clause (iv) of clause (a) of S. 4(1) shows that the power

of the State Government is itself restricted to giving directions referred to in sub-clause (iv), in relation to any relief undertaking. Obligations and

liabilities of the Directions or other Officers of the undertaking are not in a true sense obligations and liabilities in relation to the relief undertaking. In

plain and simple language they are the obligation and liabilities of such persons themselves.

These observations were made on the strength of the provisions of the Employees' Provident Fund and Family Pension Fund Act, 1952

(hereinafter referred to as the Provident Fund Act").

15. In para 38(1) of the Provident Fund Scheme, an obligation is imposed on "The employer" to pay the provident fund contribution to the fund

within 15 days of close of every month. The Scheme does not define "employer" but the expressions defined by the Scheme shall have the meaning

assigned to them in the Provident Fund Act. Section 2(e)(ii) of the Provident Fund Act defines an "Employer" to the extent material, as the person

who, or the Authority which has the ultimate control over the affairs are entrusted to a Manager, Managing Director or Managing Agent. From this

the Supreme Court came to the conclusion that the responsibility to pay the contributions to the Fund was of the appellants and if they had

defaulted in paying the amount, they are liable to be prosecuted under paragraph 76(1) of the Scheme, and such a personal liability does not fall

within the scope of S. 4(1)(a)(iv) of the Act. It was, therefore, submitted by Mr. Panchal and Mr. Raval that though this may be a consideration for

a criminal case ultimately question of personal liability was considered and it was applicable to both civil as well as criminal matters. I think, they

are quite justified in this much submission. Personal liability may be criminal liability as well as civil liability. If on consideration of the provisions of the Act and also the Wages Act it can be said that there was personal liability of the present petitioners Nos. 1 and 2 Civil Revision Application No. 2037 of 1981, then probably the provisions of sub-clause (iv) would not be applicable. I must say at this stage, and as has been fairly conceded by Mr. Raval, that so far as payment of wages application filed by Rashtriya Mill Majdoor Sangh are concerned, they are only against the Mill Company (i.e. the undertaking) and, therefore, by all means, the learned Authority was not justified in rejecting the application so far as the stay of those proceedings was concerned, because they were certainly against the undertaking. It should be noted that the Supreme Court specifically refers to criminal actions and criminal liability towards the individual. Therefore, if the petitioners are to be prosecuted under the provisions of S. 20 of the Wages Act, the matter would have different consideration.

16. Mr. Nanavati for the petitioners submitted that what the Supreme Court has considered in case of *Indrajit Parekh* (supra) is that there should be distinct liability and not joint and several. For this, he drew my attention to para 7 of the Supreme Court judgment, wherein it is specifically observed :

Neither the language of the statute nor its object would justify the extension of the immunity so as to cover the individual obligations and liabilities of the Directors and other Officers of the undertaking. If they have incurred such obligations or liabilities, as distinct from the obligations or liabilities of the undertaking, they are liable to be proceeded against for their personal acts of commission and omission

Mr. Nanavati has emphasised the words ""distinct from the obligations or liabilities of the undertaking"". He therefore, wanted to submit that if the liability is not distinct from the obligations or liabilities of the undertaking, then the proceedings should have been stayed. In terms, it is his submission that if the Manager is required to pay such a huge amount, who would merely be a paid servant of the then existing mill, can it be said that he should be made liable to pay the amount ? Would it not be vicarious liability of the undertaking to make payment, and if that is so, can it be

distinct ?

17. As against that, it was argued by Mr. Panchal that even if it is assumed for the sake of argument that the Manager would not be able to pay so

much amount, so far as the Managing Director or owner, who in the popular parlance is called "Sheth" in this part, and who is still enjoying all the

luxuries and pleasure which he was enjoying earlier, is concerned can he avoid making payment ? For this he drew my attention to the further

observations of the Supreme Court in para 7 in *Indrajit's* case (supra). They are :

... The remedy in that behalf cannot be suspended not can proceeding already commenced against them in their individual capacity be stayed.

