Bombay High Court
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Kay Kay Embroideries Pvt. Ltd. vs Cloth Markets And Shops Board And ... on 30 August, 2006
Equivalent citations: 2006 (6) BomCR 739, (2007) ILLJ 865 Bom, 2006 (6) MhLj 377
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Bench: J Patel, D Deshmukh, R Dalvi
JUDGMENT

J.N. Patel and Roshan Dalvi, JJ.

1. The Division Bench of this Court while considering a group of petitions filed by the petitioner employers relating to the application of the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 (hereinafter referred to as "the Mathadi Act, 1969" for the sake of brevity and convenience) felt that principally two questions of law arise for the determination of the Court in those proceedings treating the writ petition of M/s Kay Kay Embroideries Pvt. Ltd., (Writ Petition No. 7671 of 2005) as a lead petition. The Bench was of the view that the interpretation placed in the judgment of this Court in Century Textiles and Industries Ltd., v. State of Maharashtra, 2001(2) Mh.L.J. 775 : 2000 (II) CLR 279 relating to Section 2 definitions defining the words "unprotected workers" (section 2(11) and "worker" (section 2(12) of the Mathadi Act, 1969 is in conflict with the statutory provisions enacted by the legislature and that the correctness of the decision would, therefore, merit examination by the Larger Bench. The two questions of law for determination of the controversy were formulated after considering the various provisions of the Mathadi Act, 1969 and the Schemes enacted thereunder like the Cloths Markets and Shops Unprotected Workers (Regulation of Employment and Welfare) Scheme, 1971 and the Grocery Markets, Shops Unprotected Workers (Regulation of Employment and Welfare) Scheme, 1970 and Iron and Steel Scheme which have been made in exercise of the power conferred by Sections 3 and 4 of the Mathadi Act, 1969 and are operative in their respective fields of employment of manual workers in scheduled employment or group of scheduled employments for the purpose of effective implementation of provisions of the Mathadi Act, 1969 and the various schemes formulated under the said Act.

2. The Bench examined the issue in the backdrop of the previous decision of this Court in C. Jairam Pvt. Ltd., v. The State of Maharashtra, Misc. Petition No. 150 of 1973 dated 19th April 1974 wherein the constitutional validity of the Act and the Scheme was in question before the Court, namely, the Cotton Merchants Scheme of 1972 and a subsequent decision rendered in the case of S.B. More v. State of Maharashtra, Misc. Petition No. 414 of 1973 dated 24th April, 1974 in the context of the Khokha and Timber Unprotected Workers Scheme, 1973, which upheld the validity of the said Act and the Scheme except found to be and held offending Article 19(1)(g) of Constitution of India. It also referred to the decision of the Division Bench dated 16th January, 1980, Lallubhai Kevaldas v. The State of Maharashtra, Writ Petition No. 119 of 1979 in the backdrop of the statement of objects and reasons underlined in the enactment of Mathadi Act of 1969 and after examining the definition of the term "unprotected worker" defined in Section 2(11) of the said Act and "worker" as defined in Section 2(12), the Bench found that once the Act defines the expression "unprotected workers" the definition in the Act provides a statutory dictionary. The Court is under bounden duty to apply the provisions of the said Act to such 'worker' who stands covered by the definition, and, therefore, it was not open to the Court to adopt the meaning of the expression "unprotected worker" to apply only to the casually engaged workmen who would come within the purview of the Act, which is at variance with what has been laid down by the competent legislation and it felt that the judgment of the Division Bench in Century Textiles and Industries Ltd. v. State of Maharashtra does not advert to the definition of Section 2(11) in the judgment in its proper perspective. The Division Bench observed that the definition merely indicates that "unprotected workers" are manual workers who are engaged or to be engaged in any scheduled employment and, therefore, the Division Bench felt that the judgment in Century Textiles does not give effect to the plain meaning of the language used by the legislature in Section 2(11) and requires consideration. They framed the following question of law for being considered by a 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 Textiles and Industries Ltd. v. State of Maharashtra 2001(2) Mh.L.J. 775 : 2000 (11) CLR 279 on the aforesaid expression that it is only casually engaged workers who come within the purview of the Act, correct and proper?

3. We have heard the learned Counsel appearing for the petitioners, the Board and the respondents who are representing the cause of workers purported to be covered by the Mathadi Act, 1969. Though the question referred to us by the Division Bench relates to the interpretation of the definition of "unprotected workers" and "worker", we have been also addressed touching the merits of the petitions which in substance challenge the very applicability of the Mathadi Act, 1969 to the establishment of the petitioners and so also the respective schemes for ensuring regular employment of unprotected workers which arguments are directed on the premises that even if their establishments engage manual workers and comes within the scheduled employment, they will not be governed by the Mathadi Act, 1969 and the Schemes framed thereunder relating to the scheduled employment as these workers are regular employees of the establishments. It is canvassed before us that the Mathadi Act, 1969 is only meant for "unprotected workers" whose employment is not protected by any of the labour legislations.

4. On behalf of the employers it is contended that though their establishments may fall within the scheduled employment, their workers who are engaged for doing manual work are protected as they enjoy benefits of more than one labour legislation like : (1) Industrial Employment (Standing Orders) Act, 1946, (2) Industrial Disputes Act, 1947, (3) The Factories Act, 1948, (4) The Employees State Insurance Act, 1948, (5) Minimum Wages Act, 1948, (6) The Employees' Provident Funds and Miscellaneous Provisions Act, 1952, (7) The Payment of Bonus Act, 1965 and (8) Maharashtra Factories Rules, 1963.

5. It is strongly contended before us that it has been the consistent view of this Court that the Mathadi Act, 1969 is applicable to establishments which employ manual workers to do casual work in a scheduled employment who is "unprotected worker" as defined in Section 2(11) of the Mathadi Act, 1969. It is submitted that the decision of this Court in C. Jairam Pvt. Ltd. v. The State of Maharashtra Misc. Petition No. 150 of 1973 dated 19th April, 1974 followed by another decision in the case of S. B. More v. State of Maharashtra Misc. Petition No. 414 of 1973 dated 24th April, 1974 and affirmed by the decision of the Division Bench of this Court dated 16th January, 1980 in the case of Lallubhai Kevaldas v. The State of Maharashtra Writ Petition No. 119 of 1979 has consistently held it to be so and it has been reaffirmed in the judgment of the Division Bench in Century Textiles and Industries Ltd. v. State of Maharashtra 2001(2) Mh.LJ. 775 : 2000 (11) CLR 279 when the Division Bench of this Court expressed its approval by observing in para 40 of the reported judgment as under:

40. We, therefore, respectfully agree with the view expressed in the said judgment dated 16th January, 1980 in Writ Petition No. 119 to the effect that the Act does not deal with employees engaged on monthly basis as the same are protected under the Shops and Establishments Act and other enactments. We also agree with the view that it is only the casually engaged workmen who would come within the purview of the Act. The material produced on record clearly shows that they are protected workmen more particularly with reference to the said Agreement under Section 2(p) of the Industrial Disputes Act, 1947.

