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(2004) 12 AHC CK 0012

In the Allahabad High Court

Case No : C.M.W.P. No''s. 31892 and 50799 of 2003

Maya Press Mazdoor Sangh etc. — APPELLANT

Vs

Uppar Shramayukt and Others — RESPONDENT

Date of Decision : 03-12-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195
Factories Act, 1948 — Section 2, 7, 85
Industrial Disputes (Appellate Tribunal) Act, 1950 — Section 4B, 5A
Uttar Pradesh Industrial Disputes Act, 1947 — Section 14B, 2, 2(1), 22, 25FFA
Uttar Pradesh Industrial Peace (Timely Payment of Wages) Act, 1978 — Section 2, 3, 3(1), 3(2), 3(3)
Uttar Pradesh Industrial Peace (Timely Payment of Wages) Rules, 1981 — Rule 4

Citation : (2005) 1 ESC 437

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Advocate : K.P. Agarwal and Bushra Mariyam, Triloki Nath, for the Appellant;

Judgement

V.K. Shukla, J.—In Civil Misc. Writ Petition No. 31892 of 2003, Maya Press Mazdoor Sangh, Allahabad, through its President Kalloo Ram has approached this Court questioning the validity of the order, dated 20.6.2003, passed by Additional Labour Commissioner, Allahabad, refusing to award wages under the provisions of U.P. Industrial Peace (Timely Payment of Wages) Act, 1978. In Civil Misc. Writ Petition No. 50799 of 2003, Maya Press Private Limited and others have approached this Court assailing the validity of the same order by means of which it has been held that provision of Section 6-W of U.P. Industrial Disputes Act, 1947 is applicable qua petitioners-establishment and further notice, dated 8.9.2003, is also subject matter of challenge by means of which, notice has been issued to show cause as to why petitioners be not prosecuted. As both the writ petitions are questioning the validity of the order, dated 20.6.2003, and as show cause notice, dated 8.9.2003, is just consequential to the same as such both the writ petitions are being heard together with the consent of the parties and are being finally decided.

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2. Brief fact giving rise to dispute in question are to the effect that in the District of Allahabad, there are two companies registered under the Companies Act, 1956, namely, Maya Press Private Limited, a Private Limited Company and Mitra Prakashan Ltd., a Public Limited Company, incorporated under Companies Act. Office and establishment of both the companies are situated in the same building at Muthiganj, Allahabad. Maya Press is on ground floor whereas Mitra Prakashan is at first floor. Maya Press carried out publication work whereas Mitra Prakashan carried out entire clerical work and publication work. Both the aforementioned companies closed their business, w.e.f. 23.12.2000, and notice about closure was published in newspapers on 23.12.2000. After said closure was declared Additional Labour Commissioner. Allahabad served notice on petitioner employers asking the petitioner employers to show cause as to why action against them be not taken for having closed their establishment without taking permission from State Government, as such entire activities of the petitioner employer''s is in contravention of the provision as contained u/s 25O of Industrial Disputes Act, 1947. The said notice, dated 23.12.2000, was objected to by mentioning that closure was not illegal and provision of Section 25O was not at all applicable as far as petitioner employer''s establishment is concerned and in this background it was requested that notices be dropped. Inspite of the said reply having been submitted and as coercive action was sought to be initiated, two writ petitions were filed before this Court being writ petition Nos. 2482 of 2001 and 2483 of 2001. Said writ petitions were ultimately finally disposed of by this Court on 11.2.2003, by giving liberty to petitioner employers to take all possible objection before the Labour Commissioner who shall decide the matter as expeditiously as possible. Pursuant to this liberty which had been accorded objections were filed on behalf of petitioner employers before the Additional Labour Commissioner, Allahabad and therein it has been contended that he had no jurisdiction to decide the matter as Section 25O of Industrial Disputes Act was not applicable and to the contrary Section 6-W of U.P. Industrial Disputes Act, 1947 was applicable and as in the petitioners'' establishment there were less than 300 workmen, as such there was no occasion of violation of the provision of Section 6-W of U.P. Industrial Disputes Act, 1947. While said objections were pending Kallu Ram moved an application u/s 3 of U.P. Industrial Peace (Timely Payment of Wages) Act, 1978 for payment of wages in terms of Section 6-W of U.P. Industrial Disputes Act, 1947. Thereafter said application of Kallu Ram as well as objection moved on behalf of petitioners company has been considered by the Additional Labour Commissioner and impugned order in question has been passed which is subject matter of challenge in both the writ petitions.

3. In Civil Misc. Writ Petition No. 31892 of 2003, counter-affidavit has been filed on behalf of State and therein it has been contended that establishment in question was closed without taking any prior permission, as such notice in question had been issued. It has also been contended that from the side of workmen that at M/s. Mitra Prakashan, total 262 employees were employed and at M/s Maya Press Pvt. Ltd. total 186 employees had been employed. This fact

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has also been asserted that various workmen during this period have approached Labour Court in proceedings u/s 33-C(2) of Industrial Disputes Act, 1947, for computation of their amount and Labour Court after hearing the parties concerned in respect of 50 employees of Maya Press Pvt. Ltd. and 60 employees of Mitra Prakashan Ltd., had computed amount. It has also been asserted that on the basis of compromise till May 2003 amount of Rs. 21.00 lacs 90 thousand has been paid to the employees. The order, which has been passed, has been sought to be justified. It has been contended that closure is illegal and in contravention of the statutory provision. It has further been contended that provision of Section 3 of U.P. Industrial Peace (Timely Payment of Wages) Act, 1978 is not applicable as such order any question does not warrant in interference by this Court.

4. Counter-affidavit has also been filed on behalf of Ashok Mitra and on behalf of other respondents and therein it has been contended that the two concerns are independent separate companies and registered as separate companies. Registration number are separate and they are separate legal entity. The factum of ground floor being occupied with the printing machinery and first floor being occupied by clerical staff has been described to be misleading. It has also been mentioned that all these facts are not relevant for decision in the present writ petition. It has also been contended that application which had been moved was not at all maintainable as petitioners workmen union is neither registered under Trade Union Act nor is Kallu Ram its recognised President and thus, Kallu Ram has no locus standi to move application and file writ petition. It has been contended with vehemence that assertion of two industrial establishment being sister concern is wrong and same by no stretch of imagination can be treated as one. President of employees'' union had never been brought over by employers and theory of President being turned out and formation of Sanchalan Samiti has also been disputed.

5. Rejoinder-affidavit has been filed and therein statement of fact mentioned in the counter-affidavit has been disputed and much emphasis has been laid on the fact that both the companies have been incorporated separately for different reasons i.e. to enlarge the scope of escaping from liabilities under various Labour Laws and also under the Income Tax Act. It has also been asserted that two alleged separate industrial establishments are in fact integral part of each other. It has further been asserted that accounting for Maya Press is done by Mitra Prakashan and in this background it has been contended that they are one and the same, and thus provision of Section 6-W of U.P. Industrial Disputes Act, 1947, is fully applicable and two industrial establishments cannot escape their liability and pleading that both the concern are separately incorporated is of no consequence. It has also been contended that Maya Press Mazdoor Sangh is a Trade Union registered under the Indian Trade Unions Act, 1926 and on account of the closure of the two industrial establishments, word Sanchalan Samiti was added for doing the work of Trade Union. It has also been contended that at no point of time any objection has been taken in this respect. In this background it has been asserted that locus of Kallu Ram by no stretch of imagination can be

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challenged. During the pendency of writ petition Kallu Ram died and in its place Jai Kishan Yadav has filed application in the present matter and said application has been allowed and Jai Kishan Yadav has been permitted to pursue the present writ petition.

6. In Civil Misc. Writ Petition No. 50798 of 2003 counter-affidavit had been filed on behalf of Kallu Ram and therein it has been contended that present writ petition is premature and in all eventuality prosecution proceedings are liable to continue and writ petition against show cause notice is not maintainable, and as petitioner employers have acted in breach of Section 6-W of U.P. Industrial Disputes Act, 1947 as such, petitioners are liable to be prosecuted. Additional Labour Commissioner, Allahabad has acted well within its jurisdiction and as two industrial establishments are integral part of each others and, as such, employees of both establishment have been rightly clubbed for invoking the provision as contained u/s 6-W of U.P. Industrial Disputes Act, 1947, as such proceeding Has rightly been proceeded.

7. Supplementary-affidavit has also been filed bringing on record reply which was submitted to the show cause notice.

8. Rejoinder-affidavit has been filed and therein statement of fact mentioned in the counter-affidavit has been disputed and that of writ petition has been reiterated.