Indeed, it would be strange if any such thing was within the contemplation of law. Normally, the occasion for declaring an industry as a relief

undertaking would arise out of causes connected with defaults on the part of its directors and others officers. To declare a moratorium on legal

actions have necessitated the issuance of a notification in the interest of unemployment relief is to give to such persons the benefit of their own

wrong. Section 4(1)(a)(iv), therefore, advisedly limits the power of the State Government to direct suspension of remedies and stay of proceedings

involving the obligation and liabilities in relation to a relief undertaking and which were incurred before the undertaking was declared relief

undertaking.

18. It is the submission of Mr. Nanavati that the very fact that the *Rashtriya Mill Majdoor Sangh* has filed an application for payment of wages only

against the Undertaking, shows that the liabilities were in relation to the Relief Undertaking. He also submitted that even if the Payment of Wages

Inspector filed cases against the Sheth and the Manager, the Mill Company (Undertaking) is also one of the parties, meaning thereby, the liability of

the Sheth or Manager is not distinct from the liability of the Undertaking, and also that the liability is in relation to Relief Undertaking.

19. It is of course true merely because applications are filed in a particular way, it cannot be said that the legal terminology pertaining to it is distinct

from the liability of the undertaking and also in relation to relief undertaking would be immediately applied. For that, it is necessary to consider the

other aspects, meaning thereby, the aspects considered by the Supreme Court so far as the Provident Fund Act and the Scheme are concerned,

and also how the liability for payment of wages are is under the Wages Act and on whom.

20. As considered by the Supreme Court in *Indrajit's case* (*supra*), if the liability of the Manager or Managing Director is distinct from the

obligation or liabilities of the undertaking meaning thereby, if is independent and is a personal liability under the Wages Act, then those matters

cannot be stayed. The Supreme Court considered the definition of the word "employer" in S. 2(e)(ii) of the Provident Fund Act. In that S. 2(e) the

first definition is in relation to an establishment which is a factory, and in that "employer" means "the owner" or "occupier" of the factory including

the agent of such owner or occupier, the legal representative of the deceased owner or occupier etc. Sub-clause (ii) is in relation to any other

establishment, the person who, or the authority which has the ultimate control over the affairs of the establishment, land where the said affairs are

entrusted to a Manager, Managing Director or Managing Agent. The Supreme Court considered the second definition and on consideration of

that, come to the conclusion that thus the responsibility to pay the contributions to the Fund was of the appellants (before it). This sub-clause (ii) is

clearly referable to the person who, or the authority which, he has ultimate control over the affairs of the establishment and where the said affairs

are entrusted to a Manager, Managing Director or Managing Agent, then they are liable. Considering this provision, the Supreme Court observed

that this liability of the Manager, Managing Director or the Managing Agent was distinct from that of the Undertaking because in this sub-clause (ii)

of clause (e) of S. 2 of the Provident Fund Act, there is not mention of the undertaking, and if a person so named or is incharge, would be the

employer.

21. In the Wages Act there is no specific definition of "employer" as such, but in S. 2(ia) of the Wages Act "employer" includes the legal

representative of a deceased employer. It is, therefore, the submission of Mr. Panchal that this would mean that the employer is a person and not

institution or an undertaking, because an institution of an undertaking would not have a legal representative. He also drew my attention to S. 3 of

the Wages Act, which is as follows :

3. Every employer shall be responsible for the payment to persons employed by

him of all wages required to be paid under this Act;

Provided that, in the case of persons employed (otherwise than by a contractor) -

(a) in factories, if a person has been named as the manager of the factory under clause (f) of sub-s. (1) of S. 7 of the Factories Act, 1948, then the

person so named and the employer jointly and severally :

(b) in industrial establishments, if there is a person responsible to the employer for the supervision and control of the Industrial establishment, then

the person so responsible and the employer jointly and severally;

(c) upon railways (otherwise than in factories), if the employer is the railway administration and the railway administration has nominated a person

in this behalf for the local area concerned, then the person so nominated; shall also be responsible for such payment"".

It should be noted that under S. 3 of the Wages Act, persons responsible to make payment are categorised so far as factories and industrial

establishments are concerned, and it is not in dispute that the petitioner mill-company is considered to be a factory and/or an industrial

establishment and, therefore, it will be covered by proviso to S. 3 of the Wages Act. According to this, even if a person is named as the manager

of the factory under clause (f) of sub-s. (1) of S. 7 of the Factories Act, over and above the person so named, the employer also is held liable, and

both are jointly and severally liable to pay all the wages required to be paid under the Wages Act, so also for an industrial establishment.