6. It is the contention of the employers that the definition of "unprotected workers" in Section 2(11) of the Mathadi Act must be read conjointly with the expanded meaning of "worker" in Section 2(12) and if so read, it becomes clear that when the Act applies to "unprotected workers" it covers all these employees whether engaged directly, indirectly (on contract) or by simple agreement and, therefore, it would cover all "unprotected employees" whosoever engaged and in case if "worker" as defined in Section 2(12) is read separately from "unprotected worker" in Section 2(12) it would mean that "unprotected worker" means someone engaged other than directly, indirectly or by simple agreement. In our view this contention stems from the observations made by the Division Bench of this Court in the case of Century Textiles and Industries

Limited, particularly in the later part of para 32 of the reported judgment which reads as under:

The definition given as to the word "worker" in Clause 2(12) of the said Act is meant to refer to those persons who are not employed by any Employer or Conlractor, 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, the workers covered by this definition are engaged or to be engaged directly or through any Agency on wages or not, to do manual work in any Scheduled Employment.

According to Mr. Cama, the learned Counsel for petitioners, this would make the definition clause in Section 2(11) meaningless and inoperative which is not permissible in law. On the other hand, if "worker" in Section 2(11) is independent of Section 2(12) and refers to the same person other than an "unprotected worker" in Section 2(11) then, since the protection and coverage of the entire Act and Scheme apply only to "registered unprotected workers" that word after its incorporation into the Act under Section 2(12) has no effective purposes, object or usage which will again be an impermissible construction and, therefore, one is left with no choice but to read the two sub-sections conjointly. It has the effect of conformity with the obvious and overriding object and purpose of the statute in the first instance and by giving the expression "unprotected worker" the widest possible meaning expands the coverage of the Act to "unprotected workers" employed in every conceivable manner.

7. It is further contended that the statute does not bring within its fold every "workman" in scheduled employment as it would be fallacious as it would defeat the very objects and reasons for which the Mathadi Act came to be enacted. The learned Counsel for the petitioner employers have also made a detailed reference before us to the three Committees appointed by the Government which found that a certain special class of workers employed essentially in markets, factories and other such places were either not covered by the existing labour legislations or could not be covered by the same, because of the very uncertain employment and the entirely transitory nature of their work and this was thus the existing position of law in 1969 which the Legislature found out through the aforesaid three Committees. 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 which is also reflected in the observations made by the Division Bench of this Court in the case of Lallubhai Kevaldas (supra) which took into consideration the judgment of C. Jairam Pvt. Ltd. (supra) and S. B. More (supra) and has 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 and the said reasoning has been thereafter adopted by another Division Bench in the case of Irkar Sahu and Anr. v. Bombay Port Trusts, reported in 1994 (I) CLR 187 and this is also the view of the learned Division Bench in Century Textile's case (supra) and, therefore, as this Court has taken a consistent view that the expression "unprotected workers" in the Mathadi Act refers to a worker who is unprotected by other labour statutes, such a long standing unbroken line of law cannot and should not be easily upset and does not call for any reconsideration. It was also argued before us that the stand taken by the Mathadi Board that the workers directly employed in scheduled employment are ipso facto not casual, must also be held to be covered under the said Act. It is, therefore, submitted that there is no bar on the part of the employers to engage workers directly or indirectly or even by simplicitor agreement by referring to Item 6 of Schedule IV of the MRTU and PULP Act and item 10 of the Fifth Schedule of the I. D. Act and by referring to Clauses 4(c) and 4(d) of the Model Standing Orders. It is, therefore, submitted that the test is not whether the worker is engaged directly or indirectly in scheduled employment but whether the worker engaged in any manner is at the time of intended coverage unprotected as in respect of his employment and conditions of service from other existing labour statutes. Therefore, according to the learned Counsel for the petitioner employers, the worker could be covered under the Mathadi Act of 1969 only if it is found that:

(i) The employee must be unprotected by other statutes.

(ii) He must be employed in scheduled employment.

(iii) He must be employed to do the work set out in the schedule.

and, therefore, the Act has no application to manual workers even in scheduled employment who are doing other kind of manual work and it is equally inapplicable to employees in scheduled employment who are protected by other Labour Legislations.

8. It is further contended that if literal construction of Section 2(11) is attributed to the definition of "unprotected workers" in Section 2(11) of the Mathadi Act, 1969, it is directly opposed to the objects of the Act as demonstrated from the committee reports which preceded the Act, the statement of objects and reasons for the enactment and indeed the preamble too. It is submitted that it will also lead to a situation where the word "unprotected worker" would have no rational meaning other than to club together by force of law protected and "unprotected workers" in one lumpsum and this would not advance the cause of protecting "unprotected workers" but would simultaneously lead to protected workers being terminated from employment so that they can be registered as "unprotected workers" under the Mathadi Act so that finally they could be sent back to the same or similar employer as daily rated or monthly rated mathadi workers. Therefore, it has been emphasised that such liberal construction would lead to an absurdity and should not be accepted. It is, therefore, contended that while resorting to the literal construction of the definition of "unprotected workers" the Court should take into consideration the object and reason of the enactment and then to read the words sought to be construed in consonance with that object.

9. In addition to relying on the decision of this Court in the case of C. Jairam Pvt. Ltd., till Century Textiles' reliance has also been placed on the following cases:

1. Mohandas Issardas and Ors. v. A.N. Sattanthan and Ors. , 2. Judgment of this Court in Criminal Revision Application No. 160 of 1975 (with Cri. Rev. Application No. 161/75) in the case of Western Rolling Mills Pvt. Ltd. and five Ors. v. Shri T.S. Hatekar and the State of Maharashtra dated 24th November, 1975,

3. , Commissioner of Income-tax v. J.H. Gotia, 4.

, State of Haryana and Anr. v. Raghubir Dayal, 5.

, U.P. State Electricity Board v. Shri Shiv Mohan

Singh, 6. , Nathidevi v. Radhadevi Gupta, 7.

, Utkal Construction and Jonery Pvt. Ltd. v. State

of Orissa, 8. 2004(11) CLR 534 (SC), Mukesh K. Tripathi v. Senior Divisional Manager, LIC, 9. , Baldevsingh Bajwa v.