9. After pleadings inter se parties have been exchanged in both the writ petitions, respective arguments have been advanced on behalf of both i.e. the employers and employees.

10. Sri Triloki Nath, Advocate, who entered appearance on behalf of employers contended with vehemence that proceedings at the behest of Kallu Ram u/s 3 of U.P. Industrial Peace (Timely Payment of Wages) Act, 1978 was not at all maintainable and further even writ petition at the behest of Kallu Ram is not maintainable. Further it has been asserted that two companies have separate legal entity and same cannot be treated as one legal entity for the purposes of bringing the same within the clutches of Section 6-W of U.P. Industrial Disputes Act, 1947, and, as such, proceedings are nullity. Apart from this it has been contended nature of dispute complained, being industrial dispute, same could have been decided only by the Industrial Tribunal, and not by Additional Labour Commissioner, Allahabad on the administrative side and thus, adjudication is totally without jurisdiction. Further at the point of time when closure had been made, Section 6-W of the U.P. Industrial Disputes Act, 1947 did not exist on the statute book as same had been declared to be ultra vires by this Court having territorial jurisdiction in the said matter and subsequently said provision was declared intra vires by Hon''ble Apex Court on 17.1.2002 and thus by no stretch of imagination on the date when decision has been taken for closure, petitioner could be compelled to take permission, which was not necessary on the said date, thus, no action can be taken against petitioner-employer in reference to

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action which has been taken on the said date when Section 6-W was not in existence in statute book as such entire proceedings against the petitioner are nullity.

11. Sri K.P. Agarwal, Senior Advocate, assisted by Ms. Bushra Mariyam, Advocate, learned counsel for the workmen contended with vehemence that hyper technical objections are being taken in the matter whereas anxiety should be that cause of justice is advanced. Kallu Ram had full authority to move an application and writ petition both as he was duly authorised by group of workmen to prosecute the proceeding and further even if same was not registered trade union, and when finding of fact had been returned that there were more than 300 workmen and there was no permission before effecting closure and the closure being illegal, and there being no disputed question of fact involved then in all eventuality in exercise of power u/s 3 of U.P. Industrial Peace (Timely Payment of Wages) Act, 1978, amount in question ought to have been paid to the workmen, as such impugned order in question is liable to be quashed to this extent.

12. In order to answer questions raised above following provision would be relevant to be looked into which are being quoted below :

Section 3 of U.P. Industrial Peace (Timely Payment of Wages) Act, 1978:

"3. Recovery of wages in certain industrial establishments as arrear of land revenue.--(1) Where the Labour Commissioner is satisfied that the occupier of an industrial establishment is in default of payment of wages and that the wage-bill in respect of which such occupier is on default exceeds fifty thousand rupees, he may, without prejudice to the provisions of Sections 5 and 6, forward to the Collector, a certificate under his signature specifying the amount of wages due from the industrial establishment concerned.

U.P. INDUSTRIAL PEACE (TIMELY PAYMENT OF WAGES) RULES, 1981

In exercise of the powers u/s 8 of the U.P. Industrial Peace (Timely Payment of Wages) Act, 1978 (U.P. Act V of 1978) the Governor is pleased to make the following Rules :

1. Short title extent and commencement--

(i) These Rules may be called the Uttar Pradesh Industrial Peace (Timely Payment of Wages) Rules, 1981.

(ii) They shall extend to whole of Uttar Pradesh.

(iii) They shall come into force with effect from the date of their publication in the official Gazette.

2. Definitions.--In these Rules, unless the context otherwise requires--

(a) ''Act'' means the Uttar Pradesh Industrial Peace (Timely Payment of Wages) Act, 1978 ;

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(b) ''Section'' means a section of the Act;

(c) ''Form'' means form appended to these Rules;

(d) Other words and expressions used in these rules and not defined shall have the meaning assigned to them in the Act.

3. Nomination of occupier.--Every industrial establishment to which the Act applies shall intimate to the Labour Commissioner the name of its occupier in Form-I by January 15th every year. In case, there is a change in the name of the occupier of the industrial establishment, the employer shall intimate within week to the Labour Commissioner the name of the new occupier in place of the out-going occupier.

4. Ascertainment of wage bill--(1) On the receipt of information about the default of payment of wages exceeding fifty thousand rupees in an industrial establishment, the Labour Commissioner shall serve a notice on its occupier in Form-II for the purposes of ascertaining the wage bill in respect of which default in payment has been committed. The Labour Commissioner may also require the occupier to furnish to him the information in Form-III and to produce such other information and material he may consider necessary for the above purpose.

(2) The Labour Commissioner shall forward to the Collector a certificate in Form-IV under his signature specifying the amount of wages due from the industrial establishment concerned.

(3) The amount realised by the Collector and placed at the disposal of the Labour Commissioner shall be disbursed by the Labour Commissioner himself or he may cause it to be disbursed through the occupier of the concerned industrial establishment among the workmen, entitled thereto. The account of the amount, so disbursed among the workmen, shall be maintained in Form-V by the Labour Commissioner or the occupier of the concerned industrial establishment, as the case may be, and where the amount is disbursed by the Labour Commissioner, himself, a copy of the same shall be forwarded to the occupier of the industrial establishment concerned.

U.P. INDUSTRIAL DISPUTES ACT, 1947

Section 2-K :

''Industry'' means any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft, or industrial occupation or avocation of workmen.

Section 2-L :

''Industrial dispute'' means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the term of employment or with the conditions of labour, of or the term of

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employment or with the conditions of labour, of any person; but does not include an industrial dispute concerning--

(i) any industry carried on by or under the authority of the Central Government or by a Railway Company, or

(ii) such controlled industry as may be specified in this behalf by Central Government, or

(iii) banking and insurance companies as defined in the Industrial Disputes Act, 1947, or

(iv) a mine or an oil-field;

Section 4-A, Labour Court :

(1) The State Government may, by notification in the official Gazette, constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in the First Schedule and for performing such other function as may be assigned to them under this Act.

(2) A Labour Court shall consist of one person only to be appointed by the State Government.

(3) A person shall not be qualified for appointment as the Presiding Officer of a Labour Court unless--

(a) he has, for a period of not less than three years, been a District Judge or an Additional District Judge; or

(b) he has held the Office of the Chairmen or any other member of the Labour Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950 or of any Tribunal, for a period of not less than two years ; or

(c) he has been a Presiding Officer of a Labour Court constituted under any Provincial Act or State Act for a period of not less than five years; or

(d) he has held any judicial office in India for not less than seven years ; or

(e) he is enrolled in the list prepared u/s 4D.

Section 4-B. Tribunal :

(1) The State Government may, by notification in the official Gazette, constitute one or more Industrial Tribunal for the adjudication of industrial disputes relating to any matter whether specified in the First Schedule and Second Schedule.

(2) A Tribunal shall except where otherwise provided u/s 5A, consist of one person only to be appointed by the State Government.

(3) A person shall not be qualified for appointment as the Presiding Officer of a Tribunal unless--

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(a) he has, for a period of not less than three years, been a District Judge or an Additional District Judge ; or

(b) he has held the Office of the Chairman or any other member of the Labour Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950 for a period of not less than two years or of any tribunal constituted under the U.P. Industrial Disputes Act, 1947 for a period of not less than five years; or

(c.) he is enrolled in the list prepared in accordance with Section 4-D.

(4) The State Government may, if it so thinks fit, appoint up to two persons as assessors to advice the Tribunal in the proceedings before it.

Section 6-V

Application of Sections 6-W and 6-X.--(1) The provisions of Sections 6-W and 6-X shall apply to an industrial establishment pertaining to an industry other than an industry referred to in Sub-clause (i) of Clause (a) of Section 2 of the Industrial Disputes Act, 1947 (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than three hundred workmen were employed on an average per working day for the preceding twelve months.

Section 6-W

Procedure for closing down an undertaking.--(1) An employer who intends to close down an undertaking of an industrial establishment shall, in the prescribed manner, apply, for prior permission, at least ninety days before the date on which the intended closure is to become effective, to the State Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workman in the prescribed manner :

Provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.

(2) Where an application for permission has been made under Sub-section (1), the State Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity being heard to the employer, the workmen and the persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order, and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(3) Where an application has been made under Sub-section (1) and the State Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which

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such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(4) An order of the State Government granting or refusing to grant permission shall, subject to the provisions of Sub-section (5), be final and binding on all the parties and shall remain in force for one year from the date of such order.

