IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1835 OF 2001

...

Maharashtra Rajya Mathadi Transport
& General Kamgar Union ...Petitioner

v/s.

The Grocery Markets & Shops
Labour Board & Ors. ...Respondents

...

Shri Anand Grover i/b Ms.Bharati Patil for the Petitioner.

Shri P.K.Rele with Shri R.P.Rele, Vinod Tayade, Shri Piyush Shah i/b Shri N.G.Chitre for the Respondent No.2.

Shri S.R.Nargolkar, A.G.P. for Respondents Nos. 3 & 4.

Shri K.M.Naik i/b Shri S.P.Dhulapkar for Respondent No.1.

AND

WRIT PETITION NO.3783 OF 2001

Pennzoil Quaker State India Ltd. ...Petitioner

v/s.

The Grocery Markets & Shops Board

for Greater Bombay & Ors. ... Respondents

...

Shri P.K.Rele with Shri R.P.Rele, Shri Vinod Tayade, Shri Piyush Shah i/b Shri N.G.Chitre for the Petitioner.

Shri S.R.Nargolkar, A.G.P. for State.

Shri K.M.Naik i/b Shri S.P.Dhulapkar for Respondent No.1.

AND

WRIT PETITION NO.9125 OF 2003

Vilas Dattu Shirke & Ors. ... Petitioners

v/s.

The Grocery Markets and Shops

Board for Gr.Bombay & ors. ... Respondents

...

Shri M.S.Topkar for the Petitioners.

Shri K.M. Naik i/b Shri S.P.Dhulapkar for Respondent No.1.

Shri D.S.Joshi for Respondent No.2.

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7671 OF 2005

...

Kaykay Embrodaries Pvt.Ltd. ...Petitioners

v/s.

Cloth Market and Shops
Mumbai ...Respondents

...

Shri J.P.Cama, Sr.Counsel with Shri A.K.Jalisatgi for the Petitioner.
Smt.Lata Desai i/b Smt.Pallavi Divekar for Respondents Nos.1,2 & 5.

AND

WRIT PETITION NO.3717 OF 2006

...

Shri Scafolding Pvt.Ltd. ...Petitioner

v/s.

State of Maharashtra ...Respondent

...

Shri M.S.Karnik for the Petitioner.
Smt.Lata Desai i/b Smt.Pallavi Divekar for Respondent No.2.
Shri S.R.Nargolkar, A.G.P. for Respondent No.1.

AND

WRIT PETITION NO.597 OF 2000

...

Bhulwalka Steel Industries Ltd. ...Petitioner

a

v/s.

The Bombay Iron & Steel Labour
Board ...Respondent

...

b

Shri S.K.Talsania, Sr.counsel with Shri Mohit Kapoor with Shri Aditya Chitale for the Petitioner.
Smt.Lata Desai for Respondents Nos. 1 & 2.

...

c

WRIT PETITION NO.3112 OF 2006

d

Maruti on Board Courier
Services Ltd. ...Petitioner

v/s.

The Cloth Markets & Shops
Board & Anr. ...Respondents

e

...

f

Shri S.C.Naidu i/b Shri N.P.Dalvi for the Petitioner.
Smt.Lata Desai i/b Smt.Pallavi Divekar for Respondent No.1.
Shri S.R.Nargolkar, A.G.P. for State.

g

...

AND

h

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

WRIT PETITION NO.2544 OF 2003

...

Chemfert Traders (Bombay) Pvt.ltd. ...Petitioner

v/s.

State of Maharashtra & ors. ...Respondents

...

None for the Petitioner.

Smt.M.Kajle, AGP for Respondents Nos. 1 to 4.

Shri K.M.Naik i/b Shri S.P.Dhulapkar for Respondent No.5.

CORAM: J.N.PATEL J.,

D.K.DESHMUKH &

SMT.R.S.DALVI J**J.**

DATED: 30TH AUGUST, 2006

JUDGMENT: (PER D.K.DESHMUKH, J.)

1. The Hon'ble Chief Justice has constituted this Bench because the Division Bench of this Court has referred following question for consideration by the Larger Bench:

"In view of the statutory definition of the expression "unprotected worker" in Section 2(11) of the Maharashtra Mathadi, Hamal and Other manual Workers (Regulation of Employment and Welfare) Act, 1969, is the interpretation placed by the Division Bench in Century Textile & Industries Ltd. vs. State of Maharashtra, 2000 II CLR 279 on the aforesaid expression that it is only casually engaged workers who come within the purview of the Act, correct and proper?"

2. The relevant developments leading to the Division Bench referring the aforesaid question are that the Legislature of the State of Maharashtra enacted the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 (hereinafter referred to as the "Act" for the sake of brevity), which came into force on 13-6-1969. The State Government in exercise of its power conferred

by the Act framed the Cotton Merchant Unprotected Workers (Regulation of Employment and Welfare) Scheme 1972; (hereinafter referred to as Cotton Merchant Scheme). The constitutional validity of the Act and the Cotton Merchant Scheme was challenged by the employer in an establishment dealing with yarn-waste by filing Misc.Petition No.150 of 1973. That petition was decided by the learned single Judge of this Court (Hon'ble Mr.Justice Rege) by judgment dated 19th April, 1974. The learned Judge held the Act and the scheme to be constitutionally valid except for clause (*n*) framed by sub-section 2 of Section 3 of the Act and clause 6(11)(v) read with clauses 33 and 43 of the Cotton Merchant Scheme.

3. Misc.Petition No.414 of 1973 was filed in this Court by the employer engaged in Khokha and Timber Market challenging the constitutional validity of the Act and the Khokha and Timber Unprotected Workers (Regulation of Employment and Welfare) Scheme 1973. That Petition was decided by order dated 24th April, 1974 by the same learned Judge. The learned single Judge followed his earlier judgment dated 19th April, 1974 in Misc.Petition No.150 of 1973 and held the Act and the Scheme to be constitutionally valid except

the same provisions which were found to be invalid by the earlier judgment.

4. The learned single Judge (Hon'ble Mr.Justice Savant) of this Court while deciding the criminal revision application No.160 of 1975 and criminal revision application No.161 of 1975 by judgment dated 24th November, 1975 also considered the scheme of the Act and the Bombay iron and Steel Unprotected Workers (Regulation of Employment and Welfare) Scheme, 1970 to decide the challenge that the provisions of the Act are repugnant to the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and found that there is no repugnancy in the two enactments. The learned single Judge found that the Act and the scheme cover the subjects and encompasses area which is not covered by the Contract Labour Act.

5. The constitutional validity of the Act was also considered by a Division Bench of this Court in Writ Petition No.119 of 1979, M/s.Lallubhai Kevaldas & Anr. v/s. The State of Maharashtra & Ors. decided on 16-1-1980. Perusal of the judgment of the Division Bench in Lallubhai's case shows that the Division Bench held the Act to be constitutionally

valid mainly relying on the two judgments of the learned single Judge (Mr.Justice Rege), one in Misc.Petition No.150 of 1973 and the other in Misc.Petition No.414 of 1973.

6. Writ Petition No.1117 of 1988 and Writ Petition No.1118 of 1988 were filed before this Court by the employers who were engaged in the Cloth markets, which is also scheduled employment. Those two writ petitions were decided by the Division Bench of this Court by its judgment dated 10-2-2000, Century Textiles & Industries Ltd. & ors. v/s. State of Maharashtra & ors, 2000 II CLR 279.