Monish Saini, 10. , Buckingham and Caruatic Mills

Ltd. v. Venkatiah and Anr. 11. , Pradeep Kumar

Biswas v. Indian Institute of Chemical Biology and Ors. 12. , Thirumuruga Kirupananda Variyar Thavathiru

Sundara Swamigal Medical Educational and Charitable Trust v. State of Tamil Nadu and Ors. 13. , Kulwant Kaur and Ors.

v. Gurdial Singh Mann (dead) by Lrs. and Ors 14. ,

Kaiser-I-Hind Pvt. Ltd. and Ors. etc. v. National Textile Corporation Ltd. and Ors. etc.

10. Mr. Talsania, the learned Counsel appearing for Bhuwalka Steel Industries Ltd., in Writ Petition No. 597 of 2000 also joined issue with Mr. Cama and he supports the contentions advanced by Mr. Cama on behalf of the petitioner employers who would also like to apprise the Court with the consistent view taken by this Court which is holding the field since the last 25 years as regards the class of workmen who are covered under the Mathadi Act being those who have been casually employed workmen and who do not enjoy benefits of regularly employed workmen governed by the provisions of the Industrial Disputes Act, 1947, the Minimum Wages Act, 1948 and other enactments and, therefore, relying on the principle of Stare decisis submitted that the settled position in law should not be disturbed and placed reliance on the decision rendered by the Seven Judge Bench of the Hon'ble Supreme Court in the case of State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamad .

11. Mr. Naidu who represents petitioner employer Maruti on Board Courier Services (Writ Petition No. 312 of 2006) submitted that the Court should not prefer a literal interpretation of the definition "unprotected worker" [section 2(11)] and "worker" [section 2(12)] in a scheduled employment [section 2(9)] as it would lead to patent absurdity, anomaly, inconsistency, injustice and hardship as it would deprive the employer from engaging manual workers directly/indirectly in a scheduled employment as every manual workman working in a scheduled employment would be "unprotected workman" and this will result into termination from service of manual workers engaged directly in a scheduled employment as it encompasses all scheduled employments within its scope. It is further contended that it will also lead to repugnancy or inconsistency and cause irreconceivable hardship in the implementation and compliance of other labour laws and labour welfare legislations which otherwise apply on its own motion to regular, direct or indirect mathadi workers working in any employment including a scheduled employment under the Mathadi Act. The next limb of the arguments canvassed by Mr. Naidu relates to the competency of the State in enactment of the Mathadi Act in exercise of legislative power conferred by Article 246 of the Seventh Schedule, List III, Entry 24 which is sufficiently covered by various enactments like Industrial Employment (Standing Orders) Act, 1946, Industrial Disputes Act, 1947. The Factories Act, 1948. The Employees State Insurance Act, 1948, Minimum Wages Act, 1948. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The Payment of Bonus Act, 1965 and the Maharashtra Factories Rules, 1963 and according to him, this takes sufficient care of each and every class of worker including those who are doing manual work in all the factories and establishments and as the object of the Mathadi Act is protection of employment and extension of certain benefits to a special class of workers who, according to him, were not covered under the aforesaid enactments, this can be the only meaning which can be attributed to the term "unprotected worker" and, therefore, according to him if worker is the 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 and, therefore, the Mathadi Act of 1969 would not be applicable to those factories or establishments, though they may be carrying out scheduled employment, if the manual workers employed in such scheduled employment is otherwise "protected". In support of his contention, Mr. Naidu has also referred to the various committees and labour conferences which led to the passing of various enactments to look into the problems of workers/employees. Mr. Naidu has also canvassed that this Court, while answering the reference, should have purposive approach as opposed to literal construction which was adopted by Lord Denning L.J. in the case of Seaford Court Estates Ltd. v. Asher which was approvingly referred to by the Supreme Court in the case of Bangalore Water Supply and Sewage Board v. A. Rajappa . In addition to these submissions Mr. Naidu has also relied on various authorities which lay down principles for interpretation of the statute in its proper perspective and concluded his argument by submitting that the interpretation given by the learned Single Judge in the two cases C. Jairam Pvt. Ltd. (supra) and S. B. More (supra) as well as by Division Bench in Lallubhai Kevaldas (supra) followed by another Division Bench in Century Textile's case (supra) is the correct interpretation and requires to be upheld. He has also expressed the same feeling as his other colleagues representing the cause of employers that in case any different view is taken in the matter it would unsettle the proposition which has been accepted for the last so many years that the employers who have employed regular workmen on their rolls within the scheduled employment and who are duly protected by other labour legislations do not fall within the purview of the Mathadi Act, 1969.

12. On behalf of the Mathadi Board Mrs. Lata Desai, the learned Counsel submitted that in deciding the reference this Court will be required to determine the following questions of law which arise as a corollary to the above reference.

a) Whether the term "Unprotected worker" means a worker not protected by labour legislations or whether it means a manual worker as defined in the Act?

b) Whether a mathadi worker who is engaged directly by the Employer falls outside the purview of the Mathadi Act and the Scheme?

Mrs. Desai has drawn our attention to the findings of the various committees which led to the introduction of the Bill which ultimately culminated into passing of the Mathadi Act, 1969 by the State Legislature. According to her, the apprehension expressed by the learned Counsel espousing the case of the employers is unfounded as Mathadi Act and the Scheme formulated thereunder takes sufficient care of all such apprehensions and employer is not left without a remedy in case in his factory or establishment, which has been notified as a scheduled employment, manual worker enjoys all the benefits which the Mathadi Act and the Scheme thereunder contemplates and provides for. In support of her contention she has referred to the decision of the Supreme Court in the case of Punjab Land Development and Reclamation Corporation Limited v. Presiding Officer, Labour Court, Chandigarh and Ors. wherein the Supreme Court was

dealing with the issue of retrenchment in a group of petitions and held as under:

The doctrine of ratio decidendi has also to be interpreted in the same line. To consider the ratio decidendi Court has to ascertain the principle on which the case was decided. The ratio decidendi of a decision may be narrowed or widened by the judges before whom it is cited as a precedent. In the process the ratio decidendi which the judges who decided the case would themselves have chosen may be even different from the one which has been approved by subsequent judges. This is because judges, while deciding a case will give their own reasons but may not distinguish their remarks in a rigid way between what they thought to be the ratio decidendi and what were their obiter dicta, that is, things said in passing having no binding force, though of some persuasive power.