(5) The State Government may, either on its own motion or on the application made by the employer or any workman, reviews its order granting or refusing to grant permission under Sub-section (2) or refer the matter to a Tribunal for adjudication :

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(6) Where no application for permission under Sub-section (1) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.

(7) Notwithstanding anything contained in the foregoing provisions of this section, the State Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that the provisions of Sub-section (1) shall not apply in relation to such period as may be specified in the order.

(8) Where an undertaking is permitted to be closed down under Sub-section (2), or where permission for closure is deemed to be granted under Sub-section (3), every workman who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive compensation which shall be equivalent to fifteen days average--pay for every completed year of continuous service or any part thereof in excess of six months.

Section 14-B.--(1) Any employer who closes down an undertaking in contravention of the provisions of Section 3 or Section 6-W shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(2) Any employer, who contravenes a direction given u/s 6-X shall be punishable with imprisonment for term which may extend to three years or with fine or with both, and where the contravention is continuing one, with a further fine which may extend to two thousand rupees for every day during which the contravention continues after the conviction.

Section 22 :

Protection.--(1) No suit, prosecution or other legal proceedings shall lie against

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any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made or deemed to be made thereunder.

(2) No suit, prosecution or other legal proceedings shall lie against the [Government] for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made or deemed to be made thereunder.

THE FIRST SCHEDULE (See Section 4-A)

(Matters within the jurisdiction of Labour Courts)

1. The propriety or legality of an order passed by an employer under the Standing Order;

2. The application and interpretation of Standing Orders;

3. Discharge or dismissal of workman including reinstatement or, or grant of relief to, workmen wrongfully dismissed;

4. Withdrawal of any customary concession of privilege;

5. Illegality or otherwise of a strike or lockout; and

6. All matters other than those specified in the Second Schedule.

THE SECOND SCHEDULE (See Section 4-B) (Matters within the jurisdiction of Industrial Tribunal)

1. Wages, including the period and mode of payment.

2. Compensatory and other allowances.

3. Hours of work and rest intervals.

4. Leave with wages and holiday.

5. Bonus, profits sharing, provident fund and gratuity.

6. Shift working otherwise than in accordance with standing orders.

7. Classification by grades.

8. Rules of discipline.

9. Rationalisation

10. Retrenchment of workmen and closure of establishment.

10-A. Any matter relating to the closure of undertaking of an industrial establishment.

11. Any other matter that may be prescribed.

13. On the basis of arguments which have been advanced, the first question to

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be answered is : as to whether Kallu Ram had any authority to initiate proceeding u/s 3 of U.P. Industrial Peace (Timely Payment of Wages) Act, 1978, and had right to participate in proceedings undertaken u/s 6-W of U.P. Industrial Disputes Act, 1947, and whether writ petition, at his behest, is maintainable, or not, claming himself to be President of Sangh.

14. Provisions as contained under the U.P. Industrial Peace (Timely Payment of Wages) Act, 1978 had been incorporated as provision of Payment of Wages Act, 1936 were found to be inadequate in respect to ensuring timely payment of wages, and net effect of the same was that incidence of disturbance of industrial peace was greater in comparatively bigger establishments in this background it has been considered necessary to provide that if, wage-bill in default exceeds fifty thousand rupees the amount should be recoverable as arrears of land revenue and, further in order to curb the tendency of the employers to keep large amounts of wages in arrears, it was also considered necessary to make it a penal offence qua employers who were in default of a wage-bill exceeding rupees one lakh. Under the said provisions Industrial establishment wherein articles are produced, processed, adopted or manufactured with a view to their use, transport or sale, are included irrespective of the fact that said industrial establishment is factory, workshop or any other establishment wherein articles are produced, processed, adopted and manufactured with a view to their use, transport or sale. Thus, for these categories of industrial establishment or any other establishment this particular provision can be invoked. Section 3 of the said Act provides that where the Labour Commissioner is satisfied that the occupier of an industrial establishment is in default of payment of wages and that the wage bill in respect of which such occupier is in default exceeds fifty thousand rupees, he may, without prejudice to the provisions of Sections 5 and 6, forward to the Collector, a certificate under his signature specifying the amount of wages due and thereafter said amount be realised. Section 4 of the Act deals with powers of Labour Commissioner. Section 5 of the Act deals with penalties and Section 6 of the Act deals with offence by companies. Thus, entire scheme of the Act clearly reflects that there is an obligation cast upon the Labour Commissioner to make enquiry and satisfy himself that occupier of an industrial establishment is not in default of payment of wages of more than fifty thousand rupees. As far as workmen are concerned they have no role to pay in the same and at the best, their role is that of complaint, bringing to the knowledge and notice of Labour Commissioner that industrial establishment as defined u/s 2(a) of the Act is in default of payment of wages exceeding fifty thousand rupees. Labour Commissioner has to satisfy himself that there is default and said amount exceeds 50 thousand rupees then certificate has to be issued specifying the amount of wages due. Sub-section (2) to (5) of Section 3, then provides the way and manner in which amount in question has to be realised and disbursed, and further that liability of occupier towards each workman in respect of payment of wages, shall, to the extent of the amount paid to such workman will stand discharged. Rule 4 of 1981 Rules deals with that on receipt of information about

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default of payment of wages exceeding 50 thousand rupees Labour Commissioner shall serve notice on its occupier in Form-II for the purpose of ascertaining wage bill in respect of which default in payment has been committed. Thus, it is writ apparent that on receipt of information action has to be taken. Receipt of information clearly connotes, information from any quarter whatsoever and thus, this power can even be exercised even suo motu. In the case in hand Kallu Ram''s information also furnished to Additional Labour Commissioner, Allahabad of the fact that was an industrial establishment which was in default of payment of wages exceeding 50,000/- rupees. Additional Labour Commissioner, Allahabad while passing order dated 20.6.2003 has mentioned that application moved on behalf of Kallu Ram was not maintainable. This view which has been taken by the Additional Labour Commissioner, Allahabad while exercising authority u/s 3 of U.P. Industrial Peace (Timely Payment of Wages) Act, 1978, namely, that application moved on behalf of Kallu Ram was not maintainable is incorrect view, inasmuch as, it was merely an information and on said information being received rest of the exercise was to be undertaken by concerned Additional Labour Commissioner, Allahabad. Said application after cognizance has been taken was of no consequence, inasmuch as said application merely transmitted and conveyed information of default. Observation which has been made by Additional Labour Commissioner, Allahabad is erroneous as in proceeding undertaken u/s 3 of U.P. Industrial Peace (Timely Payment of Wages) Act, 1978, there is no requirement of moving of application and the only requirement is that through any agency information has to be received by Additional Labour Commissioner, Allahabad for initiating further action in the event of fulfilment of each and every prerequisite terms and conditions provided therein. Thus, information, which had been furnished by Kallu Ram on the basis of the same action could have taken.

15. Now the question of maintainability of writ petition, is being dealt with. As far writ petition is concerned it has been filed by Kallu Ram in capacity of President of Maya Press Mazdoor Sangh and later on after death of Kallu Ram Vice-President of said Mazdoor Sangh has come into picture. In respect of legal entity of Maya Press Mazdoor Sangh from the pleading available on record this fact is clearly reflected that same is unregistered Trade Union. Plea which has been taken by Kallu Ram is to the effect that Maya Press Mazdoor Sangh is registered Trade Union and its President had been brought over by employers and in this background President had been turned out as an interim measure, instead of holding fresh election, as large workmen had dispensed, a Sanchalan Samiti was formed, for the period closure of two Industrial Establishment was over. Thus, from the own showing of Kallu Ram it is clear that Trade Union in question is unregistered Trade Union, and with the aid of some workers Sanchalan Samiti has been formed. This Sanchalan Samiti by no stretch of imagination could be treated as Trade Union, rather at the best it could be treated as unregistered Trade Union. Right of unregistered union to pursue the matter has been recognised by Hon''ble Apex Court in the case of Newspapers Limited, Allahabad

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v. U.P. State Tribunal 1960 SCC 1328, by mentioning that it is not necessary that a registered body should sponsor a workman''s case to make it industrial dispute. Once it is shown that body of workmen, either acting through their union or otherwise had sponsored a workman''s case it becomes an industrial dispute. Thereafter, Hon''ble Apex Court in the case of Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others, , has reiterated the same view in paragraph 63 as follows :

"A technical point is taken in the counter-affidavit that the 1st petitioner in an un-recognised association and that, therefore, the petition to that extent is not sustainable. It has to be overruled. Whether the petitioners belong to a recognised union or not, the fact remains that a large body of persons with a common grievance exists and they have approached this Court under Article 32. Our current processual Jurisprudence is not of individualistic Anglo-Indian mould. It is broad-based and people-oriented, and envisions access to justice through ''class action'' ''public interest litigation'' and ''representative proceedings''. Indeed little Indians in large numbers seeking remedies in Courts through collective proceedings, instead of being driven to an expensive plurality of litigations, is an affirmation of participative justice in our democracy. We have no hesitation in holding that the narrow concept of ''cause of action'' and ''person aggrieved'' and individual litigation is becoming obsolescent in some jurisdictions. It must fairly be stated that the learned Attorney General has taken no objection to a non-recognised association maintaining the writ petitions."