7. The question that was raised before the Division Bench in the case of Century Textile was whether the workers who were engaged by the Petitioners, who were protected by the provisions of Industrial Disputes Act could be called unprotected workmen within the meaning of the Act so as to be covered by the Cloth Markets Scheme. The Division Bench after referring to the judgment of the learned single Judge in the two Misc.Petitions referred to above and the judgment of the learned single Judge in the Criminal revision applications referred to above as also the judgment

of the Division bench in the case of Lallubhai referred to above held that the workers who are engaged by the Petitioners in that petition who were protected by the other labour legislations are not covered by the definition of the term "unprotected workers" found in the Act. The Division Bench also found that the Division Bench of this Court in its judgment in Lallubhai case by paragraph 9 has held that it is only casually engaged workmen who are covered by the Act and not the workers who are protected by the Shop and Establishments Act. The Division Bench held that the observations in paragraph 9 of the judgment of the Division Bench in Lallubhai case are not casual observations, but they are special obitor-dicta.

8. Writ Petition No.7671 of 2005 and Writ Petition No.3717 of 2005 were filed by the employer who were covered by Cloth Market scheme contending that the order passed by the Board constituted under the Act for covering the establishment of the Petitioners was illegal because the workers engaged by the Petitioners were not casually engaged workers, but they were protected by other labour legislations. In support of their contentions the Petitioners relied

on the judgment of the Division Bench in the case of Century Textile. The Division Bench which was hearing Writ Petition No.3717 of 2005 for the reasons which have been disclosed in that judgment did not agree with the view taken by the Division bench in the judgment in Century Textile Industries case and therefore the aforementioned question has been referred to the Larger Bench.

9. We have heard the learned Counsel appearing for the Petitioners, different Boards constituted for the different scheduled employments, the learned counsel appearing for the State Government as also the learned Counsel appearing for the trade-union of Mathadi workers.

10. On behalf of the Petitioners, it is submitted that the term unprotected workers is defined by Section 2(11) of the Act. The term "Scheduled employment" is defined by section 2(9) of the Act. It is submitted that if the plain and literal meaning is given to these two definitions, it would mean that manual workers engaged in the Scheduled Employment would fall in one class, namely "unprotected workers". According to the Petitioners, such an

interpretation would lead to patent absurdity, anomaly, inconvenience, injustice and hardship. It is submitted that no manual workers can be engaged directly/indirectly in a scheduled employment. As manual workers working in a scheduled employment would be unprotected workmen, manual worker engaged directly in a "Scheduled employment" will be rendered "illegally employed". The services of existing manual workers engaged directly in a scheduled employment will have to be terminated and their posts permanently abolished and be engaged through the Board as unprotected workers. Employment of every manual worker in the scheduled employment would be regulated totally by the Board. "Scheduled Employment" would encompass all conceivable employments within its fold. The Board would become the sole monopoly "contractor" in respect of every manual worker in all "Scheduled Employments". It is submitted that this would result in implied repeal of Central Act which occupies the field and which covers regular, direct and indirect workers as a class. It would lead to repugnancy or inconsistency and pose irreconcilable hardship in the implementation and compliance of other Labour laws and Labour Welfare Legislation which otherwise apply of its own force to

regular, direct and indirect manual workers working and all employments including the scheduled employment under the Mathadi Act. It would adversely change the existing status of regular, direct and indirect manual workers as a class. It would result in injustice to the direct or indirect employees of the employer in the scheduled employment who are enjoying protection and benefits under the aforesaid laws made by the Parliament. It would also result in absurd illegal position i.e. all direct employees of the employer in the scheduled employment doing manual work would cease to be workmen of the said employer and would require to be registered with the Board. It is submitted that in these circumstances, therefore, the court should apply the Rules of Construction for the purpose of gathering true and correct meaning of the definition of the term "unprotected workers" found in the Act. It is submitted that before the Act was enacted, the Parliament had enacted the Industrial Employment (Standing Orders) Act, 1946, The Industrial Disputes Act, 1947, The Factories Act, 1948, The Employees State Insurance Act, 1948, The Minimum Wages Act, 1948, Employees' Provident Funds and Miscellaneous Provisions Act, 1952, The Maharashtra Factories

Rules, 1963, Payment of Bonus Act, 1965.

11. It is submitted that the above Parliamentary enactments are permanently applicable to a factory or establishment as defined therein by its own force. They are applicable to every class of workers including to those workers doing manual work. The provisions of those Acts do not permit either the employer or employee to opt out of the provisions of the said Act. These legislations extend protection to the employment and also extend benefits to the employees. The object of the Act is protection of employment and extension of certain benefits to the special class of workers, who were not covered under the above referred Parliamentary enactments. It is submitted that the worker is a genus. For the purpose of Industrial Law "unprotected worker" is a species thereof. As a natural corollary "protected worker" is the other species. Both form a distinct and separate class. It is submitted that there is no doubt that the Acts of Parliament did not cover manual workers such as Mathadi or Hamal within its fold. However, manual workers who were doing similar work in the factory/establishment were covered by those acts. Hence, the State Legislature stepped in

by bringing a special legislation to ensure protection and benefits to this excluded class. According to the Petitioners, the term protected as understood in industrial law means protection of employment, compensation in the event of unemployment, a fair procedure concerning cases of misconduct on the part of the employee. According to the Petitioners, the provisions of the Industrial Disputes Act (Standing Orders) Act protect the manual workers. To some of the scheduled employments, according to the Petitioners, Factories Act is also applicable which also protects the employees including the manual workers working in the factories. According to the Petitioners even manual workers are protected by the provisions of Minimum Wages Act. The Petitioners submit that the Employees' State Insurance Act is also applicable to the manual workers and therefore that protection is also extended to them.

12. In short, the submissions of the Petitioners is that the workers who are directly engaged by the employer for doing even manual work are protected by various Industrial and Labour Legislations. It is submitted that, therefore, this court will have to

interpret the phrase "unprotected worker" by looking at previous law, mischief sought to be remedied, legislative intent and approach should be harmonious and should ensure that the laws enacted by the Parliament and State Legislature operate without impediment with each other. In support of this submission, the Petitioners rely on the judgment of the Supreme Court in the case of CIT v/s. J.H. Gotla, AIR 1985 SC 1698, as also the judgment of the Supreme Court in the case of Bangalore Water Supply & Sewage Board v/s. Rajappa, AIR 1978 SC 548. It is submitted that in order to find out what is the true meaning of the term "unprotected worker", this Court should look into the report of the three Committees which were constituted by the State Government to enquire into the working of Mathadi, Hamal and other manual labourers. The statement of objects and reasons and notes of clauses clearly demonstrate the intention of the legislature as to who would come within the meaning of the term "unprotected worker". According to the Petitioners, if preamble of the Act is harmoniously read with various other statutes, it would be clear that "unprotected worker" means a manual worker engaged in an employment, wherein he has no security of employment, unemplopyment is a

rule and availability of work is uncertain. In addition to the above, such worker may not enjoy any benefit, which ordinarily an industrial worker is in receipt of. According to the Petitioners, except such worker no other class of workers can be brought within the meaning of the definition of the term "unprotected worker". According to the Petitioners, the Act was brought into effect to remedy the mischief which is mentioned in the report of the Committees. According to the Petitioners, the learned Single Judge (Rege J.) and the Division Bench in Lallubhai case have placed correct interpretation which has been followed by the Division Bench in Century Textile case, and therefore, it has to be upheld. It is submitted that during the last 36 years though the Act has been in force, regular workmen on the rolls of employers within the scheduled employment have not been registered.