22. If we refer to the terminology in the Provident Fund Act and the terminology used in S. 3, proviso (a)(b) of Wages Act, it can be said that the

Provident Fund Act definition does not refer to bay joint and several liability. Sub-clause (i) of clause (e) of S. 2 of the Provident Fund Act has the

reference to a person named as a manager of the factory under clause (f) of sub-s. (1) of S. 7 of the Factories Act, 1948, but that does not include

other employer, as is the case in S. 3 of the Wages Act. Therefore, the Wages Act has made liability joint and several and not distinct as is made

under the Provident Fund Act referred to in the Supreme Court judgment. Therefore, when the question of paying wages under the Wages Act is

seen, it is different from paying contribution of Provident Fund as the liabilities are not identical. Under the Provident Fund Act, Manager or the

person so named, etc. is included in the definition of "employer" while in the

Scheme of Wages Act under S. 3, names "manager" and "employer" are different and both are held jointly and severally liable.

23. Now, therefore, we have to revert to the argument of Mr. Panchal that if word "employer" is to be interpreted, then it should be interpreted for

a human being because under S. 2(e)(i) of the Provident Fund Act "employer" includes "legal representative of a deceased owner or occupier" i.e.

the employer and, therefore, unless the employer is considered to be a human person, there would not be any question of legal representative. But

it should be noted that S. 3 of the Wages Act considers three types job persons who are liable to pay wages required to be paid under the Wages

Act, first of all, in factories person named as the Manager and the employer, secondly in industrial establishments a person responsible to the

employer for the supervision and control, then the person so responsible and the employer, jointly and severally. This is like sub-clause (ii) of

clause (e) of S. 2 of the Provident Fund Act. But in the Provident Fund Act there is no joint and several liability. Now, it is not in dispute, so far as

the instant case is concerned, that the petitioner Mill-Company is an employer and it is judicial person.

24. In order to support his argument, Mr. Panchal referred to me the decision of the Allahabad High Court in H. Watts v. B. N. Rai (A.I.R. 1960

Alld. 200). Therein it has been held that if the petitioner before the Allahabad High Court was named as the Manager of the Company under the

Factories Act, he was liable to pay the wages even if there was dispute as to whether wages would have been paid by the previous Managing

Agent. But this does not resolve the dispute before us because before the Allahabad High Court there was no question of considering the joint

responsibility of an employer so that it can be said that in spite of these wordings under proviso to S. 3 of the Wages Act, the Allahabad High

Court considered that independent of the employer, manager was individually liable. On the contrary, in that case the petitioner before the

Allahabad High Court was the Manager of the Muir Mills Company Limited, Kanpur. Due to previous mis-management the High Court had to

interfere and suspend the then Managing Agents, a private company known as the Indian Textile Syndicate Limited and vested the powers of the

management in another company known as J. K. Commercial Corporation Ltd.,

Kanpur. This was done by an order dated 27th October, 1957.

While on 12th October, 1957 an application under S. 15 and 16 of the Wages Act was filed by the Inspector of Factories, Kanpur Region before

the Magistrate praying for a direction for the payment of wages due to the workmen of the company during a specified time. There was also

another application, and in both the applications H. Watts was the impleaded as respondent in his capacity as a Manager and there was no other

party and, therefore, liability was of H. Watts as Manager, as considered by the Allahabad High Court. Therefore, that decision would not help in

deciding the point in issue before me.

25. Mr. Panchal also cited before me the decision of the Bombay High Court in Ganpat Laxman Vaite Vs. Lionel Holland, . Therein it has been

observed :

In construing S. 3 (of the Wages Act) and deciding what meaning has got to be given to the expression "employer" one must look at S. 15(3).

The Authority has got to hear the employer when an application is made by the employer, and it is clear that the person who has got to be heard is

the person who is the employer at the date when the application for wages has been made. Therefore, the material date to consider is not who was

responsible for payment of wages when the wages accrued, but the material date to consider is who was the person responsible for the payment of

wages at the date when the application is made.