16. In the said case question of locus standi has been termed to be technical point and in respect to current trend it has been mentioned that same should envision access to justice and further it has been held that narrow concept of cause of action and persons aggrieved and individual litigation is becoming obsolescent in some jurisdiction. In Full Bench judgment of this Court in the case of Umesh Chand Vinod Kumar and Ors. v. Krishi Utpadan Mandi Samiti, Bharthana and Anr., AIR 1984 All. 46, this Court while considering the question of locus standi by an association of person for enforcement of the rights of its members as distinguished from its own rights in para-20 of the said judgment has summed up when association of person registered or unregistered can file a petition under Article 226 for enforcement of the rights of its members as distinguished from the enforcement of its own rights. Para 20 and 21 of the said judgment is being quoted below :

"To summarise, the position appears to be that an association of persons, registered or unregistered, can file a petition under Article 226 for enforcement of the rights of its members as distinguished from the enforcement of its own rights--

(1) In case members of such an association- are themselves unable to approach the Court by reason of poverty, disability or socially or economically disadvantage position "little Indian".

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(2) In case of a public injury leading to public interest litigation provided the association has some concern deeper than that of a wayfarer or a busybody i.e. it has a special interest in the subject matter.

(3) Where the rules or regulations of the association specifically authorise it to take legal proceedings on behalf of its members, so that any order passed by the Court in such proceedings will be binding on the members."

17. Even this Full Bench judgment recognises the right of unregistered association to file writ petition under Article 226 for enforcement of right of its members as distinguished from the enforcement of its own right. Thus, in three contingencies, writ petition on behalf of un-registered association is maintainable when members of said association are themselves unable to

approach the Court, by reason of poverty, disability, or socially or economically disadvantaged position. Secondly when public injury is complained and association has some concern deeper than that of way-farer or busybody. Third condition which has been summarised is that when rules and regulations of the association specifically authorise it to take legal proceedings on behalf of its members so that any order passed by the Court, in such proceedings will be binding on its members and in other cases it has been held that an association whether registered or unregistered cannot maintain a writ petition for enforcement or protection of the rights of its members as distinguished from the enforcement of its own rights.

18. Tested on the principles as laid in the case of Umesh Chand Vinod Kumar and Others Vs. Krishi Utpadan Mandi Samiti and Another, , this fact is clearly reflected that as far as Maya Press Mazdoor Sangh is concerned it is unregistered Trade Union. This has been precise case of Kallu Ram himself that Sanchalan Samiti was formed when office bearer of registered Trade Union had colluded with employer. Nothing has come on record, on the basis of which conclusions could be drawn, that Trade Union in question had risen to the occasion and espoused the cause of workman. Sanchalan Samiti in the facts of present case, could be termed to be unregistered association for the integrum period, till establishments were revived and the workers had the right to come under one umbrella, to espouse the cause of workmen. The very first condition of Full Bench provides that when members of such an association are themselves unable to approach the Court by reason of poverty or economically disadvantage position. Establishment in question had been closed on 23.12.2000, Kallu Ram moved an application on 26.2.2003. Wages had not been paid for long period and thus workmen in question, had been suffering from poverty and were in economically disadvantageous position, and had every right to approach this Court.

19. Much stress has been placed by employees that other workmen may not agree with the proceeding and in the event of adverse decision may disown the proceeding and, as such, there should be something on record to show that

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person, prosecuting the proceeding has some authorisation to prosecute the proceeding. This is true that in the present case, there is nothing on record to suggest that any such resolution has been passed authorising Kallu Ram to prosecute the proceeding, but no workman has come forward even formally opposing the request of Kallu Ram. Coupled with this, seeing the nature of proceeding, personal interest of none of the workers is going to be prejudiced, as under 1978 Act the wages are collectively recovered and paid whereas if the provisions of 1978 Act are not applicable, then the wages can be recovered individually under Payment of Wages Act, 1936.

20. This question can be viewed from another angle that when there was nothing like Maya Press Karmachary Sangh then can Kallu Ram in individual capacity was entitled to participate and pursue the proceedings before Additional Labour Commissioner, Allahabad and even file writ petition before this Court. As has already been noticed above and seeing the nature of proceedings u/s 3 of U.P. Industrial Peace (Timely Payment of Wages) Act, 1978 and Rule 4 of 1981 Rules it is clear that merely on information received action has to be taken. Kallu Ram by virtue of being workman and by virtue of being prospective beneficiary of the said order had full authority to participate in said proceeding and question its validity also. Thus, Kallu Ram even in individual capacity had full authority to participate in the proceedings before Additional Labour Commissioner, Allahabad and also to file writ petition before this Court. Apart from this Kallu Ram had been complaining that closure was in violation of Section 6-W of U.P. Industrial Disputes Act, 1947. Question of applicability of Section 6-W is also involved in the present case. Section 6-W (1) obligates the employer, who intends to close down undertaking to proceed in particular manner, with copy of application served on representative of workmen. Section 6-W (2) deals with providing an opportunity to employer, workmen and person interested in closure and thereafter relevant considerations for refusing and granting permission, and thereafter copy of the order to be communicated both to employer and workmen. Section 6-W (4) provides that an order of the State Government granting or refusing to grant permission shall subject to the provisions of Sub-section (5) of Section 6-W, be final and binding on all the parties and shall remain in force for one year from the date of such order. Sub-section (5) of Section 6-W provides that the State Government may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under Sub-section (2) or refer the matter to a Tribunal for adjudication. Thus, State Government, as per the Scheme of Section 6-W of U.P. Industrial Disputes Act, 1947 before according approval for closure can hear any workmen and even can review its order on the application made by any workmen and thus, this is apparent that even an individual workman has interest in the matter of closure and he can question the validity of closure and it is not necessary that it should be done through representative of the workmen. In this background application moved on behalf of Kallu Ram was clearly maintainable as it proceeded to furnish information on two fronts (I) Provisions of U.P.

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Industrial Peace (Timely Payment of Wages) Act, 1978 were applicable (II) Provisions of Section 6-V and 6-W were applicable, attracted and violated with impunity. Once decision has been taken and decision-making process was being challenged undertaken by statutory authority, by an incumbent who had participated in the same and his interest was involved then he had full authority to question the validity of the order and in the fact of present case, Kallu Ram thus, had got full authority to participate in the proceedings before Additional Labour Commissioner, Allahabad by virtue of being workman in the said establishment even in individual capacity and even, writ petition at the behest of Kallu Ram in individual capacity was clearly maintainable.

21. Second question to be answered is to whether in the present case dispute in question ought to have been adjudicated in reference u/s 4-K of U.P. Industrial Disputes Act, 1947, or it was within the domain and jurisdiction of Additional Labour Commissioner, Allahabad to decide the dispute in proceedings u/s 3 of U.P. Industrial Peace (Timely Payment of Wages) Act, 1978.