13. It is submitted that in the referring judgment the learned Division Bench has referred to the questions of law which had arisen before them. They are divided into sub-paras (i) and (ii). These, however, are not the issues referred to the Full Bench. The Division Bench has expressed some doubts

on some of the observations in the Century Textile case pertaining to the meaning of the expression "unprotected workers". However, having expressed some doubt on the above issue, the Division Bench in its order of reference has not asked the Full Bench to consider whether the judgment in Century Textile Mills case was or was not right in its interpretation of the term "unprotected worker". It is, therefore, submitted that the meaning attached by the earlier judgment to the term "unprotected worker" is accepted by the Division Bench and the reference is only in relation to the observations in the judgment of the Division Bench in Century Textile Mills case that only casually engaged workmen are covered by the definition of the term "unprotected worker". It is submitted that the provisions of Section 2(11) and Section 2(12) of the Act have to be read together. It is submitted that by these two provisions coverage of the Act is extended to all unprotected employees howsoever engaged. It is submitted that Section 2(11) and 2(12) should be so read that none of the provisions are rendered nugatory. It is submitted that if the interpretation placed by the Board on the provisions of Section 2(11) is accepted, the the provisions of Section 2(12) are rendered negated. It

is further submitted that the Act is a special statute and in interpretating the special statute the court must determine the following:

(a) What is the existing law before making the Act;

(b) What is the special mischief or defect for which the law did not provide;

(c) What is the special remedy that the special Act has provided and

(d) what is the reason of the remedy.

14. It is submitted that Mr.Justice Rege in his two judgments dated 19-4-1974 and 24-4-1974 has considered the above and essentially the ratio of his two judgments is that the three committees appointed by the Government had discovered that a certain special class of workers employed essentially in markets, factories and other such places were either not covered by existing labour legislations or could not be covered by the same, because of uncertain employment and entirely transitory nature of their work. This was the "existing position" of law in 1969 which the Legislature found out through the aforesaid three Committees and it was therefore the

non-protection of this specific class of workers which the Legislature sought to thereafter correct by the enactment of this special statute. The Division Bench of this court in the case of Lallubhai Kevaldas has considered the above judgments of Mr.Justice Rege and have expressly come to the conclusion that it is only those workers who are unprotected by other labour statutes who are intended to be covered by the present statute. It is also the view of the learned Division Bench in Century Textile Mills case. It is submitted that the test to find out who is the unprotected worker is not whether the worker is engaged directly or indirectly in scheduled employment. The only test for the coverage of the Act is whether the worker engaged in any manner is at the time of intended coverage unprotected in respect of his employment and conditions of service by other existing labour statutes. It is further submitted that the interpretation of the term unprotected worker which is being canvassed by the Petitioners has been accepted by the two judgments of Mr.Justice Rege and the Division Bench in Lallubhai case as well as the Division bench in Century Textile case. It is, therefore, submitted that on the principle of stare decises the settled position in law should not

be disturbed. Reliance for this proposition is placed on the judgment of the Supreme Court in the case of State of Gujarat vs. Mirzapur Moti Kureshi Kassab Jamad (2005) 8 SCC page 534. It is submitted that the view taken by the Division bench in the matter of Lallubhai and reiterated by the another Division Bench in its judgment in the case of Century Textile need not and should not be disturbed merely because it is said that plain meaning of the language used by the Legislature in Section 2(11) of the Act is not given effect. In otherwords, the judgments which have held the field for 25 years should not be disturbed merely because another view may be possible. It is further submitted that an erstwhile protected workmen could now very conceivably be sent to the pool of daily rated workers under the scheme. Thus an employee who is fully protected by law and who has security of employment and tenure would by reason of the enactment of a statute aimed at protecting "unprotected workers" now lose the self-same security of tenure, monthly employment and full wages. Once he joins the pool, there is no guarantee of regular employment and at best he is assured of limited payment under the heading "disappointment money". It is further submitted that

in case the workers regularly covered by the Industrial Disputes Act are held to be covered by the Scheme framed under the Act, services of such employee would have to be terminated so as to enable him to join the Board, there will be no need to comply with the provisions of Section 25F. Thus to comply with the provisions of the Act, the provisions of the Industrial Disputes Act will have to be violated.

15. On the other hand, on behalf of the Board it is contended that the Petitioners are not right in contending that the Full Bench has to consider only whether casually engaged workmen are covered by the definition of the term "unprotected worker". It is submitted that reading of the referring judgment makes it clear that the question that the Full Bench has to consider is whether direct and/or regularly employed manual workers engaged in scheduled employment are covered under the Act and the scheme framed thereunder. It is submitted that the definition of the term "unprotected worker" in Section 2(11) and the definition of the term "worker" appearing in Section 2(12) of the Act have to be read together. It is submitted that the provisions of

Section 2(12) are clarificatory in nature. It is submitted that the definition of the term "worker" is given to indicate the employers under the Act by or through whom such manual workers are engaged in scheduled employment. The said Act and the Scheme framed thereunder, requires registration not only for unprotected workers, but also the employers who engage the unprotected workers. It is submitted that by reading the provisions of Section 2(11) and Section 2(12) of the Act together it is clear that only casually engaged workers do not come within the purview of the Act. It is submitted that there is no ambiguity whatsoever either in the definition of term "unprotected worker" or the term "worker" and both are to be given their natural meaning keeping in mind the object to be achieved for which the Act has been enacted. They refer to sub-section 1 of Section 3 of the Act and submit that sub-section 1 of Section 3 presupposes that prior to the passing of the said Act there is no adequate supply and full and proper utilization of the unprotected workers in the scheduled employment and there were no better terms and conditions of service for such unprotected worker and in order to protect them, the Legislature has passed the said Act. It is submitted that the object

of the Act clearly states that the Act is for regulating the employment of unprotected manual workers employed in certain employment and to make the provisions for adequate supply and full and proper utilization in such employment and for matters connected therewith. It is submitted that various provisions of the said Act read with various provisions in the Scheme framed thereunder, clearly manifest the intention of the legislature that a machinery in the form of a Board has to be constituted to monitor and/or administer the entire scheme for unprotected worker and to achieve the objects to regulate their employment, better provision for their terms and conditions of employment, to provide for their welfare and for health and safety measures, including providing for Provident Fund, Gratuity, etc. It is submitted that the history shows that the unprotected workers were exploited for generations together in the employments (which are now scheduled) and therefore the State government had to step in to suppress the mischief played by the employer and advance the remedy. It is further submitted by the Respondents that the arguments on behalf of the employer that the direct and regular employees may get better benefits and as

such they are not coverable under the Mathadi Act, has no substance because the provisions of Section 21 of the Mathadi Act. The learned counsel further submits that from the above, it is clear that the State Government was very much aware that as on the date of passing of the said Act, there are unprotected workers enjoying better benefits than the one that may be available under the said Act and the Scheme framed thereunder and therefore those better benefits have been fully protected under Section 21. The employer's arguments that regular manual workers directly employed by the employers are enjoying better benefits, are not covered by the Mathadi Act, has no substance because there is no such provision in the said Act or Scheme framed thereunder which states that such workers who are enjoying better benefits are to be excluded from the said Act. Section 22 of the Mathadi Act provides for exemption by the Government if the employers can establish that they have directly employed regular employees who are enjoying better benefits than the benefits provided under the said Mathadi Act. The provisions of the said Section defeats the arguments of the employers that their direct and regular manual workers are not covered under the said Act. The legislators knowing

fully well that there may be employers who may directly engage regular manual workers in scheduled employment and they may also enjoy better benefits and therefore they are allowed to manage such workers themselves and need not be under the control of or monitored by the Board and therefore the provision for exemption is incorporated in the Act. It is further submitted that if the employers are allowed to employ/engage employees directly without there being any control/monitor by the Board, the history of exploitation of the said workers will be repeated. It is submitted that where a meaning of expression in a statute is plain and clear and unambiguous, the external aids cannot be resorted to interpret the said statute. Reliance in support of this submission is placed on the judgment of the supreme Court in the case of Bhaiji v/s. Sub-Divisional Officer, Thandla & ors, (2003) 1 SCC 692. 2003 (1) SCC, 592. It is submitted that apart from the judgment of the Division Bench in Century Textile Mills, which did interpret the meaning of the expression "unprotected worker", in neither of the two judgments of Mr.Justice Rege or the judgment of the Division Bench in the case of Lallubhai the meaning to be attached to the term "unprotected worker" was in issue.