According to Mrs. Desai, the observations made by the learned Single Judge of this Court in C. Jairam's case and S. B. More's case and the Division Bench of this Court in the case of Lallubhai Kevaldas (supra) and Century Textiles case (supra), cannot be considered to be a ratio decidendi for the simple reason that the provisions of the various schemes of the Mathadi Act were under challenge before the learned Single Judge. Whether the Act could be applicable to a worker who is otherwise protected under any other labour legislation and who is not casually employed is only a further reasoning in deciding the vires of the Act and the Scheme and they were not dealing with the interpretation of the definition of "unprotected worker" and "worker" as given in the Mathadi Act, 1969. According to her, the Mathadi Act is a special legislation and a complete code in itself, which has been the consistent view of this Court, and the scheme framed under the Act takes care of terms and conditions of employment and the benefits to which a manual worker working in scheduled employment is entitled. She contended that the Act is designed to achieve the twin purpose and it is not merely designed to regulate the employment of mathadi labour, to make better provisions for their terms and conditions of employment and for welfare and for health and safety measures but importantly to make provision for ensuring an adequate supply to and full and proper utilization of such workers and to prevent avoidable unemployment. It is, therefore, contended that insofar as the decision of the Division Bench of this Court in Lallubhai Kevaldas's case to which a passing reference is made in Century Textiles case are casual observations which are not binding on another Bench of co-ordinate jurisdiction of this Court.

13. Mrs. Desai also furnished to us a note on the Cloth Markets and Shops Board, Specimen Form No. A for Registration of Employer under the Cloth Market and Shops Board, Specimen Form No. 1 for information to be given by employer to the Board regarding work done by workers, Specimen Form No. 2 -Statement of

Wages and Levy to be submitted by the Registered employers, Specimen Form No. 3 for particulars of work carried out by the workers of the toli to be filled in by the Mukadam of the Toli, Form No. A submitted by Maruti OBC Services Pvt. Ltd. Petitioner in Writ Petition No. 3112 of 2206 along with inspection report and show cause notice issued to Maruti OBC Services by way of illustration to demonstrate that the Act and the Scheme do not in any manner lead to any sort of absurdity, inconvenience, injustice or hardship to the employer as contended by Mr. Naidu nor it has resulted in unemployment of workers/employees in any factory or establishment and, therefore, fears expressed on behalf of the employers is merely a figment of their imagination and such considerations cannot have any bearing or impact while interpreting the definition of "protected", "unprotected workers" and "worker" in the Mathadi Act of 1969 which has to be read conjointly.

14. Mr. Naik who appears for the workers in a group of writ petitions and particularly on behalf of the Grocery Board and Mr. Anand Grover submitted that the learned Counsel appearing for the employers tried to narrow down the scope of discussion when addressing the Court on the question referred by restricting it only in relation to casually engaged workers and submitted that the Act and the Scheme framed thereunder is applicable to manual workers engaged in or to be engaged in any scheduled employment de hors the terms of their employment as to whether it is regular or casual and has analysed that each of the workers and "unprotected worker" as defined in Section 2(11) and "worker" in Section 2(12) of the Mathadi Act, 1969 in context to the scheduled employment as defined in Section 2(9). He has also highlighted provisions of Section 3(1) and submitted that it necessarily presupposes that prior to the passing of the said Act there was no adequate supply of 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 workers" and in order to protect them, State Government has passed the said legislation which is a special welfare legislation for class of workers in a class of scheduled employment. He submitted that the Court can very well examine the objects and reasons of passing of the said enactment along with definition clause which defines "unprotected worker" 2(11), "worker" 2(12), "employer" 2(3) and scheduled employment 2(9) and establishment 2(4) and submitted that the conjoint reading of all the aforesaid definitions and the use of the respective words in the various provisions of the Mathadi Act, 1969 in context to the definition and if the provisions of the said Act are read with various provisions and the schemes framed thereunder clearly manifest the intention of the State that a machinery in the form of a Board has to be constituted to monitor and/or administer the entire scheme for unprotected workers 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. He has submitted 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 takes care of such a contingency and this also indicates 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 available under the said Act and the Scheme framed thereunder and thus those better benefits are fully protected under Section 21. It is submitted that 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 which defeats the arguments of the employers that their direct and regular manual workers are not covered under the said Act and, therefore, according to Mr. Naik upon passing of the Mathadi Act, 1969 all workers doing manual work in the specified scheduled employment will be covered which object cannot be defeated by accepting the proposition that only casually engaged workers are covered by the said Act. It is the contention of Mr. Naik that the passing reference made by the learned Single Judge in the case of C. Jairam Pvt. Ltd. and Anr. (supra) that the provisions of the Act and the Scheme are not applicable to worker who are covered by Bombay Shops and Establishments Act if it is applicable to an establishment and further in Lallubhai Kevaldas (supra) a passing reference has been made that the Act is not applicable to protected workers which has occurred in Century Textiles' case, which will have to be held as per incurium as it forms part of obiter dicta as the learned Single Judge as well as the learned Division Bench while dealing with Lallubhai's case has considered the constitutional validity of the provisions and the scheme framed thereunder. Mr. Naik placed reliance on the case of Goodyear India Ltd. v. State of Haryana, . According to Mr.

Naik, the observations made by the Division Bench of this Court in Century Textiles' case (supra) particularly in para 32 of the reported judgment, the definition of worker as given in Clause 2(12) of the Mathadi Act is wrongly read and understood. It is submitted that as there is no ambiguity in the provisions of the Mathadi Act, 1969, this Court need not by way of external aid refer to the other Acts like Security Guards Act which covers altogether different fields and submitted that the manual work done in scheduled employment is of several kinds such as loading, unloading, stacking, carrying, piling, weighing, measuring etc., which are incidental to the main activity of any business enterprise and not casual in nature. It is such work in scheduled employment for which manual worker is employed to which the Mathadi Act, 1969 is attracted.

15. Smt. Kajale, the learned Counsel appearing for the State of Maharashtra supports the stand taken by the Board in favour of workers.

16. Mr. Singhvi has also addressed us on behalf of Hindustan Lever Employees' Union, the intervener in Writ Petition No. 2544 of 2003. Mr. Singhavi concurred with the submissions of Mr. Naik and submitted that the provisions of the Mathadi Act, 1969 and the Vegetable Markets Unprotected Workers (Regulation of Employment and Welfare) Scheme, 1985 relating to hundekaries came up before the Supreme Court for consideration and the three Judge Bench in the case of Maharashtra Rajya Mathadi Transport and Central Kamgar Union v. State of Maharashtra and Ors. reported in 1995(2) Mh.LJ. (S.C.) 315 : 1995(11) CLR 217 has considered the provisions of the Act and the Scheme and in para 11 of the reported judgment has observed as under:

11. A 'mathadi worker' is an unprotected worker in the 'scheduled employment' - an employment specified in the Schedule to the Act i.e., 'employment in vegetable markets (including onions and potato markets) in connection with loading, unloading, stacking, weighing, measuring, sewing, stitching, sorting, cleaning or such other work preparatory or incidental to such operations, is undisputed.

And, therefore, according to him, there is a clear dictum on the concept as to who are "unprotected workers" governed by the Mathadi Act and the Schemes framed thereunder which leaves no doubt in one's mind that all those workers employed in scheduled employment are within the purview of Mathadi Act and are governed by the schemes framed thereunder.