22. In order to answer this question relevant provisions are to be looked into Section 2 (k) of U.P. Industrial Disputes Act, 1947 defines "industries". Section 2(1) defines industrial dispute, Section 4-A deals with the constitution of Labour Court, and the matter within the jurisdiction of Labour Court as specified in First Schedule. Section 4-B deals with constitution of Industrial Tribunal and the matter within the jurisdiction of Industrial Tribunal as specified in First Schedule and Second Schedule. Second Schedule deals with all matters which are within the jurisdiction of Industrial Tribunal. As item No. 10 of Second Schedule deals with retrenchment of workman and closure of establishment and item No. 10-A of Second Schedule deals with any matter relating to closure of undertaking of an industrial establishment. Thus, there is a specific provision providing for as to who is competent to decide question in respect of closure of establishment on any matter relating to closure of undertaking of an industrial establishment. Item No. 10-A has been inserted by U.P. Act No. 26 of 1983 with effect from 3.8.1983 and thus, in respect of closure of an undertaking industrial establishment, it is the Industrial Tribunal which has authority and jurisdiction to deal with the matter. As far as provision of U.P. Industrial Peace (Timely Payment of Wages) Act, 1978 is concerned said proceedings are summary in nature and provisions of said Act has been considered by Hon''ble Apex Court in the case of Modi Industries Ltd. Vs. State of Uttar Pradesh and others, . Relevant extract of aforementioned judgment, paragraph 3 and 4 are being quoted below :

"3. In order to resolve the controversy between the parties, it is first necessary to examine the provisions of the Act. As the title of the Act itself suggests it has been enacted to secure industrial peace by ensuring timely payment of wages to the workmen. The preamble of the Act states that it is an Act to provide "in the interest of maintenance of industrial peace, a timely payment of wages in bigger industrial establishments and for matters connected therewith." The Statement of Objects and Reasons of the Act states that delays in payment of wages of

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workmen lead to simmering discontent among them. Sometime a grave threat to law and order is also forced on this account. The provisions of the Payment of Wages Act, 1936 have been found to be inadequate to ensure timely payment of wages. The incidence of disturbance of industrial peace being greater in comparatively bigger establishments, it was considered necessary to provide that if the wages-bill in default exceeds Rs. 50,000/- the amount should be recoverable as arrears of land revenue. Further, in order to curb the tendency of the employers to keep large amounts of wages in arrears, it was also necessary to make it a penal offence to be default of a wage-bill exceeding Rs. 1 Lakh.

Section 2(a) of the Act defines, "Industrial establishment" to mean "any factory, workshop or other establishment in which articles are produced, processed, adopted or manufactured with a view to their use, transport or sale". "Wage-bill" is defined by Section 2(d) to mean "the total amount of wages payable by an industrial establishment to its workmen." Sub-section (1) of Section 3 then states that where the Labour Commissioner is "satisfied" that the occupier of an industrial establishment is in default of payment of wages and that the "wage-bill" in respect of which such occupier is in default "exceeds fifty thousand rupees," he may, without prejudice to the provisions of Sections 5 and 6, forward to the Collector, a certificate..... specifying the amount of wages due from the industrial establishment concerned. Sub-section (2) of that section states that upon receipt of "the certificate" referred to in Sub-section (1), the Collector shall proceed to realise from the industrial establishment, the amount specified therein, ... recovery charge at the rate of ten percent, as if such amount was an arrear of land revenue. Subsection (3) of that section states that the amount so realised shall be placed at the disposal of the Labour Commissioner and he shall disburse the same among the workmen entitled thereto. Subsection (4) states that when the amount so realised falls short of the wage-bill in respect of which there has been a default, the Labour Commissioner may arrange for disbursement of such proportion or respective proportions of the wages due to "various categories of workmen" as he may think fit. Sub-section (5) then states that the liability of the occupier towards each workman in respect of payment of wages shall to the extent of the amount paid to such workman, stand discharged. Section 4 specifies the powers of the Labour Commissioner when he entertains the complaint of the default of payment of the wage-bill. It states that for the purposes of ascertaining the "wage-bill" of an establishment in respect of which default has been committed, the Labour Commissioner shall have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 in respect of enforcing the attendance of witness ; examining them on oath and compelling production of documents and shall be deemed to be a Civil Court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. Section 5 prescribes penalty. It states that no occupier of an industrial establishment shall at any time be in default of a wage bill exceeding Rs. 1 lakh, and every occupier who is so in default shall be punishable with imprisonment for a term which shall not be less than three months but which

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may extend to three years and shall also be liable to fine. The Court is given power to impose a sentence of imprisonment for a term of less than three months for adequate and special reasons to be recorded in writing. Section 6 provides for punishment of persons when the offence is by the company, which includes firms and association of individuals.

It will thus be clear from the preamble, the statement of objects and reasons and the provisions of the Act that, firstly, the Act has been placed on the statute book to ensure timely payment of wages by the bigger establishments, the incidence of disturbance of industrial peace being greater in such establishment on account of the default in payment of wages. Secondly, the Act deals with defaults in payment of the wagebill of all the workmen in the establishment. It is not meant to provide a remedy for the default in payment of wages of individual workmen. There can be taken care of by the provisions of the Payment of Wages Act, 1936 which provisions are found inadequate to ensure timely payment of wages of the whole complement of workmen in an establishment. Thirdly, it is not in respect of the default in payment of every wage-bill but only of a wage-bill exceeding Rs. 50,000/- that the Labour Commissioner can be approached under the Act for redressal of the grievance. Fourthly, the Act is not applicable to all establishments but only those establishments which produce, process, adopt or manufacture some articles. It will, therefore, be evident that the Act does not supplant or substitute the Payment of Wages Act, 1936 but supplements the said Act, in the limited area, viz., where the establishment, as stated above, (i) produces, processes, adopts or manufactures some articles, (ii) where there is a default in the wage-bill of the entire such establishment, and (iii) where such wage-bill exceeds Rs. 50,000/-. The object of the Act as stated above is not so much to secure payment of wages of individual workmen but to prevent industrial unrest and disturbance of industrial peace on account of the default on the part of the establishment in making payment of wages to their workforce as a whole. It appears that many establishments had a tendency to delay the payment of wages to their workmen and were playing with the lives of the workmen with impunity. This naturally led to a widespread disturbance of industrial peace in the State. Hence the legislature felt the need for enacting the present statute. This being the case, the inquiry by the Labour Commissioner contemplated u/s 3 of the Act is of a very limited nature, viz., whether the establishment has made a default in timely payment of wages to its workmen as a whole when there is no dispute that the workmen are entitled to them.

The inquiry u/s 3 being thus limited in its scope, the Labour Commissioner''s powers extend only to finding out whether the workmen who have put in the work were paid their wages as per the terms of their employment and within the time stipulated by such terms. If the Labour Commissioner is satisfied that the workmen thought they have worked and are, therefore, entitled to their wages are not paid the same within time, he has further to satisfy himself that the arrears of wages so due exceed Rs. 50,000/-. It is only if he is satisfied on both counts that he can issue the certificate in question. Under the Act, the Labour

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Commissioner acts to assist the workmen to recover their wages, which are admittedly due to them but are withheld for no fault on their behalf. He does not act as an adjudicator if the entitlement of the workmen to the wages is disputed otherwise than on frivolous or prima facie untenable grounds. When the liability to pay wages, as in the present case, is under dispute which involves investigation of the questions of fact and/or law, it is not the function of the Labour Commissioner to adjudicate the same. In such case, he has to refer the parties to the appropriate forum.

The powers conferred on the Labour Commissioner u/s 3 of the Act are to prevent, apprehended or present breach of industrial peace. That is why the inquiry contemplated is of a summary nature. The exercise of the said powers by the Labour Commissioner does not prevent either party from approaching the regular forum for the redressal of its grievance. Construing a more or less similar provision of Section 3(b) of the U.P. Industrial Disputes Act, 1947 in State of Uttar Pradesh and Others Vs. Basti Sugar Mills Co., Ltd., , this Court had taken the same view, the provisions of the said Section 3(b) read as follows :

"3. Power to prevent strikes, lockouts, etc.--If, in the opinion of the State Government, it is necessary or expedient so to do for securing the public safety or convenience or the maintenance of public order or supplies and services essential to the life of the community, or for maintaining employment, it may, by general or special order, make provision--

(a) X X X X X X X

(b) for requiring employers, workmen or both to observe for such period, as may be specified in the order, such terms and conditions of employment as may be determined in accordance with the order;

XXXXXXXXX

In that case, the State Government under the above provision had directed the sugar factories to pay bonus to the workman. Repelling the challenge to the direction of the Government this Court observed as follows in State of Uttar Pradesh and Others Vs. Basti Sugar Mills Co., Ltd., :

"We entirely agree with Mr. Pathak that the normal way of dealing with in industrial dispute under the Act would be to have it dealt with judicial either by conciliation or by adjudication and that judicial process cannot be circumvented by resort to executive action. The proceeding before a conciliator or an adjudicator is, in a sense a judicial proceeding because therein both the parties to the dispute would have the opportunity of being heard and of placing the relevant material before the conciliator or adjudicator. But there may be an emergency and the Government may have to act promptly "for securing the public safety or convenience or the maintenance of public order or supplies and services essential to the life of the community or maintaining employment." It was, therefore, necessary to arm it with additional powers for dealing with such

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an emergency. Clause (b) of Section 3 was apparently enacted for this purpose. An order made thereunder would be in the nature of a temporary or interim order which would be clear from the words "for such period as may be specified" appearing therein and from the second proviso to Section 3. Under this proviso where an industrial dispute is referred for adjudication under Clause (d) an order made under Clause (b) cannot be enforced after the decision of the adjudicating authority is announced by or with the consent of the State Government. It would, therefore, follow from this that where the Government has an executive order, as it did in this case, under Clause (b) of Section 3, it is open to the aggrieved party to move the Government to refer the industrial dispute for conciliation or adjudication under Clause (d) of Section 3....."