Therefore,none of these judgments actually interpreted the expression "unprotected worker" in the Mathadi Act. These judgments made passing observations in the context of recording of the history of the Act or in the context of the facts of the case. The learned Counsel appearing for the Board have also taken us through the provisions of various schemes framed under the Act.

16. We have also heard the Trade-Union of Mathadi workers through their counsel, the trade-union supports the submissions made on behalf of the Board.

17. Now from the rival submissions it is clear that first we have to decide what is the scope of the reference. According to the Petitioners the scope of the reference is to find out whether the Division Bench in the judgment in the case of Century Textile Industries was at all right in holding that the term unprotected worker used in the Act was limited only to casually engaged manual worker. Perusal of the question that has been framed and referred by the Division Bench however shows that this Bench has to express its opinion on the question as to whether the Division Bench in its judgment in the case of Century

Textile Industries was right in saying that the expression unprotected workers found in Section 2(11) of the Act covers only casually engaged workers. Now, to answer this reference this Bench will have to construe the provisions of Section 2(11) to find out as to who is covered by the expression unprotected workers as defined in Section 2(11) of the Act. According to the Petitioners, Mr.Justice Rege in his two judgments has held that workers who were protected by other labour legislations were not covered by the expression unprotected workers defined by Section 2(11) of the Act. According to the Petitioners, the same finding was recorded also by the Division Bench in Lallubhai case. Therefore, first reference has to be made to the judgment of Mr.Justice Rege dated 19th April, 1974 in Misc.Petition No.150 of 1973. Perusal of that judgment shows that the Petition which was decided by that judgment was filed by employers who were covered by the Cotton Merchant Unprotected Workers (Regulation of Employment and Welfare) Scheme, 1972. In that petition what was challenged was the constitutional validity of some of the provisions of the Act and the Cotton Market Scheme. The first challenge raised was that the establishments of the

Petitioners in those cases were not covered by the Cotton Market Scheme. It was further contended on behalf of the Petitioners in those cases that apart from the clerical staff, supervisory staff, Chowkidars, drivers and cleaners, they engaged about 175 workers who are given protection of the Employees' State Insurance Scheme, bonus, leave with pay, festival holidays and other benefits. Apart from the said workers, the Petitioners in those cases also engaged Toliwalas, who do the job of loading and unloading and stacking the various types of wastes. It was contended that there was no privity of contract with Toliwalas. According to the Petitioners, therefore, the scheme was not applicable to them. The Petitioners also challenged the constitutional validity of some of the provisions of the Act and the scheme being violative of Articles 14, 19 (i) (f) and (g) and 31 of the Constitution of India. The learned single Judge Mr.Justice Rege rejected the contention that the Petitioners were not covered by the Cotton Market Scheme. Mr.Justice Rege held that the Act and scheme put certain restrictions on the rights of the Petitioners, but those restrictions were reasonable. Mr.Justice Rege in his judgment has observed thus:

> "Essentially, the said impugned Act is a social labour legislation relating to a large class of manual workers viz. Mathadi, Hamal etc. called unprotected workers employed under individual employers with verying terms and conditions, in shops and markets dealing with several commodities. Admittedly, they are not covered under any of the existing labour legislations dealing with the rights of the workers and their terms and conditions of service."

18. The above quoted observations show that Justice Rege proceeded on this admitted position that the workers in relation to whom those petitions were filed were not covered by any labour legislations. Therefore, there is no question of Justice Rege considering the question whether the manual workers engaged in the scheduled employment who are protected by other labour legislations are covered by the definition of the term unprotected workers or not? The Petitioners, therefore, are not right in contending that Justice Rege by his first judgment held that it is only those manual workers engaged in

the scheduled employments who are not protected by the other labour legislations come under the definition of the term "unprotected workers".

19. So far as the second judgment of Mr.Justice Rege dated 24th April, 1974 in Misc.Petition No.414 of 1973 is concerned, in that Petition the validity of certain provisions of the Act and Khokha and Timber Unprotected Workers (Regulation of Employment and Welfare) Scheme, 1973 was challenged. Mr.Justice Rege in this judgment has noted that the Khokha and Timber Market Scheme is in the same terms as the Cotton Market Scheme and challenges that are raised are the same which were raised in the earlier petition which was decided by him. Mr.Justice Rege has noted that in this petition only three separate contentions have been raised. The first separate contention was that the provisions of the Act and the Scheme are violative of Article 14 of the Constitution of India as they discriminate against the employer. It was contended that the conditions of the labour engaged in Khokha Industries is different than the unprotected workers in other scheduled employments. That contention was negatived by Justice Rege relying on the report of the

committees which noted that the conditions of the workers in Khokha industry was similar to the conditions of unprotected workers in other scheduled employments. The second separate contention was that the scheme travels beyond the scope of the Act. That contention was negatived by Mr.Justice Rege. The third separate contention was that Khokha industry and Timber industry are two different and distinct industries clubbed together under the said Scheme viz. the Khokha Industry and the Timber Industry. That contention was also rejected by Justice Rege. Therefore, in the second judgment Mr.Justice Rege had no occasion to consider the definition of the term "unprotected workers". Therefore, even in the second judgment, there is nothing which would show that the learned single judge held that the manual workers who are protected by other labour legislations are not covered by the definition of the term "unprotected worker" in Section 2(11).

20. The third judgment is the judgment of the Division Bench in the case of Lallubhai in Writ Petition No.119 of 1979 decided on 16-1-1980. Perusal of that judgment shows that before the Division Bench the constitutional validity of some of

the provisions of the Act was challenged. In paragraph 6 of the judgment the Division Bench has noted that most of the challenges raised to the constitutional validity of the Act are already covered by the judgment of Justice Mr.Rege and therefore they did not reconsider those challenges. There were two additional challenges raised before the Division Bench which have been dealt with by the Division Bench. The first additional challenge was that the prohibition against engaging of the unregistered workmen by the employer is beyond the scope of the Act. That challenge was negatived by the Division Bench by holding that the obligation of the employer and employee to get compulsorily registered is a part of the mechanism to ensure effective enforcement of the Act and thereafter the Division Bench observed " It is obvious that the main object of the Act is to ensure some element of security to the casually employed workman and ensuring certain employment benefits to them which are available to the other monthly paid or other regular workers governed by the provisions of the Industrial Disputes Act, Minimum Wages Act and other enactments. That is why the workers governed by this Act are described as "unprotected manual workers".

Before the enactment, such workers not only did not have any security of work but the wages paid to them were also not regulated by any rules and no Provident Fund or gratuity benefits were available to them. Work as well as the wages, therefore, depended entirely on the employers' unbridled option, pleasure and will. It is precisely to prevent this and ensure work for them and better conditions of service that several provisions have been made in the present enactment."

21. It is clear from these observations that these observations have been made by the court for deciding challenge to clause 31 of the scheme. These observations have not been made by the Bench after considering the definition of the term "unprotected worker". It is also clear that the question as to whether the manual workers engaged in the scheduled employments who are protected by other labour legislations are covered by the definition of the term "unprotected worker" was neither raised nor considered by the Division Bench. Therefore, the observations quoted above can by no stretch of imagination be termed as the ratio of the judgment of the Division Bench.