17. The learned Counsel appearing for the employers also addressed the Court on the issue of grant of Presidential assent to the Mathadi Act of 1969 by referring to Article 254 of the Constitution of India and cited the case of Kaiser-I-Hind Pvt. Ltd. and Ors. etc. v. National Textile Corporation Ltd. and Ors. etc., .

In our view this is not the subject-matter of the reference and, therefore, it is not necessary for us to deal with the contention.

18. We have given our anxious consideration to rival contentions made at the Bar and the various authorities cited in support of the same. Before we proceed to examine the key issue which is referred to us, we reproduce the relevant provisions of the Mathadi Act, 1969 which are crucial for considering the key issue referred to us. As the reference relates to the statutory definition of the expression "unprotected worker", the following definitions from the definition clause require our consideration i.e. out of the definition clause:

2(11) "unprotected worker means a manual worker who is engaged or to be engaged in any scheduled employment;

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 contactor, 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.

It also requires consideration of the provisions of Sections 3(1), 18, 19, 20, 21 and 22 in context to the definitions which read 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 terms and conditions of employment of such workers 1 * * * *, 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 employments.

18. The provisions of the Workmen's Compensation Act, 1923, and the rules made from time to time thereunder, shall mutatis mutandis apply to (registered unprotected workers) employed in any scheduled employment to which this Act applies; and for that purpose they shall be deemed to be workmen within the meaning of that Act; and in relation to such workmen, employer shall mean where a Board makes payment of wages to any such workmen, the Boards, and in any other case, the employer as defined in this Act.

19. (1) Notwithstanding anything contained in the Payment of Wages Act, 1936, (hereinafter referred to in this section as "the said Act"), the State Government may, by notification in the Official Gazette, direct that all or any of the provisions of the said Act or the rules made thereunder shall apply to all or any class of (registered unprotected workers) employed in any scheduled employment to which this Act applies, with the modification that in relation to (registered unprotected workers) employer shall mean where a Board makes payment of wages to any such worker, the Board, and in any other case, the employer as defined in this Act; and on such application of the provisions of the said Act, an Inspector appointed under this Act shall be deemed to be the Inspector for the purpose of the enforcement of such provisions of the said Act within the local limits of his jurisdiction.

(2) The State Government may, only if the Advisory Committee so advises, by a like notification cancel or vary any notification issued under Sub-section (1).

20. Notwithstanding anything contained in the Maternity Benefit Act, 1961 (hereinafter referred to in this section as "the said Act") the State Government may, by notification in the Official Gazette, direct that all or any of the provisions of the said Act or the rules made thereunder shall apply to (registered unprotected women workers) employed in any scheduled employment to which this Act applies; and for that purpose they shall be deemed to be women within the meaning of the said Act; and in relation to such women employer shall mean where a Board makes payment of wages to such women, the Board; and in any other case, the employer as defined in this Act; and on such application of the provision of the said Act, an Inspector appointed under this Act shall be deemed to be the Inspector for the purpose of enforcement of such provisions of the said Act within the local limits of his jurisdiction. "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.

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.

Insofar as the schemes framed under Sections 3 and 4 of the Mathadi Act, 1969 are concerned, are not the subject-matter of our consideration and also not necessary for answering the reference as the various schemes framed under the said Act are subject matter of the writ petitions which are pending before the Division Bench of this Court and, therefore, we would like to make it clear that the judgments which have led to the controversy right from C. Jairam Pvt. Ltd., till Century Textiles case were mainly concerned with the issue of the validity of the Mathadi Act, 1969 and the schemes framed thereunder and while dealing with the challenge in the respective petitions, particularly on the issue of applicability of the Act and the respective schemes framed thereunder, the question arose as to which class of "workers" is governed by the said Act and the Schemes framed thereunder. Insofar as the constitutional challenge to the provisions of the Act i.e. violative of Articles 19(1)(f) and (g) and 300 of the Constitution is concerned and so also the applicability of the respective schemes have been negatived and to that extent there is a consistency in all the judgments except for holding that some of the clauses were ultra vires and were struck down. Therefore, one thing is clear that the Mathadi Act, 1969 and the Schemes framed thereunder are valid and in force i.e. it is in operation and functional.

19. The virus which corrupted the definition of "unprotected worker" 2(11) and "worker" 2(12) can be detected from the judgment delivered in C. Jairam Pvt. Ltd., by Rege, J. and can be traced to the use of the terminology "casual worker" referred in the scheme while discussing Clause 30(2) of the Cotton Merchants Unprotected Workers (Regulation of Employment and Welfare) Scheme, 1971. At this stage only we would make it clear that insofar as Clause 30 of the said Scheme is concerned, it does not in any manner, and cannot, override the statutory definition of "unprotected worker" 2(11) and "worker" 2(12) as given in the Mathadi Act, 1969 and that the tenor of the judgment will also show that in the said case the Court did not make any attempt to redefine the two statutory definitions. On the other hand, it was basically dealing with the implementation and the implication of the various clauses in the scheme which sub-divides the "unprotected worker" 2(11) as Clause 11 of the said scheme provides for maintenance of various registers as provided under Sub-clauses (2), (3) and (4) of Clause 11 of the said scheme and it is while providing for these registers Sub-clauses (3) and (4) in Sub-clause (4) a pool register is required to be maintained which distinguishes the worker from the one whose name is to be maintained in the monthly register. A monthly register provides that there shall be a register of workers who are engaged by each employer on contract on monthly basis and who are known as monthly workers whereas the pool register provides that there shall be a register of workers other than those on the monthly register known as pool workers. This register shall include a sub-pool of workers who are not attached to any gang to fill casual vacancies in gangs. The workers included in such a sub-pool shall be known as leave reserve workers. Thereafter while dealing with the subsequent petition in S. B. More's case which was basically related to "unprotected worker" in Khokha industry, the learned Judge has expressly held that the delegation of power given to the Government to prepare a Scheme and the purpose of the Scheme are necessarily to give protection to the workers who are found to be unprotected in many respects covered by the objects of the Act. Merely because to those workers the Bombay Shops, and Establishments Act, 1923, the Payment of Wages Act, 1965, the Workmen's Compensation Act, 1923. The Minimum Wages Act, 1948, the Payment of Bonus Act, 1965, the Payment of Gratuity Act, 1972, and the Employees Provident Funds and Family Pension Act, 1952, are made applicable, that, by itself, would not afford to them complete protection in respect of things not covered by these special legislations, as it envisaged by the Act and the

Scheme. Moreover, the Act and the Scheme themselves protect and higher benefits received by such workers under any other legislation and the Scheme on that ground therefore cannot be declared to be ultra vires the Act.