A similar view is expressed in Basti Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Another, . This nature of the provisions of Section 3 of the present Act emphasises two aspects which are relevant for our purpose. Firstly, the power conferred on the Labour Commissioner being meant to be used specially to prevent apprehended or continuing industrial unrest, the procedure to be adopted by him is essentially of a summary nature. It does not contemplate a protracted inquiry. Secondly, the purpose of the inquiry being to redress the grievance of the non-payment of wages, the authority of the Labour Commissioner extends only finding our whether on the admitted fact that the workman had worked, the grievance of the workmen has a substance in it or not. It does not, however, mean that the employer can defeat the provisions of the Act by raising frivolous pleas to avoid the payment of wages and when the employer does so, the Labour Commissioner has to wash his hands off the complaint of workmen. While looking into the grievance of the workmen, the Labour Commissioner will undoubtedly have power to find out whether the employer has a plausible defence or not. Hence the Labour Commissioner would have to examine the pleas and to deal with them. He would have, therefore, to give reasons for accepting or not accepting them. To that extent, he is called upon to give reasons while issuing or refusing to issue the certificate. It must be remembered that Labour Commissioner is not mere recovery officer. While the recovery officer acts on a claim which is already crystallized in some order, the Labour Commissioner in the present case has to ascertain him whether and to what extent that workmen are entitled to the wages and then issue or refuse to issue certificate. The inquiry that the Labour Commissioner conducts for the purpose is thus of a quasi judicial nature. It is the Collector to whom he forwards the certificate who in fact acts as the recovery officer. As is provided in Section 3 itself, on receipt of the claim or complaint of the workmen, the Labour Commissioner has to satisfy himself that the occupier of the industrial establishment concerned is in default of payment of wages and that the wage-bill in respect of which the default is complained or exceeds Rs. 50,000/-. He cannot satisfy himself without hearing the occupier of the industrial establishment on the claim made. This, why u/s 4 he is clothed with the powers of the Civil Court in the matter of enforcing the attendance of the witnesses examining them on

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oath and compelling production of documents. It has further to be borne in mind that the consequences to the parties of the issuance or non-issuance of the certificate are grave. When the certificate is not issued, the employees'' claim stands deferred to an indefinite period. When however, it is issued the employer is saddled with a seizable financial liability and the non-payment of the amount indicated in the certificate visits him with penal consequences of both imprisonment and fine. The decisions of this Court in Mahabir Jute Mills Ltd., Gorakhpore Vs. Shibban Lal Saxena and Others, ; Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, ; C.B. Gautam v. Union of India 1993 (1) SCR 78 on which Shri Tarkunde relied in support of his proposition that administrative orders need not contain reasons for the same, according to us, therefore, have only a limited application in the present case. The Labour Commissioner may have to deal with broadly three different situations, viz. (i) where there is no defence whatsoever raised by the employer to the claim of the workmen, (ii) where the employer raises frivolous and untenable pleas to resist the claim, and (iii) where there is a genuine dispute with regard to the entitlement of the workmen to the wages and the said dispute cannot be resolved without investigating the disputed questions of fact or law. In the first case, the Labour Commissioner is not called upon to give any reasons while issuing certificate. In the second case, the Labour Commissioner has to give reasons as to why according to him, the pleas raised are untenable. In the third situation, the Labour Commissioner when he rejects the claim of the workmen has to indicate the disputed question of law or fact, which prevent him from exercising his limited jurisdiction. Thus, both for issuing the certificates as well as for rejecting it, the Labour Commissioner may be called upon to give his reasons depending upon the facts in each case. It is well settled by a series of decisions beginning with A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , that even administrative decisions must bear reasons for some of them may have more vital consequences of the rights of the parties than even judicial decisions. It is not, therefore, correct to say that the Labour Commissioner is not required to give reasons for his orders.

As stated earlier, whether the certificate is issued or not, the parties'' remedy to approach the appropriate forum of the adjudication of their claim is not taken away. They can still approach the regular forum meant for the resolution of the dispute. The provisions of the Act are only of a summary nature meant to deal speedily. With situations requiring urgent solution."

23. As per the judgment quoted above, scope of enquiry u/s 3 is limited and the same is extended only to find out, as to whether workmen, who have put in their work have been paid their wages or not, within the time stipulated and further arrears of wages, so due, exceeds Rs. 50,000/-. After satisfaction is recorded on these two counts then certificate is to be issued. Labour Commissioner does not act as an adjudicator rather assists the workmen to recover their wages, which are admittedly due to them, but are withheld for no fault of the workmen. Labour Commissioner has authority to ignore the objections of employer in case it is

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frivolous or based on unsustainable ground. However, when liability to pay the wages, is under dispute, which involves investigation of question of fact/or law, then in that contingency, Labour Commissioner has not authority to adjudicate, and matter has to be referred to appropriate forum.

24. Now here in the present case tested on the principles as laid down in the case of Modi Industries Ltd. Vs. State of Uttar Pradesh and others, , it has to be seen as to whether serious question of fact and law had been raised before Labour Commissioner or not and whether Labour Commissioner was competent to deal with the matter at its own level or not. In the present case, question raised was to the effect as to whether M/s. Maya Press Pvt. Ltd. and Mitra Prakashan were separate and distinct entities, or they were one and the same with more than 300 workmen in their employment, and as to whether there was requirement of taking prior permission from the State Government in terms of Section 6-W of the U.P. Industrial Disputes Act, 1947. Hon''ble Apex Court in the case of S.G. Chemicals and Dyes Trading Employees'' Union Vs. S.G. Chemicals and Dyes Trading Limited and Another, , Paragraph 17 has mentioned that question as to whether undertaking of the Company, namely, Churchgate Division, formed part of the industrial establishment of the Company, namely, the Trombay factory so as to constitute the Trombay factory and the Churchgate division one establishment. It has been held that if they did and the total strength of the workmen employed in the Churchgate Division and at the Trombay factory was one hundred or more, then Section 25O would apply. If they do not, then the Section which would apply would be Section 25FFA. This is a question of fact to be ascertained from the evidence led before the Industrial Court. For ready reference of this Court paragraph 17 to 19 are being quoted below :

"17. What now falls to be ascertained is whether the undertaking of the Company, namely, the Churchgate division, formed part of the industrial establishment of the Company, namely, the Trombay factory so as to constitute the Trombay factory and the Churchgate division one establishment. It they did and total strength of the workmen employed in the Churchgate division and at the Trombay factory was one hundred or more, then Section 25O would apply. If they do not, then the section which would apply would be Section 25FFA. This is a question of fact to be ascertained from the evidence led before the Industrial Court. At the relevant time the number of employees in the Trombay division was 60, aggregating in all to 260. The Worli division does not fall for consideration in this appeal because the evidence in the case is confined to the Trombay factory and the Churchgate division and does not refer to the Worli division except in passing. The evidence clearly establishes that the functions of the Churchgate division and Trombay factory were neither separate nor independent but were so integrally connected as to constitute the Churchgate division and the Trombay factory into one establishment. Until 1965 any Company had its various departments, such as pharmaceutical sales, dyes and chemicals sales, laboratory (which is now in the Trombay factory), accounts, purchases, personnel and

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administration and other departments housed in Express Building, Churchgate, while its factory was situate at Tardeo. In 1965 the factory as also the laboratory were shifted to Trombay and in 1971 the Pharmaceutical Sales Division was shifted to Worli. Even after the Company began carrying out its operation at three separate places, namely, at Worli, Churchgate and Trombay, all the purchases of raw materials required for the Trombay factory were made by the Churchgate division. The Churchgate division also looked after the marketing and sales of the goods manufactured and processed at the Trombay factory. The statistical work of the Company, namely, product-wise sales statistics, industry wise sales statistics, partywise sales statistics, monthly sales performance statistics, sales forcast statistics, collection forecast statistics, sales outstanding statistics and other statistical work, was also done in the Churchgate division. The orders for processing of dyes and instructions in respect thereof were issued from the Churchgate division to the Trombay Factory. The work of making payment of salaries, overtime, conveyance allowances, medical expenses, leave travel allowance, statutory deductions such as for provident fund, income tax, professional tax etc. in respect of the workmen working at the Trombay factory from the Churchgate division used to go to the Trombay factory on the last day of each month for actually making payment of the salaries etc. The work of purchasing statutory items, printing forms, etc, for the Trombay factory and the Worli division was also done by the Churchgate division and the maintenance of the Express Building at Churchgate division and of the factory at Trombay was done by personnel in Churchgate division. The Churchgate division also purchased uniforms, raincoats, and umbrellas for the workmen working in the Trombay factory in addition to the workmen working in the Express Building. The services of the workmen working in the Trombay factory were transferable and workmen were in fact transferred from the Trombay factory to Churchgate division.