22. Thus, it is clear from the three judgments that in none of the three judgments the scope and ambit of the expression unprotected worker as defined by Section 2(11) of the Act was either considered or decided. Therefore, the Petitioners are not right in contending that this Bench is required to proceed on the basis that the meaning attached to the term "unprotected workman" by the earlier judgment of this Court does not require reconsideration by this Bench. The issue, as observed above, which has been referred was not considered either by Mr.Justice Rege in his two judgments or by the Division Bench in its judgment in the case Lallubhai. This issue for the first time fell for consideration before the Division Bench in the case of Century Textile Industries. In paragraph 15, the Division Bench referred to three submissions which were made in the earlier round of litigation. The second submission was "that the petitioners' workmen proposed to be covered under the said Schemes are not unprotected workers, as defined by the Act." In paragraph 17, it is noted that the question of protected workmen has been kept open and now it has to be decided in this Petition. In paragraph 19, the Division Bench refers to the first

judgment of Justice Mr.Rege. In paragraph 22 the Division Bench refers to the submissions of the Petitioners that merely because the workers are engaged in manual work as specified in the said Act viz.loading and unloading etc., they by itself would not be rendered unprotected. It can be demonstrated on the basis of the record that in fact they are protected.

. Then a reference is made to the judgment of the Division Bench in the case of Lallubhai, specially the observations found in paragraph 9 of that judgment. They read as under:-

> "It is pertinent to note that this Act does not deal with employees engaged on monthly basis as the same are protected by Shops and Establishment Act and the enactments. It is only the casually engaged workmen that come within the purview of the Act."

23. The Division Bench in its judgment in the case of Century Textile notes that it was not necessary for the earlier Division Bench to make those observations for deciding the issue which was raised

before it. But according to the Division Bench the observations cannot be called totally irrelevant and therefore, according to the Division Bench those observations are special obiter and therefore the Division Bench holds that it is only the casually engaged workmen who would come within the purview of the Act. It, thus, becomes clear from what has been observed above that the question that has been referred to this Bench by the Division Bench requires us to consider the scope and ambit of the term "unprotected worker" as defined by Section 2(11) of the Act. The first operative provision found in the Act is Section 3. It empowers the State Government to frame schemes for registration of employer and unprotected workers in scheduled employment and for providing for terms and conditions of the work of registered unprotected workers and make provisions for the general welfare in such employment. Sub-section 1 of Section 3 reads as under:-

> 3(1) For the purpose of ensuring an adequate supply and full and proper utilization of unprotected workers in scheduled employments, and generally for making better provision for the term and conditions of employment of such

> workers, the State Government may by means of a scheme provide for the registration of employers and unprotected workers in any scheduled employment or employments, and provide for the terms and conditions of work of (registered unprotected workers) and make provision for the general welfare in such employment.

24. Perusal of the above quoted provisions shows that the State Government has been given power primarily to frame a scheme to ensure adequate supply and full and proper utilization of unprotected workers in scheduled employments and to make better provision for the terms and conditions of employment of such works. Therefore, there are two primary elements with which the scheme deals. (i) unprotected worker; (ii) scheduled employment. The term "scheduled employment" is defined by Section 2(9) as follows:-

> "scheduled employment" means any employment specified in the Schedule hereto or any process or branch of work forming part of such employment;"

Perusal of the schedule of the Act shows that there are total number of 14 employments which are shown in the schedule. The term "unprotected worker" is defined by Section 2(11) of the Act as follows:-

> "unprotected worker" means a manual worker who is engaged or to be engaged in any scheduled employment;"

Perusal of the above provisions shows that any manual worker who is either engaged or is to be engaged in any scheduled employment would be an unprotected worker. The purpose for which the scheme is to be framed by the State Government as is clear from the provisions of sub-section 1 of Section 3 is (i) for ensuring adequate supply and full and proper utilization of unprotected workers in scheduled employment; (ii) making better provision for the terms and conditions of employment of unprotected workers; (iii) for registration of such unprotected workers making provisions for the general welfare in such employment. Sub-section 2 of Section 3 lays down the matters which are to be provided for in the scheme. Thus, if one goes by the natural meaning of

the words which are employed by the legislature for defining the term unprotected worker, then it is clear that all manual workers who are either engaged or are to be engaged in scheduled employment are called "unprotected worker", irrespective of whether their conditions of service are regulated or protected by any other labour legislations or not. By referring to the report of the committees which were constituted by the State Government and the statement of object and reasons, it is contended by the Petitioners that it was not the intention of the legislature to include in the definition of the term "unprotected worker" those manual workers who are engaged in the scheduled employment and whose conditions of service are regulated by other labour legislations and therefore protected by other labour legislations. At this juncture, therefore, we have to see what is the interpretative function of the court? Whether we can interprete the provision of Section 2(11) to mean that unprotected workers are those manual workers engaged or to be engaged in schedule employment who are not protected by other labour legislations by reference to the reports of the Committees and the statement of objects and reasons. It is clear that for ascertaining the

meaning provided by the employer to the term "unprotected worker" we will have to add words to the section. A Constitution Bench of the Supreme Court has recently considered the scope of the interpretative function of the Court in its judgment in the case of Nathi Devi v/s. Ratha Devi Gupta (2005) 2 SCC 271. The observations found in paragraph 13 of the judgment are relevant.

> 13. The interpretative function of the court is to discover the true legislative intent. It is trite that in interpreting a statute the court must, if the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, give to the words that meaning, irrespective of the consequences. Those words must be expounded in their natural and ordinary sense. When the language is plain and unambiguous and admits of only one meaning, no question of construction of statute arises, for the Act speaks for itself. Courts are not concerned with the policy involved or that the results are injurious or otherwise, which may follow from giving effect to the language used. If the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In considering whether there is ambiguity, the court must look at the statute as a whole and consider the appropriateness of the meaning in a particular context avoiding absurdity and inconsistencies or unreasonableness which may render the statute unconstitutional.

From the abovequoted observations it is clear that if

the words used by the statute are clear and susceptible to only one meaning, no question of construction of statute arises. Now, we have to see whether giving literal meaning to the words of Section 2(11) of the Act leads to any conflict with the other provisions of the Act. If one looks at the provisions of the Act, there are provisions in the Act itself which indicate that it was the intention of the Legislature to include even those manual workers who are engaged in scheduled employment whose conditions of service are governed or who are protected by other labour legislations. In this regard, provisions of Section 21 are relevant. Section 21 of the Act reads as under:-

> 21. Nothing contained in this Act shall affect any rights or privileges, which any (registered unprotected worker) employed in any scheduled employment is entitled to, on the date on which this Act comes into force, under any other law, contract, custom or usage applicable to such workers, if such rights or privileges are more favourable to him than those to which he would be entitled under this Act and the scheme:

> Provided that, such worker will not be entitled to receive any corresponding benefit under the provisions of this Act and the scheme.

25. Perusal of this provision makes it clear that if a manual worker is engaged in scheduled employment on the date on which this Act comes into force in relation to that employment and his rights and privileges are more favourable than the one to which he is entitled under the Act, then those rights and privileges are protected. Still such manual worker has to get himself registered under the provisions of the Act. In otherwords, if on the date of the commencement of the Act because of any contract or operation of law, a manual worker engaged in the scheduled employment is enjoying better condition of service and benefits, then he is not excluded from the obligation to get himself registered under the Act, but because of his registration under the Act he does not lose the better condition of service and benefits to which he is in otherwise entitled. It , therefore, means that a manual worker engaged in the scheduled employment who is otherwise protected is

also to be covered by the provisions of the Act on its commencement, subject to the condition that any benefits to which he may be entitled on the date of the commencement of the Act will be saved and will not be lost to him because of the application of the Act to him. The second provision in the Act which manifests the intention of the legislature to include even the manual workers engaged in the scheduled employment who are receiving benefits which are not less favourable than the ones to which unprotected workers are entitled under the Act within the definition of the term unprotected worker is Section 22. Section 22 reads as under:-

> 22. The State Government may, after consulting the Advisory Committee, by notification in the Official Gazette, and subject to such conditions and for such period as may be specified in the notification, exempt from the operation of all or any of the provisions of this Act or any scheme made thereunder, all or any class or classes of unprotected workers employed in any scheduled employment, or in any establishment or part of any establishment of any scheduled employment,

if in the opinion of the State Government all such unprotected workers or such class or classes of workers, are in the enjoyment of benefits which are on the whole not less favourable to such unprotected workers than the benefits provided by or under this Act or any scheme framed thereunder:

Provided that, before any such notification is issued, the State Government shall publish a notice of its intention to issue such notification and, invite objections and suggestions in respect thereto, and no such notification shall be issued until the objections and suggestions have been considered and a period of one month has expired from the date of first publication of the notice in the Official Gazette:

Provided further that, the State Government may, by notification in the Official Gazette, at any time, for reasons to be specified, rescind the aforesaid notification.