20. The Division Bench of this Court while deciding the case of Lallubhai Kevaldas (supra) though observed that the view taken by Rege, J. has to be approved and has held in paragraph 8 of the judgment as under:

8. We are unable to see any merit in this connection. The obligation of the employers and employees to get compulsorily registered is merely a part of the mechanism aimed at ensuring effective enforcement of the Act. 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.

(Emphasis supplied)

In our view the reasoning spelt out in paragraph 8 by the Division Bench was in reference to the contention that the operation of the Act and particularly in reference to Clause 31 of the Scheme where private employer were engaging in unregistered workers and that this provision is both against registered and unregistered employers made reference to Sub-clause (2) of Clause 31 and the Bench proceeded on the assumption that engaging of unregistered workers is prohibited under the Scheme which, according to the petitioner in Lallubhai's case can have effect of unregistered worker having no work at all though the Act is mainly aimed at benefits of all the unprotected workers. Exclusion of such unprotected worker is beyond the scope of law. Therefore, it is very clear that these observations particularly on which we have laid emphasis were in reference to the scheme under the Act which was being examined by the Division Bench in Lallubhai Kevaldas's case. Such observations came to be made as the main object of the Act is to ensure security of employment to casually employed workers and that is why the workers governed under the Mathadi Act are described as "unprotected manual workers". The word "manual" is, therefore inserted (read) in the definition clause Sub-clause (11) of Section 2 which only provides for the definition of "unprotected worker" and not "unprotected manual worker" and, therefore, after examining the scheme, the Bench fell into error when it observed in the later part of paragraph 9 of the judgment,

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 Establishments Act and the enactments. It is only the casually engaged workmen that come within the purview of the Act.

(Emphasis supplied)

which was exactly contrary to what Justice Rege has observed in the case of S. B. More (supra). Nor are these observations in context to the definition clause in the Mathadi Act, 1969. In our view, it is a clear obiter dicta which is per incurium. If it has to be construed as a judicial interpretation of the word "unprotected worker" as defined in Section 2(11) of the Mathadi Act, 1969, these observations deserve to be ignored for the said purpose. But, unfortunately, we find that it is this observation of the Division Bench in the case of Lallubhai Kevaldas which persuaded the Division Bench in the case of Century Textiles' to consider it as a foundation when they observed in the concluding part of paragraph 24 of the reported judgment by reproducing paragraph 9 of the judgment in Lallubhai's case. This was though it was vehemently opposed by the respondents by contending that these are casual observations and when the Court was dealing with a writ

petition with regard to the constitutional challenge is not called upon to decide the extent and scope of the applicability of the Act. This observation may not be said to be the decision noted on the point of applicability of the Act by the Division Bench with regard to what is sought to be made - a category of "protected workers", though the Division Bench in Century Textiles case made it clear in paragraph 31 of the reported judgment that the entire Act, therefore, is not only designed to take care of "unprotected workers" but also throughout referred to workers as "unprotected" for which there is a definition clause under 2(11). It merely indicates that "unprotected workers" are manual workers who are engaged or to be engaged in scheduled employment but then it fell in error when it went on to observe in paragraph 32 of the reported judgment as under:

32. The submission made on behalf of the respondents, therefore, is that moment the worker is found to be manually working in any Scheduled Employment to which the Act is extended, he is an unprotected worker. Once this situation arises, there is no alternative but to cover the employers and workers under the provisions of the Act, Scheme and the Board.The definition given as to the word "worker" in Clause 2(12) of the said Act is meant to refer to those persons who are not employed by any Employer or 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, the workers covered by this definition are engaged or to be engaged directly or through any Agency on wages or not, to do manual work in any Scheduled Employment.

(Emphasis supplied)

We are in total agreement with the submissions of Mr. Naik, learned Counsel appearing for the Grocery Board in assailing the observation by stating that the plain reading of the above para clearly shows that the definition of "worker" as given in Clause 2(12) of the Mathadi Act has been wrongly read, understood and applied. As in our view the plain reading of the definition does not call for such an interpretation and to read it in the sense expressed by the Division Bench in Century Textiles and Industries Ltd., would be nothing but to corrupt the definition of "worker" as given in Clause 2(12) of the Mathadi Act. The dissection of the definition in the process of analysis has done much violence to the definition rather than promoting the object for which the Mathadi Act, 1969 came to be enacted as it excludes the earlier part which rather spells out the source from where worker may be engaged or employed to do manual work in any scheduled employment and restrict it only to those workers by laying emphasis on the later part of the definition i.e. working with the permission of, or under agreement with the employer or a contractor, but does not include the members of the employer's family. The workers covered by this definition are engaged or to be engaged directly or through any agency, whether for wages or not, to do manual work in any scheduled employment.

21. The learned Counsel for the employers have heavily relied upon the history which led to the introduction of the Bill and the statement of objects and reasons for introducing the Bill in the Legislature by the then Labour Minister in order to make a point as to why the Mathadi Act, 1969 was not meant for and is not applicable to the regular employee in a scheduled employment who is doing manual work as in the proposed Bill which contained the statement of objects and reasons and was presented to the State Legislature on 19-12-1968 by the then Minister of Labour. The notes on clauses in order to explain the important provisions of the Bill and particularly Clause 2 in which some of the important expressions were defined. There the proposed definition in the Bill of the word "unprotected worker" which found place in Sub-clause (11) of Clause (2) read as under:

2(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 welfare and benefits of the labour in force in the State.

But then when the Bill came to be passed and received the assent of the President on 5-6-1969 and was first published in the Maharashtra Government Gazette, Extraordinary, Part IV, on 13th June, 1969 clearly eliminated from its definition of "unprotected worker" the words "but for the provisions of this Act is not adequately protected by the legislation for welfare and benefits of labour in force in the State" and defined the

words "unprotected worker" in Sub-section (11) of Section 2 of the said Act means a manual worker who is engaged or to be engaged in any scheduled employment. The Legislature in their wisdom were conscious of the fact that there may be employers who may directly engage manual workers in scheduled employment and they may also enjoy better benefits and, therefore, if such a definition as proposed in the Bill is to be accepted then the employers will take advantage of the definition and deprive "workers" as defined in Section 2(12) of the Act of the benefits to which they are entitled to under the Mathadi Act, 1969 as contemplated under Section 3 of the said Act. The Legislature was also conscious of the fact being concerned with the welfare of the workers for whom the Mathadi Act, 1969 was considered to safeguard their interest by providing protection to such workers as enshrined in Section 21 of the Mathadi Act, 1969. Further, they also incorporated Section 22 to enable the employer to seek exemption from the Government should they establish that they have directly employed regular employees who are enjoying better benefits than the benefits provided under the said Mathadi Act and if the definitions of "unprotected worker" and "worker" in the Act is read along with Sections 21 and 22 of the Mathadi Act, 1969 there remains no doubt in one's mind as to the intention of the Legislature that the Act was to protect the interest of unprotected workers as a distinct class of workers and they have in plain and simple words defined who is "unprotected worker" and such "worker" as defined in Section 2(12) of the said Act who are manual workers employed in scheduled employment.