18. While the Union examined eight witnesses, P.S. Raman, Executive (Administration) of the Company was the only witness examined by the Company. Raman has admitted in his evidence that the marketing and sales operations of the dyes processed at the Trombay factory were done in the Churchgate division, that personnel from the Churchgate division were sent to the Trombay factory in connection with the technical matters relating to the factory that the procurement of raw materials and the work of technical advice on processing and standardisation of goods manufactured and processed at the Trombay factory as also the final marketing of the finished products of the Trombay factory were done by the Churchgate division. He has further admitted that the supply of stationery to the Trombay factory was largely done from the Churchgate division and that the ultimate decisions with regard to the workload, assignment of job, etc. were taken by the top management of the Company at the Head Office of the Company in Express Building. Raman has also admitted that samples relating to the products to be processed at the Trombay factory were received at the Churchgate division and salary sheets in respect of

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workmen employed in the Trombay factory were prepared in the Churchgate division and that all preparations in respect of disbursement of wages and salaries of the employees working in the Trombay factory were also done in the Churchgate division. Raman''s evidence further shows that there were no accountants at the Trombay factory and all the work relating to the accounts of the Trombay factory was done at the Head Office and Raman himself had to go to Trombay sometimes in connection with the work of the factory. It is thus clear from the evidence on the record that the Trombay factory could never have functioned independently without the Churchgate division being there. A factory cannot produce or process goods unless raw materials required for that purpose are purchased. Equally, there cannot be a factory manufacturing or processing goods unless the goods so manufactured or processed are marketed and sold. The one without the other is a practical impossibility. Similarly, no factory can run unless salaries and other employment benefits are paid to the workmen nor can a factory function without the necessary accounting and statistical data being prepared. These are integral parts of the manufacturing activities of a factory. All these factors existed in the present case and there can be no doubt that the Trombay factory and the Churchgate division constituted one establishment. The fact that, according to the Company, a major part of the work of the Churchgate division was that marketing and selling the products of the Ranoli factory belonging to Ambalal Sarabhai Enterprises Limited is irrelevant. The Trombay factory could not have conveniently existed and functioned without the Churchgate division and the evidence shows a complete functional integrity between the Trombay factory and the Churchgate division of the Company. The total number of workmen employed at the relevant time in the Trombay factory and the Churchgate division was one hundred and fifty and, therefore, if the Company wanted to close down its Churchgate division, the section of the Industrial Disputes Act which applied was Section 25O and not Section 25FFA.

19. The next contention raised on behalf of the company was that the Trombay factory was registered under the Factories Act while the Churchgate Division was registered as a commercial establishment under the Bombay Shops and Establishments Act and, therefore, they could not be treated as one. According to the Industrial Court, this fact of registration under two different Acts constituted the Trombay factory and the Churchgate division into two separate legal entities. It is as difficult to follow this contention of the Company as it is to understand the conclusion reached by the Industrial Court. Merely because registration is required to be obtained under a particular statute, it does not make the business or undertaking or industry so registered a separate legal entity except where a registration of incorporation is obtained under the Companies Act. The Factories Act and Bombay Shops and Establishments Act are regulatory statutes and the registration under both those Acts is compulsory for providing certain benefits to the workmen employed in the factory or the establishment, as the case may be. What was, however, relied upon was the definition of "commercial establishment" given in Clause (4) of Section 2 of the Bombay Shops and Establishments Act.

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The said Clause (4) is as follows :

"(4) ''Commercial establishment'' which caries on, any business, trade or profession or any work in connection with, or incidental or ancillary to, any business, trade or profession and includes establishment of any legal practitioner, medical practitioner, architect, engineer, accountant, tax consultant or any other technical or professional consultant and also includes a society registered under the Societies Registration Act, 1860 and a charitable or other trust, whether registered or not, which carries on whether for purposes of gain or not, any business, trade or profession or work in connection with or incidental or ancillary thereto but does not include a factory, shop, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment."

Clause (9) of Section 2 of the said Act defines "factory" as meaning "any premises which is a factory within the meaning of Clause (m) of Section 2 of the Factories Act, 1948, or which is deemed to be a factory u/s 85 of the said Act." The definition of "commercial establishment" in Clause (4) of Section 2 clearly shows that a commercial establishment is one of the categories of "establishment". "Establishment" is separately defined in Clause (8) of Section 2 as follows :

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

It will be noticed that the word "factory" does not occur in the definition of "establishment" while a factory is expressly excluded from the definition of "commercial establishment". The reason is obvious. There are separate chapters in the Bombay Shops and Establishment Act which provide for various matters such as opening and closing hours, daily and weekly hours of work, interval for rest, holidays in a week, etc., in respect of different categories of establishment, such as eating houses and theatres or other places of public amusement or entertainment. u/s 7(1) of the said Act, the employer of every establishment is to send to the Inspector of the local area concerned a statement in a prescribed form together with the prescribed fees containing various particulars including "the category of the establishment, i.e., whether it is shop commercial establishment, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment." On receipt of such statement and the fees the Inspector, if satisfied about the correctness of the statement is to register the establishment in the Register of Establishments. The form of the Register of Establishments is given in Form-C appended to the Maharashtra Shops and Establishments Rules, 1961, made u/s 67 of the Bombay Shops and Establishment Act. This Form shows that the Register is divided into five parts. Part I consists of shops; Part II consists of commercial establishments; Part III consists of residential hotels; Part IV consists of restaurants and eating houses;

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and Part V consists of theatres and other places of public amusement or entertainment."

25. In terms of the judgment quoted above in case examination/investigation was to be made as to whether both the establishments are one and the same and as to whether total strength of staff qua said establishment was to be clubbed or not, then this was a question of fact to be ascertained from evidence led before Industrial Court. The answer to this question, would have determined as to whether the provision of Sections 6-V and 6-W of U.P. Industrial Disputes Act, 1947 were applicable or not. Additional Labour Commissioner, Allahabad has no authority or jurisdiction to decide this particular question as to whether provisions of Section 6-W are attracted in the fact of the present case or not, once serious issue was raised that both the establishments are independent of each other and figure of 300 was arrived at only after employees of both establishments were clubbed. The issues raised demanded adjudication of disputed question of fact after evidence was led in this regard. Question of jurisdiction was also involved, in the present case, which in no view of the matter could have been decided by Additional Labour Commissioner, Allahabad. The objection raised, in the present case by no means could be termed to be frivolous or without any defence. Once disputed question of fact had been raised, and said fact, touched the question of jurisdiction, then Additional Labour Commissioner, Allahabad, ought to have kept his hands off, as he has not at all been vested with the authority to decide the question of closure, as it is clearly in the domain of Industrial Tribunal.