Perusal of the above quoted Section 22 shows that the

State Government can exempt from the provisions of the Act such unprotected workers who are in the enjoyment of benefits which are not less favourable compared to the ones to which he will be entitled under the Act. This provision clearly shows that the provisions of the Act by their own force will apply to the manual worker engaged in the scheduled employment who is in receipt of benefits which are not less favourable than the benefits to which he is entitled under the Act. In such a case the Act continues to operate in relation to that worker till an exemption order is made by the State Government. These two provisions clearly show that the intention of the legislature is to make the provision of the Act applicable also to those manual workers who are engaged in scheduled employment and are in receipt of benefits which are not less favourable than the ones to which they will be entitled to under the Act. These benefits they may be getting either because of a contract or because of operation of some labour legislations. Apart from the Act, there are provisions made in the schemes framed under the Act which also indicate that workers who are engaged by employer on regular basis (monthly basis) to do manual work in the scheduled employment are also to

be covered by the scheme framed under the Act. It is clear that the above referred provisions are a complete answer to the submissions made on behalf of the Petitioners that it was not the intention of the legislation to cover by the provisions of the Act those manual workers engaged in the scheduled employment who are protected by other labour legislations.

26. Thus, we find that the clear intention of the Legislature was to cover by the definition of the term "unprotected workers" all manual workers engaged in the scheduled employment, irrespective of whether they were protected by other labour legislations or not? The purpose for which the Legislature decided to do it is to be found in the provisions of sub-section 2 of Section 3. Sub-section 2 of Section 3 reads as under:-

> 3(2) In particular, (a scheme may provide for all or any of the following matters that is to say-)
>
> (a) for the application of the scheme of such classes of (registered unprotected workers and employers) as may be specified therein;
>
> (b) for defining the obligations of (registered unprotected workers and employers) subject to the fulfilment of which the scheme may apply to them;

(c) for regulating the recruitment and entry into the scheme of unprotected workers, and the registration of unprotected workers and employers, including the maintenance of registers, removal, either temporarily or permanently, of names from the registers, and the imposition of fees for registration;

(d) for regulating the employment of (registered unprotected workers,) and the terms and conditions of such employment, including rates of wages, hours of work, maternity benefit, overtime payment, leave with wages, provision for gratuity and conditions as to weekly and other holidays and pay in respect thereof;

(d-i) for providing the time within which registered employers should remit to the Board the amount of wages payable to the registered workers for the work done by such workers; for requiring such employers who, in the opinion of the Board, make default in remitting the amount of wages in time as aforesaid, to deposit with the Board, an amount equal to the monthly average of the wages to be remitted as aforesaid; if at any time the amount of such deposit falls short of such average, for requiring the employer to make good the amount of such average, and for requiring such employers who persistently make default in making such remittances in time to pay also by way of penalty, a surcharge of such amount not exceeding 10 per cent of the amount to be remitted as the Board may determine;

(e) for securing that, in respect of period during which employment or full employment is not available to registered unprotected workers though they are available for work, such unprotected workers will, subject to the conditions of the scheme, receive a minimum wage;

(f) for prohibiting, restricting or otherwise controlling the employment of unprotected workers to whom the scheme does not apply, and

the employment of unprotected workers by employers to whom the scheme does not apply;

(g) for the welfare of (registered unprotected workers covered by the scheme in so far as satisfactory provision therefor, does not exist, apart from the scheme;

(h) for health and safety measures in places where the (registered unprotected workers) are engaged, in so far as satisfactory provision therefor, is required but does not exist, apart from the scheme;

(i) for the constitution of any fund or funds including provident fund for the benefit of (registered unprotected workers), the vesting of such funds, the payment and contributions to be made to such funds, (provision for provident fund and rates of contribution being made after taking into consideration the provisions of the Employees' Provident Funds Act, 1952, and the scheme framed thereunder with suitable modifications, where necessary, to suit the conditions of work of such registered unprotected workers) and all matters relating thereto;

(j) for the manner in which (the day from which (either prospective or retrospective) and the persons by whom, the cost of operating the scheme is to be defrayed.

(k) for constituting the persons or authorities who are to be responsible for the administration of the scheme, and for the administration of funds constituted for the purposes aforesaid;

27. Perusal of the above quoted provisions shows that a fund is to be constituted for the benefits of registered protected workers to which the employer and the workers are to contribute. The scheme is

also to make a provision for the unprotected workers who do not get any employment on a given day, getting minimum wages even for that date. The object of the present legislation is not only to secure benefit as regards the terms and conditions of services of the unprotected workers or to provide them with the benefits of provident fund, leave with wages, gratuity etc. Its further object is also to provide for welfare for health and safety measure and for ensuring an adequate supply and to full and proper utilization of such worker in such employments to prevent avoidable unemployment connected with the aforesaid matters.

. The intention of the Legislature of covering by the Act manual workers who are protected by other labour legislations is also clear from the provisions of various schemes. So far as the Grocery Markets & Shops Unprotected Workers (Regulation of Employment and Welfare) Scheme 1970 (hereinafter referred to as Grocery Market Scheme) shows that it defines the term "monthly worker" as follows, "Monthly worker" means a worker who is employed by an employer or a group of employers on contract on monthly basis. Thus, according to this scheme a manual worker who is

engaged in the scheduled employment who is engaged by employer on monthly basis is also covered by the definition of the term "unprotected worker". The term "pool worker" is defined to mean a registered worker in the pool who is not a monthly worker. Clause 16(4) of this scheme, in our opinion, is relevant, which reads as under:-

> 16(4) If the services of a registered monthly worker are terminated by the employer for an act of indiscipline or misconduct he may apply to the Board for employment in the pool. The Secretary on behalf of the Board shall then decide on the case, whether or not the registered worker should be employed by the Board and if so, whether in the same or a lower category.

This provision shows that monthly worker is an employee of the employer and the employer has a right to take disciplinary action against him. Then clause 24 is also relevant. Perusal of clause 33 shows that the Board decided the wages to which registered worker would be entitled and in the process of fixing wages the Board has to consult various organisations of employers, trade unions while fixing wages. Even

the paying capacity of the employer is to be taken into consideration. Clause 34 is also relevant, which reads as under:-

> 34. Disbursement of wages and other allowances to registered workers:
>
> The Board may permit the registered employers to pay wages and other allowances to the registered monthly workers employed by them directly after making such deductions as may be authorised and recoverable from them under this scheme. In respect of registered workers other than registered monthly workers employed by the registered employers from time to time, the wages and other allowances payable by the registered employers shall be remitted by the registered employers by cheque to the Secretary of the Board *(every fortnight). The Secretary thereupon shall arrange to disburse the wages and other dues if any to registered workers on a specified day every month subject to deductions recoverable from them under this scheme.

28. It is clear that apart from having disciplinary control over monthly worker, the employer can pay wages also to the monthly workers directly after making deductions to be forwarded to the Board. Clause 43 shows that the Board has to frame rules providing for contributory funds for registered workers and also for payment of gratuity. The other scheme namely Cloth Markets or Shops Unprotected Workers (Regulation of Employment and Welfare) Scheme 1971 (hereinafter referred to as Cloth Markets Scheme) has the provisions similar to the one contained in the Grocery Markets Scheme.