It should be noted that in the case opponent before the Bombay High Court was appointed Managing Director of the Company and was in charge

of the company's business which was being done previously by Holland and Company. One person named Hudson was the local manager of that

factory and under the Factories Act he was named as the Manager. On 6th September, 1951, the opponent before the Bombay High Court had

given notice to the employees of closure of business and their services were terminated on 21st September, 1951 when the factory closed down its

business. This notice was also served on Hudson, and Hudson ceased to be the Manager of the factory from 21st September, 1951. Applications

for payment of wages were made, and the authority directed the defendant to pay the amount. On appeal, the Court of Small Cases held that there

was no liability upon the opponent to pay the amount, Therefore, there

was revision filed by the original workers who were the petitioners before the Bombay High Court. The Bombay High Court considered whether the opponent was the employer within the meaning of Payment of Wages Act, responsible for the wages of the petitioners. The Judge of the Court of Small Causes took the view that the person who was named as the Manager was Hudson and, therefore, the liability to pay wages was upon Hudson and not upon the opponent. The Bombay High Court observed that in construing S. 3 and deciding what meaning has got to be given to the expression ""employer"" one must look at S. 15(3) of the Wages Act. Considering the facts of the case and considering that the Company in England appointed somebody as Managing Agent and the Managing Agent appointed the Manager and the Managing Agent dismissed the Manager, then the company cannot say that the workers should proceed against the Manager. The Bombay High Court considered that the law requires that there must be some one responsible at the date when the application was made for the payment of wages to the employees who had made the application. As Hudson, who was the Manager, was not there, the Bombay High Court referred to the provisions of S. 7(5) of the Factories Act, which provides that during any period for which no person has been designated as Manager of the Factory or during which the person designated does not manage the factory, any person found acting as Manager, or if no such person is found, the occupier himself, shall be deemed to be the Manager of the factory for the purposes of that Act. Under the Factories Act, "occupier" is defined as a person who has ultimate control over the affairs of the factory and, therefore, liability of the Managing Agent was considered. Such a question has not arisen before us. What we are considering is whether liability of Manager or Managing Director is distinct from the employer, i.e. the Undertaking or it is joint and several. If it is not distinct, then it cannot be personal liability and, therefore, it should be the liability of the Undertaking as well as of the Manager and/or Managing Director, and if that is so, the decision of the Supreme Court in *Indrajit's case* (supra), would not be helpful to the present opponents, because under the scheme of the Wages Act, Manager or Managing Director or Managing Agent has no liability which is distinct from that of the employer, i.e., establishment, which is the Undertaking

now. In view of this, the decision of the Supreme Court in Indrajit's case (supra) would not be helpful to the opponents.

26. There is one more point. Under S. 4(1)(a)(iv) of the Act proceedings which are required to be stayed are proceedings pending before any

Court, Tribunal, Officer or Authority, which includes all. It does not require to be stressed that Court taking up Payment of Wages cases is an

Authority under the Wages Act. The Legislature has deliberately used these words - Court, Tribunal Officer or Authority showing that it meant that

any proceeding which would be before the Authority under the Wages Act or even the Industrial Tribunal or Workmen's Compensation

Commissioner, shall have to be stayed if the provisions under S. 4(1)(a)(iv) of the Act are made applicable. Therefore, it cannot be said that the

Wages Act would be outside the purview. It cannot also be said that past arrears of wages are not past debts. It can be said that here is a very

peculiar position where the workers have put the Undertaking in the position of a debtor, and the Undertaking is liable to pay towards past wages,

but which liability has been suspended under the provisions of S. 4 of the Act and, therefore, in view of these considerations, I think that the

learned Civil Judge, Senior Division, Surendranagar, the Authority under the Wages Act, should have stayed the proceedings long as the

Undertaking would remain covered under the Act.

27. In view of this, the revision petitions are allowed. The applications pending before the payment of Wages Authority, Surendranagar, are

ordered to be stayed till the notifications issued by the Government remain in force. Rule issued in each of these petitions is made absolute. There

shall be no order as to costs in these revision petitions.