26. Hon''ble Apex Court in the case of S.G. Chemicals and Dyes Trading Employees'' Union Vs. S.G. Chemicals and Dyes Trading Limited and Another, , while deciding question of closing down undertaking of industrial establishment has itself carved out exception in para-19 of the said judgment by mentioning that merely because registration is required to be obtained under a particular statute, it does not make the business or undertaking or industry so registered a separate legal entity except where a registration of incorporation is obtained under the Companies Act. Thus, judgment which has been relied upon by Additional Labour Commissioner, Allahabad in the case of S.G. Chemicals and Dyes Trading Employees Union (supra) therein itself exception has been drawn, where in case company is registered under the Companies Act as each one on its own has separate entity after incorporation under Indian Companies Act. Thus, principles laid down in the case of S.G. Chemicals and Dyes Trading Employees'' Union Vs. S.G. Chemicals and Dyes Trading Limited and Another, , could not have been extended qua the petitioners mechanically. Further once it was contended that though both the companies have separate independent entity in law but if corporate veil was lifted, it would be amply clear that corporate personality was being used as cloak for saving themselves from the clutches of the statutory provisions as envisaged u/s 6-W of U.P. Industrial Disputes Act, 1947, then serious exercise for investigation of such fact had to take place, after lifting corporate veil for satisfying as to who are in charge of the affairs of the company

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and though both have separate legal entity in law, but for all practical purposes, they are one and the same, and corporate personality is being misused as a cloak for improper conduct Additional Labour Commissioner, Allahabad has no authority to adjudicate this issue, and Industrial Tribunal only, could have adjudicated this issue. Hon''ble Apex Court in the case of Singer India Ltd. v. Chander Mohan Chadha and Ors. AIR2004 SCW 5039, has considered in detail the principles applicable in respect to concept of lifting the corporate veil. Relevant paragraphs 14 and 15 are being quoted below :

"14. In Palmer''s Company Law (24th Edn.), in Chapter 18, para 2 onwards some instances have been given in which the modern company law disregards the principle that the company is an independent legal entity and also when the Courts would be inclined to lift the corporate veil and the important ones being in relation to the law relating to trading with enemy where the test of control is adopted and also where the device of incorporation is used for some illegal or improper purpose. In Grower''s Principle of Modern Company Law (4th Edn.), in Chapter 6, the topic of lifting the veil has been discussed. The learned author has said that there is no consistent principle beyond a refusal by the Legislature and the judiciary to apply the logic of the principle laid down in Solomon''s case where it is too flagrantly opposed to justice convenience or the interest of the Revenue. In the cases where veil is lifted, the law either goes behind the corporate personality to the individual members, or ignores the separate personality of each company in favour of the economic entity constituted by a group of associated companies. The principal grounds where such a course of action can be adopted are to protect the interest of the Revenue and also where the corporate personality is being blatantly used as a cloak for fraud or improper conduct.

15. The question of lifting the corporate veil was examined by a Constitution Bench in Tata Engineering and Locomotive Co. Ltd. Vs. State of Bihar and Others, . The Court observed that the doctrine of lifting of the veil postulates the existence of dualism between the Corporation or company on the one hand and its member or shareholders on the other. After review of a number of authorities and standard books, the Parameters where the said doctrine could be applied were indicated in consonance with the principles indicated in the preceding paragraph. In Delhi Development Authority Vs. Skiper Construction Company (P) Ltd. and another, , Mr. Justice B.P. Jeevan Reddy has examined the question in considerable detail and it will be useful to reproduce the relevant paragraph of the judgment which is as under :

"Para-24 Lifting the corporate veil :

In Aron Salomon v. Salomon and Company Limited, 1897 Appeal Case 22, the House of Lords had observed : "the company is at law a different person altogether from the subscribed..... and though it may be that after incorporation the business is precisely the same as it was before and the same persons are managers and the same hands received the profits, the company is

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not in law agent of the subscribers or trustee for them. Nor are the subscribers as members liable, in any shape or form, except to the extent and in the manner provided by that Act." Since then, however, the Courts have come to recognise several exceptions to the said rule. While it is not necessary to refer to all of them, the one relevant to us is "when the corporate personality is being blatantly used as cloak for fraud or improper conduct" [Grower Modern Company Law-4th Edn. (1979) at p. 137, Pennington Company Law 5th Edn. 1985 at p. 53] also states that "where the protection of public interests is of paramount importance or where the company has been formed to evade obligations imposed by the Law, the Court will disregard the corporate veil..... ."

It was held that, broadly, where a fraud is intended to be prevented, or trading with enemy is sought to be defeated, the veil of corporation is lifted by judicial decisions and the share holders are held to be ''persons who actually work for the Corporation.'' The main principle on which such a course of action can be taken was stated in paragraph 28 of the report and the relevant part thereof is being reproduced below :

"28. The concept of corporate entity was evolved to encourage and promote trade and commerce but not to commit illegalities or to defraud people. Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the Court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned....."

27. Thus, where it is alleged that corporate personality is being blatantly used as cloak to save them from the rigors of law then Industrial Court can proceed to examine the same on the principles mentioned above. This requires, evidence and thorough investigation of fact and certainly this exercise cannot be undertaken by Additional Labour Commissioner. Thus, Additional Labour Commissioner, Allahabad has clearly committed error in recording evidence that there are 300 workmen and provision of Section 6-W of the Act were applicable in the petitioner-establishment.

28. Last question whether any action can be taken in the facts of present case u/s 14-B of U.P. Industrial Disputes Act, 1947, or not. Section 14-B deals with employer who closes down an undertaking in contravention of the provisions of Section 3 or Section 6-W of U.P. Industrial Disputes Act, 1947 and then he is liable to be punished with imprisonment for a term, which may extend to three years. Here in the present case as to whether employer has closed down the undertaking in contravention of Section 6-W of U.P. Industrial Disputes Act, 1947 is yet to be ascertained on the basis of evidence. Notice in question has been issued, proceeding on presumption that Section 6-W has been violated, which is punishable u/s 14-B. Finding of fact which has been returned by Additional Labour Commissioner, Allahabad being without jurisdiction has already been quashed, as such entire consequential proceeding which has been undertaken pursuant to the said order are also quashed. Apart from this Section 6-W of U.P.

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Industrial Disputes Act, 1947 was declared ultra-vires by this Court in judgment dated 28.3.1990 in W.P. No. 6295 of 1987 and judgment dated 17.8.1992 in W.P. No. 4206 of 1991 and said judgments occupied the field till 17.1.2002 when Hon''ble Apex Court in the case of Orissa Textile and Steel Ltd. Vs. State of Orissa and Others, , declared the aforementioned provisions intra-vires. The said Constitution Bench, judgment nowhere has indicated that it would be prospective in its application, and thus it has to be presumed that it is law for all times to come, right since its inception. [See M.A. Murthy Vs. State of Karnataka and Others,]. However, the question is that till the aforementioned judgment was not overruled, and same had been operating, still was it incumbent on the part of employers to take permission in terms of Section 6-W of U.P. Industrial Disputes Act, 1947. Hon''ble Apex Court in the case of Commissioner v. G.M. Mitthal 2003 (2) SCC 441 has taken the view, that High Court decision binds authorities within State and merely because on subsequent occasion, Hon''ble Apex Court has reversed the said decision, the decision taken cannot be presumed to be erroneous. Non-taking of permission has implications on two fronts. Firstly, if closure is illegal, from the date of closure, workman shall be entitled for all the wages any law for the time being in force, as if the undertaking had not been closed down. Secondly, closure in contravention of Section 6-W invites penal consequences also. As far as the question, whether Section 6-W is applicable qua petitioners'' establishment or not is to be adjudicated by Industrial Tribunal. In case the answer is that Section 6-W is applicable, then Industrial Tribunal would adjudicate as to whether closure has been validly made or not and financial liability would be dependant on such adjudication. As far as initiation of penal proceedings u/s 14-B of U.P. Industrial Disputes Act, 1947, is concerned same would be saved and protected by Section 22 of U.P. Industrial Disputes Act, 1947, which clearly mentions that no suit, prosecution or other proceedings shall lie against any person for anything done in good faith. There is Maxim, Actus curiae neminem gravabit i.e. act of Court, harms no one. Here judgment of this Court, operated w.e.f. 28.3.1990 to 17.1.2002 and during this period, as no interim order was operating said judgment had binding effect and thus petitioners could not have been compelled to obtain permission. Non-taking of permission, in pursuance of judgment of this Court, can clearly be termed to be action taken in good faith and thus, proceedings u/s 14-B of U.P. Industrial Disputes Act, 1947 are clearly not contemplated in the facts of present case.

29. Consequently Civil Misc. Writ Petition No. 31892 of 2003 is dismissed and Civil Misc. Writ Petition No. 50799 of 2003 is allowed. Further, Additional Labour Commissioner is directed to transmit the entire record to Secretary Labour Department, State of U.P. for making reference in terms of Section 4-K of U.P. Industrial Disputes Act, 1947 to the concerned Industrial Tribunal within two months from the date of receipt of record. After reference is made, concerned Industrial Tribunal is directed to adjudicate the reference within the time frame as is envisaged under U.P. Industrial Disputes Rules, 1957, not exceeding six months in any case.

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30. No orders as to cost.

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