29. Thus, from the provisions of the Act and the scheme, it is clear that the intention of the Legislature was to include in the definition of unprotected worker all manual workers engaged or to be engaged in the scheduled employment.

30. On behalf of the petitioner it was submitted that by the judgment in the case of Lallubhai Kevaldas the Division Bench has held that the Act does not apply to the manual worker in the scheduled employment who was protected by the other labour legislations. That decision was in force since 1980.

That judgment was thereafter followed by the Division bench in the Century Textiles case and therefore on the principal of stare decises that settled position in law should not be disturbed, and in support of this contention reliance is placed on the judgment of the Supreme Court in the case The State of Gujarat Vs. Mirzapur Moti Kureshi Kassab Jamad (2005) 8 SCC page 534. The expression "stare decises" means to stand by decided cases to uphold precedents to maintain former adjudication. The Supreme Court in its judgment in the case of M/s.Goodyear India Ltd. Vs. State of Haryana, AIR 1990 SC, 781 has held that a precedent is an authority only for what it actually decides and not for what may remotely or logically follow from it. In other words what is binding and what operates as precedent is the ratio of the judgment. We have already observed above that the question which fell for consideration before the Division in Century Textiles case did not arise for consideration either before the learned Single Judge (Shri.Rege) nor before the Division Bench in Lallubhai Kevaldas Case. Therefore there is no question of the principle of "stare decises" operating in relation to those judgments. The submission of the petitioner in that regard,

therefore, has no substance.

31. On behalf of the employer, it is submitted that if the definition of the term unprotected worker is held to cover also those employees who are protected by other labour legislations, then it will result in repeal of several labour legislations which are enacted by the Parliament and to avoid this result we should ascribe the meaning propounded by them to the term unprotected worker by relying on the report of the Committees and the statement of objects and reasons. We can refer to the reports of the committee and the statement of objects and reasons, which are external aids to construction, only if we find that giving literal meaning to the provisions leads to absurdity, anomaly etc. In this regard observations found in paras 11 and 12 of the Judgment of the Supreme Court in the case of Bhaiji v/s. Sub Divisional Officer, Thandla and ors. (2003) 1 SCC, 692 are relevant. They read as under:-

> 11. Reference to the Statement of Objects and Reasons is permissible for understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to

the statue, and the evil which the statute sought to remedy. The weight of judicial authority leans in favour of the view that the Statement of Objects and Reasons cannot be utilized for the purpose of restricting and controlling the plain meaning of the language employed by the legislature in drafting a statute and excluding from its operation such transactions which it plainly covers. (See Principles of Statutory Interpretation by Justice G.P.Singh, 8th Edn. 2001, pp.206-09)

12. The learned Senior counsel for the appellant placed strong reliance on Girdhari Lal and sons v. Balbir Nath Mathur wherein it has been held that the courts can by ascertaining legislative intent place such construction on a statute as would advance its purpose and object. Where the words of a statute are plain and unambiguous, effect must be given to them. The legislature may be safely presumed to have intended what the words plainly say. The plain words can be departed from when reading them as they are leads to patent injustice, anomaly or absurdity or invalidation of a law. The Court permitted the Statement of Objects and Reasons, Parliamentary Debates, Reports of Committees and Commissions preceding the legislation and the legislative history being referred to for the purpose of gathering the legislative intent in such cases. The law so stated does not advance the contention of Shri Gambhir. The wide scope of transactions covered by the plain language of Section 170-B as enacted in 1980 cannot be scuttled or narrowed down by reading the Statement of Objects and Reasons.

As we have found that giving literal meaning to the words of the provisions is in consonance with the scheme of the Act and does not lead to any conflict with the other provisions of the Act, really speaking

we need not refer to any external aids of construction. Nevertheless, the argument that the giving literal meaning to the words of the provisions of Section 2(11) of the Act leads to repeal of several Acts of Parliament has to be dealt with.

32. This argument has absolutely no substance, because the manual workers who are engaged by the employer and who are said to be protected by the other labour legislations would, if the employer so desires, be the monthly workers. The Petitioners are employers and entire argument of the employers has been that if the words used in Section 2(11) of the Act are given their literal meaning the interest of their regular manual workers would be adversely affected. Therefore, it can be assumed that the Petitioners are concerned about the welfare of their regular manual workers. It that is so, then one can see to it that the manual workers who are said to be in their regular employment continue to get all the benefits to which they are entitled by continuing them as monthly workers even after those workers are registered under the Act. Provisions of the schemes show that on coming into force of the scheme only two additional obligations are cast, one on the worker

and the other on the employer. The monthly worker has to get himself registered with the Board and the employer has to pay wages as fixed by the Board. The wages can be paid directly to the employees also. The monthly worker would continue to be under the disciplinary control of the employer and therefore all the labour legislations which apply to him before he was registered under the Act, will continue to apply to him and protect him. When a statute whether enacted by the Parliament or State legislature applies to several classes of persons and subsequently due to coming into force of another enactment it ceases to apply to one of the classes of persons, it does not amount to repeal of the earlier enactment. The basic assumption that application of the Act to manual workers engaged in the scheduled employment would result in repeal of other labour legislations which may be applicable to them before their registration under the Act is wrong. The purpose of all the labour legislations , whether enacted by the Parliament or State legislature is to prevent exploitation of the labour. The purpose of the Act is also the same. Therefore, we do not see any scope for any conflict between the Act and legislations enacted by the Parliament. Compared to

all other legislations relating to labour, the Act would be special legislation dealing only with manual workers engaged in scheduled employment. Therefore it will prevail over all other labour legislations in the event of there being any overlapping or common field. Therefore, there is no question of there being any repeal of those enactments by the application of the provisions of the Act. This was the only alleged undesirable result which was pointed out to us by the employer. We thus find that giving literal meaning of the words used in the provision advances the purpose of the Act, does not lead to any conflict either with any other provisions of the Act or other legislations. Therefore, really speaking there is no reason for us to take recourse to any external aids of construction. But even if the external aids which were pointed out and on which reliance was placed by the Petitioners are to be looked into, it becomes clear that the intention of the legislature was to apply the provisions of the Act to all manual workers engaged or to be engaged in scheduled employment irrespective of the fact whether they are protected by other legislations or not, In so far as the statement of objects and reasons is concerned, sub-clause (11) of clause (2) is relevant.

It reads as under:-

> "(2)sub-clause (11)- "unprotected worker" has been defined to mean a manual worker who but for the provisions of this Act is not adequately protected by legislation for the welfare and benefit of labour in force in the State."

33. The legislation was drafted by the Government. They intended to include only those manual workers who are not adequately protected by labour legislations. It is significant that here is no reference is made to "scheduled employment". The Bill that was presented to the Legislative Assembly shows that Section 2(11) reads as under:-

> "Unprotected worker means the manual worker who but for the provisions of the Act is not adequately protected by the legislation for the welfare and benefit of labour in force in the State."

Though the Government went before the Legislature with this definition, in the statement of objects and reasons as also in the Bill, the Legislature however, did not adopt this definition of the term "unprotected worker". The Legislature deleted the words " who but for the provisions of this Act is not adequately protected by legislation for the welfare and benefit of labour in force in the State: and in its place substituted the words "is engaged or to be engaged in any scheduled employment. If the provisions of Section 2(1)) is read in the backdrop of statement of objects and reasons and the provision in the Bill that was tabled before the Legislature, the intention of the Legislature becomes clear beyond doubt that the Legislature wanted to include within the definition of the term unprotected worker every manual worker engaged or to be engaged in the scheduled employment irrespective of the fact whether they are protected by other labour legislations or not.