22. It is now a well settled rule of interpretation that the statement of objects and reasons for introducing the Bill in Legislature is not admissible as an aid to construction of statute as enacted, far less can it control the meaning of actual words used in the Act. It can only be referred to for limited purpose of ascertaining the circumstances which activated the sponsor of Bill to introduce it, and the purpose of doing so. The preamble of statute, which is often described as a key to understanding of it, may legitimately be construed to solve any ambiguity or to ascertain or fix the meaning of words in their context which otherwise bear more meaning than one. It may afford a useful assistance as to what the statute intends to reach, but if enactment is clear and unambiguous in itself then no preamble can vary its meaning. While construing the statute, one has to bear in mind the presumption that the legislature does not intend to make any substantial alteration in existing law beyond which it expressly declares or beyond the immediate scope and object of the statute. , A. C.

Sharma v. Delhi Administration. Therefore, at the most reference to object and reasons can be made for the limited purpose of finding out the intention of the Legislature which obtained at the time of introduction of Statute and which led to introduction of legislation and for ascertaining the extent and the urgency of the evil which was sought to be remedied by a particular statute.

23. The Supreme Court in the decision rendered in the case of Workmen of F.T. and R. Co. v. The Management,

observed that:

The statement of object and reasons is not taken into account while interpreting the plain words of section, but it is useful in finding out the intention of legislature.

In construing the provision of welfare legislation Court should adopt beneficial rule of construction. As far as reasonably possible construction furthering the policy and object of Act and more beneficial to employee has to be preferred. Act intended to improve and safeguard the service conditions of an employee should be liberally interpreted according to plain words and without doing violence to the language used by legislature, bearing in mind the principle laid down by S.C.

In the case of A.H. and Co. v. Engineering Mazdoor Sabha, reported in AIR 1973 SC 946 wherein certain provisions of the Payment of Bonus Act and Finance Act were under consideration, the Supreme Court observed as under:

As a general principle of Interpretation, where the words of statute are plain, precise and unambiguous, the intention of the legislature is to be gathered from the language of the statute itself and no external evidence such as parliamentary debates. Reports of the committee of legislature or even the statement made by Minister on the introduction of measure or by the framers of the Act is admissible to construe those words. It is only where a statement is not exhaustive or where its language is ambiguous uncertain, susceptible of more than one meaning or shades of meaning that external evidence as to the evils if any, which the statute was intended to remedy or of circumstances which led to the passing of the statute may be looked into for the purpose of ascertaining the object which the legislature had in view in using the words in question.

24. On examining the definition of "unprotected worker" and "worker" as given in the definition clause of the Mathadi Act, 1969, we have no hesitation to hold that the words used by the Legislature defining the important terms are plain, precise and unambiguous. They are not in conflict with each other. On the other hand, the Legislature has first defined the word "unprotected worker" in Section 2(11) so as to remove any ambiguity as regards the special class of "worker" which they had in their mind and which, according to them, needed to be protected as a class as these workers needed protection and the definition of "unprotected worker" refers to manual worker engaged or to be engaged in anyscheduled employment also clearly indicates the field where they are employedby notifying it as scheduled employment which is not left to the choice of'employer' who is defined in Section 2(3) and "scheduled employment" is alsodefined in Section 2(9) of the Mathadi Act to mean "any employment specified inthe Schedule hereto or any process or branch of work forming part of suchemployment;" and thereafter they proceeded to define "worker" in Clause 2(12)where they have specified as to who are "unprotected workers" to mean:

1) person who is engaged or to be engaged directly.

2) person who is engaged or to be engaged through any agency.

3) person who works with the permission of, or under agreement with the employer or contractor.

to do any manual work in any scheduled employment, whether for wages or not; and only the members of an employer's family are excluded from the unprotected worker.

Therefore, for the purpose of interpreting the definition of "unprotected worker" and "worker" in the Mathadi Act of 1969, statement of objects and reasons are not relevant as tried to be canvassed before us for the simple reason the statement of objects and reasons are relevant when object or purpose of an enactment is in issue or uncertain. They can never override the effect which follows logically from the implicit and unambiguous language of its substantive provision. Such effect is the best evidence of intention. The statement of objects and reasons is not a part of statute and, therefore, not even relevant in a case in which the language or the operative part of the Act leaves no room whatsoever, as it does not in the present Act, to doubt what was meant by Legislature. Reading the definition of "unprotected worker" or "worker" in the Mathadi Act, 1969 as construed by the Division Bench in the case of Century Textiles' case (supra) would negative the very object and purpose which is sought to be achieved by enacting the Mathadi Act, 1969. We may quote another decision of the Supreme Court rendered in the case of Nasruddin v. S.T.A. Tribunal, wherein it was held as

under:

If the precise words used are plain and unambiguous, they are bound to be construed in their ordinary sense.

The mere fact that the result of statute may be unjust does not entitle a Court to refuse to give it effect.

If there are two different interpretations of the word in an Act, the Court will adopt that, which is just, reasonable and sensible, rather than that which is none of those things.

If the inconvenience is an absurd inconvenience, by reading an enactment in its ordinary sense, whereas if it is read in a manner in which it is capable, though not in an ordinary sense, there would not be any inconvenience at all. There would be reason why one should not read it according to its ordinary grammatical meaning where the words are plain the Court would not make any alteration.

25. The next point which we propose to examine arises out of the contention on the part of the learned Counsel for the employers that the Court should normally not unsettle a settled proposition as in the present case where this Court has held in the case of Lallubhai Kevaldas (supra) which was followed in Century Textiles and Industries' case that the provisions of the Act are not applicable to worker if he is otherwise protected by various labour legislations in the field applicable to factory or establishment, for which the word coined is "madhadi workmen" in contradistinction to "unprotected worker", and reliance is placed on the decision rendered by the Supreme Court in the case of Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and Ors. which is primarily based on the

premise of doctrine of stare decisis. Consistency is the corner stone of the administration of justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect to the rule of finality. It is with a view to achieve consistency in judicial pronouncements, the Courts have evolved the rule of precedents, principle of stare decisis etc. These rules and principles are based on public policy and if these are not followed by Courts then there will be chaos in the administration of justice. Before we proceed to delve on this proposition, the Supreme Court had an occasion to consider the definition of "mathadi worker" while dealing with the case of Hundekaries Maharashtra Rajya Mathadi Transport and Central Katngar Union v. State of Maharashtra and Ors. 1995(2) Mh.LJ. (S.C.) 315 : 1995(11) CLR 217 and in clear terms held that:

9. When it comes to an employer of any other unprotected worker to be classified or described as 'employer' he must be a person who has ultimate control over the affairs of the establishment, i.e., a place or premises or precincts in which any part of scheduled employment is being or ordinarily carried on [see Section 2(4)] or any agent, manager or the like prevailing in the scheduled employment to whom the affairs of the establishment are entrusted.