34. It is apparant from the reports of the Committees that were set up by the Government that

the committees found that the manual workers engaged in certain employments are, by and large, exploited and that the existing labour legislation is not adequate to protect their interest and therefore it was recommended that a special legislation for protecting the interest of and giving various benefits to the said unprotected workers should be enacted. It appears from the statement of objects and reasons and the Bill that the Government intended to exclude from the ambit of the proposed legislation those manual workers who were protected by the existing labour legislation and to cover by the proposed legislation only those manaul workers who were not so protected. But the legislature did not accept this scheme of exemption at the threshold itself. Instead, the legislature adopted the scheme which provided for coverage of all manual workers engaged or to be engaged in scheduled employment and then to provide firstly for protection of their better condition of service by Section 21 of the Act and for exemption of such workers from the provisions of the Act by Section 22 of the Act. It is to be seen that this scheme adopted by the legislature is more practical, because it contemplates an enquiry by the Government into the question whether the manual

workers are really protected or not before they are exempted.

35. There was some debate before us as to whether the definition of the term "worker" found in Section 2(12) makes any difference to the way in which the definition of the term "unprotected worker" is to be construed. Section 2(12) reads as under:-

> 2(12) "worker" means a person who is engaged or to be engaged directly or through any agency, whether for wages or not, to do manual work in any scheduled employment and, includes any person not employed by any employer or a contractor, but working with the permission of, or under agreement with the employer or contractor; but does not include the members of an employer's family.

If the definition of the term "unprotected worker" found in Section 2(11) and the definition of the term "worker" found in Section 2(12) is read together, it becomes clear that the provisions of Section 2(12) indicate an employer under the Act through whom the manual workers are engaged in scheduled employment.

It is to be borne in mind that the Act and the Scheme framed thereunder requires registration of the employer also and the definition of the unprotected worker does not indicate the employer. Only the definition of the term "worker" indicates as to who are the employers through whom the manual workers are engaged. It cannot be said that because the definition of the term "worker" is framed in such way it will make any difference to the interpretation to be placed on the provision of Section 2(11) and that the provision of Section 2(11) is not to be given its natural meaning.

36. There was also some debate before us in relation to the judgment of the Division Bench in the case of Irkar D. Shahu v/s. Bombay Port Trust, 1994 (3) Bom.C.R. 566. Perusal of paragraph 33 of that judgment shows that the Petitioners before the Court were the workers who were unregistered under the Dock Workers Scheme, but they were registered under the Scheme framed under the Act and they were not permitted entry by the Port Authorities. And, therefore, to find out whether the Port authorities were justified in refusing permission to these workers on the Dock, the court has examined the

provisions of the Act, especially with reference to clause (3) of the Schedule of the Act. The observations of the Division Bench in paragraphs 33, 34, 35 and 36 are relevant.

> 33. The petitioners have registered themselves under the Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969. It is the contention of the Bombay Stevedores Association that once the petitioners are registered under the said Act (hereinafter referred to as the Mathadi Act), they cannot do any dock work. Hence, the Bombay Port Trust has rightly refused them Entry Permits. In order to examine this contention, it is necessary to look at certain provisions of the Mathadi Act and the Scheme framed under it. Under clause (1) of the Mathadi Act, the Mathadi Act applies to the employments specified in the Schedule thereto. The Schedule to the Mathadi Act sets out 13 categories of employment which are so covered. Category No.3 is as follows:
>
> "3. Employment in docks in connection with loading,unloading, stacking, carrying, weighing, measuring or such other work including work preparatory or incidental to such operations, but does not include employment of a Dock Worker within the meaning of the Dock Workers (Regulation of Employment) Act, 1948."
>
> Under section 2(9), "scheduled employment" means any employment specified int he Schedule or any process or branch of work forming part of such employment. Under section 2(11), "unprotected worker" means a manual worker who is engaged or to be engaged in any Scheduled employment.
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> 34. The purpose of the Mathadi Act is to regulate the employment of unprotected manual workers engaged in these scheduled employments

and to make better provisions for their Terms and Conditions of employment and to provide for their welfare. The Mathadi Act which is a State Act is designed to provide protection to workers who are not protected under any existing legislation State or Central. Clause 3 of the Schedule brings this out clearly. It refers to workers employed in the docks in connection with loading, unloading, stacking, carrying, weighing and other activities specified therein. Since such workers can be given protection under the Dock Workers Act, 1949, Clause 3 provides that it will not cover those Dock Workers who are within the meaning of that term under the Dock Workers Act of 1948. However, if we examine the definition of "dock worker" under the Dock Workers Act of 1948, it would cover every person employed or to be employed in, or in the vicinity of any port on work in connection with loading, unloading, movement or storage of cargoes. Looking to this comprehensive definition of a dock worker under the Dock Workers Act, 1948, it is difficult to envisage any work in the docks relating to loading, unloading, stacking etc. which will not be the work of a dock worker within the definition of that term under the Dock Workers Act of 1948. Therefore, the entire Clause 3 in the Schedule would become nugatory if it is read in this manner. Mr. Naphade, learned Counsel appearing for the Mathadi Board, has, therefore, submitted that looking to the purpose for which the Mathadi Act was enacted, namely, for giving better protection to unprotected workers, clause 3 should be read as excluding from its ambit those categories of dock workers who are protected under the Dock Workers Act of 1948; i.e. only those dock workers who are covered by any Protective Scheme framed under the Dock Workers Act of 1948. The Dock Workers Act 1948 per se gives no protection to a dock worker. A dock worker gets protection only when a Scheme is framed under this Act to cover him and the type of dock work he is doing. Once such a dock worker is protected under a Scheme framed under the Dock Workers Act, 1948, he is excluded from Clause 3 of the Schedule to the

Mathadi Act. Mr. Naphade also submitted that this does not in any manner restrict the framing of any new Scheme under the Dock Workers Act of 1948. If and when any such new Scheme is framed under the Dock Workers Act of 1948, the dock workers who come under the umbrella of such a new Scheme will be automatically excluded from the Mathadi Act of 1969.

35. We find much to commend this interpretation of Clause 3 of the Schedule. Clause 3 cannot be interpreted in a manner which renders it nugatory. The intention is clearly to give protection to manual workers who are not covered by any Scheme framed under the Dock Workers Act of 1948. Clause 3 also clearly indicates the intention of the legislators not to have any conflict between the Mathadi Act and Dock Workers Act of 1948. Therefore, as soon as the provisions of any Scheme under the Dock Workers Act, 1948 become applicable to a dock worker, such a dock worker will not be covered by the Mathadi Act. The two Acts, therefore, which are both welfare legislation, should be construed harmoniously to further the object for which both have been enacted. Read in this light, the Mathadi Act can cover those workers employed in the docks in connection with loading, unloading etc. so long as such workers are not covered by any of the Scheme framed under the Dock Workers Act of 1948.

36. In view of this interpretation which we have put on Clause 3 of the Schedule to the Mathadi Act, it is not necessary for us to consider the arguments relating to the constitutional validity of the Mathadi Act which is a State Act and/or the effect of the Dock Workers Act, 1948 which is a Central Act on the Mathadi Act and/or the question of paramountcy of the Dock Workers Act which is a Central Act over the Mathadi Act which is a State Act. In our view, there is no conflict between the provisions of the two Acts if Clause 3 to the Schedule to the Mathadi Act is interpreted as we have done.

It is clear from the above quoted observations that the Division Bench has considered only clause (3) of the Schedule of the Act with reference to the provisions of the Dock Workers Act, 1948 and the question which falls for consideration before us was not raised before the Division Bench and therefore has not been considered by the Division Bench and therefore for deciding the question which is referred to us, that judgment is not relevant at all.

37. To conclude, therefore, to my mind it is clear that within the meaning of Section 2(11) of the Act "unprotected worker" means every manual worker who is engaged or to be engaged in any scheduled employment, irrespective of whether he is protected by other labour legislations or not and "unprotected workers" within the meaning of the Act are definitely not only those manual workers who are casually engaged.

38. Reference is, therefore, accordingly answered.

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(D.K.DESHMUKH, J.)