11. A 'mathadi worker' is an unprotected worker in the 'scheduled employment' - an employment specified in the Schedule to the Act i.e., 'employment in vegetable markets (including onions and potato markets) in connection with loading, unloading, stacking, weighing, measuring, sewing, stitching, sorting, cleaning or such other work preparatory or incidental to such operations, is undisputed.

Though the words used by the Supreme Court are "mathadi worker" in context with the definition of worker as defined under the Mathadi Act, 1969 vis-a-vis the employer, the Supreme Court has not qualified the definition of "unprotected worker" in the "scheduled employment" means a casual worker who is not protected by any labour legislation.

26. Insofar as reference to the decision of the Supreme Court in Pradeep Kumar Biswas's case (supra) by the learned Counsel appearing for the employers is concerned, in that very decision Ruma Pal, J. (while delivering the judgment, for Bharucha, C.J. Quadri and Hegde, JJ, herself and Pasayat J.) referred to the issue and in paragraph 61 of the reported judgment observed:

Should Sabhajit Tewary AIR 1975 SC 1329 still stand as an authority even on the facts merely because it has stood for 25 years? We think not, Paralles may be drawn even on the facts leading to an untenable interpretation of Article 12 and a consequential denial of the benefits of fundamental rights to individuals who would otherwise be entitled to them and

[t]here is nothing in our Constitution which prevents us from departing from a previous decision if we are convinced of its error and its baneful effect on the general interests of the public". (AIR 1955 SC 661 p. 672,

para 15)

Since on a re-examination of the question we have come to the conclusion that the decision was plainly erroneous, it is our duty to say so and not perpetuate our mistake.

We think that the Division Bench which made the reference noted the anomaly in the interpretation placed by the Division Bench in Century Textiles and Industries Ltd. and Ors. v. State of Maharashtra and Ors. 2001(2) Mh.L.J. 775 - 2000 (II) CLR 279 and rightly referred for answering the reference as it felt that the meaning given to the definition of "unprotected worker" and "worker" in the case of Century Textiles and Industries Ltd. (supra) did not appear to be correct.

27. Now let us look at the issue from the different angle. There are several Central and State Acts in the field of labour and industrial law and each one of them contains a definition clause and has defined the words "employer" and "employee" using different nomenclatures but in reference to the object and purpose of the respective enactments. To cite a few and which would not be out of place if we refer to Sections 18, 19 and 20 of the Mathadi Act of 1969 which expressly makes the provisions of the Workmen's Compensation Act, 1923, Payment of Wages Act, 1936 and Maternity Benefit Act, 1961 applicable to Mathadi Act of 1969. The reason being obvious as the definitions of "employer' and "employee" in those Acts do not cover "unprotected worker" and "worker" as defined under Mathadi Act, 1969. By way of illustration we may cite a recent decision of the Supreme Court rendered in the case of Central Mine Planning and Design Institute Ltd. v. Ramu Pasi and Anr. reported in 2006(2) Mh.LJ. (SC) 367 : 2006(1) ALL MR (SC) 150, wherein the Supreme Court was concerned with the claim of compensation by a casual worker for the award of compensation under the Workmen's Compensation Act which has its own definition of the word "workmen" which is defined in Section 2(n) and the Supreme Court held that the bare reading of the said Act shows that the expression "workman" as defined in the Act does not cover a "casual worker" and, therefore, he was not entitled to claim compensation under the Workmen's Compensation Act, 1923 though the Court in the peculiar facts and circumstances of the case did not interfere with the amount awarded as compensation to the respondent casual workman. Therefore, the Court, while interpreting the words defined in the definition clause of a particular Act, will lean towards the meaning if it be susceptible to the objects and reasons of the Act and the mischief which is sought to be prevented and ascertain from relevant factors its true scope and meaning. The Court cannot reduce statutory words as is apparent from the manner in which the Division Bench in Century Textile and Industries interpreted the definition of "unprotected worker" and "worker". In any case if the Court felt that there is casus omissus, then, it is for the Legislature rather than the Court to remedy the defect or remove the lacuna but otherwise it is left with no choice but to read the provision as it stands without doing any violence to the definition as the intention of the Legislature has always been gathered from the words used by it giving the word the plain, normal grammatical meaning. We find that if the definitions and words "unprotected worker" and "worker" are read literally by giving them the strict grammatical interpretation, it does not give rise to an absurdity or inconsistency, but rather it subserve the purpose of the legislation and accordingly the benefit meant for such worker who was covered by the Mathadi Act, 1969.

28. For the aforesaid reasons, we find that the interpretation placed by the Division Bench in Century Textile and Industries Limited and Ors. v. State of Maharashtra and Ors. 2001(2) Mh.LJ. 775 : 2000 (II) CLR 279 on the definition of the words "unprotected worker" and "worker" for the purpose of applicability to Mathadi Act, 1969 that it is only the casual workmen who come within the purview of the Act is not correct and proper and it is erroneous which deserves to be ignored and is overruled.

29. The Reference is answered accordingly. The petitions in respect of point of reference be now placed before the Division Bench for disposal in accordance with law.

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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 and Industries Ltd. v. State of Maharashtra 2001(2) Mh.L.J. 775 : 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(1 l)(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 and Anr. v. The State of Maharashtra and 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 and Industries Ltd. and Ors. v. State of Maharashtra and ors, 2001(2) Mh.L.J. 775 : 2000(11) CLR

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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 Shops 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 obiter-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 (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. J. H. Gotla , as also the judgment of the Supreme Court in the case of Bangalore Water Supply and Sewage Board v. Rajappa . 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, unemployment 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 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 decisis 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 v. Mirzapur Moti Kureshi Kassab Jamad . 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 other words, 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. Sub-Divisional Officer, Thandla and ors . 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, v.'ho 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 varying 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 abovequoted 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. Ratha Devi Gupta . 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 unreason ableness which may render the statute unconstitutional.

From the above quoted 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 other words, 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 there under, 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 there under:

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 abovereferred 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 insofar 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, insofar 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 and 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 decisis 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 v. Mirzapur Moti Kureshi Kassab Jamad . The expression "stare decisis" 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. v. State of Haryana 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 Bench 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 decisis" 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. Sub Divisional Officer, Thandla and Ors. 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 statute, 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. If 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, insofar 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 there 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(11) 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 manual 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. Bombay Port Trust . 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 in the 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.

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 abovequoted 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.