

**Abdur Rahim Vs. State of Madras (Secretary, Industries, Labour and Co-operation Department)**

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**Court :** Chennai

**Decided On :** Jan-21-1960

**Reported in :** (1961)IILLJ213Mad

**Judge :** Rajagopalan and; Ramachandra Ayyar, JJ.

**Appellant :** Abdur Rahim

**Respondent :** State of Madras (Secretary, Industries, Labour and Co-operation Department)

**Judgement :**  
ORDER

**Ramachandra Ayyar, J.**

1. These twenty-eight petitions are filed under Article 226 of the Constitution, and raise the questions as to the constitutional validity of the Madras Beedi Industrial Premises (Regulation of Conditions of Work) Act, 1958 (Act XXXII of 1958; which hereafter shall be referred to as the Act.

2. The Act was passed by the Madras State legislature to regulate the conditions of work, in beedi industrial premises in the State of Madras, so as to enable the enforcement of labour and welfare laws. The Act authorizes the making of rules to

carry out the purposes of the legislation. In exercise of such powers, the Government have made rules. The Act received the assent of the President on 3 December 1958. It extends to the whole of the Madras State, and is to come into force on such date as may, by notification, be appointed by the Government which is authorized in its discretion to fix different dates for different areas and for the coming into force of the whole or different provisions of the Act, By G.O Ms. No. 1376, Industries, Labour and Co-operation, dated 26 March 1959, the Government notified that 1 July 1959 would be the date on which all the provisions of the Act, except Sections 10 and 12 to 16, would come into force and that was to be throughout the State of Madras. Sections 10 and 12 to 16 were first notified to come into force on 1 January 1960. By the said Government order it was also notified that the Governor of Madras specified that 1 September 1959, as the date on and after which no place or premises shall, save as otherwise provided in the said Act, be used as beedi Industrial premises without a licence being obtained from the competent authority and except in accordance with the terms and conditions specified in such licence. That date has since been altered by substituting 1 July 1960 as the date on or after which the licensing provisions of the Act are to come into force regarding the use of premises as beedi industrial premises, as 'defined by the Act. It cannot be and it is not disputed that the State legislature is fully competent to legislate in regard to the subject-matter of the Act, as it would come within items 24 and 26 of list II, namely, industries, and trade and commerce within State, and items 7 and 22 to 25 in list III, namely, contracts, etc., trade union, industrial and labour dispute, social security and social insurance, employment and unemployment and welfare of labour, etc., of the Schedule VII to the Constitution.

3. The provisions of the Act are, however, Impugned, as in effect contravening the fundamental rights guaranteed under Article 19(1)(g) of the Constitution.

4. The petitioners in the above petitions can be broadly classified into four groups:

(i) the proprietor of a beedi factory,

(ii) the owner of a trade mark registered under the Trade Marks Act, 1940, in relation to beedis,

(iii) the branch managers of middlemen who claim as independent contractors, and

(iv) part-time outworkers.

5. The petitioner in Writ Petition No. 1028 of 1959 is the proprietor of a factory in Madras and also the owner of a registered trade mark, Taj Mahal Beedis, with a right to use the trade mark in relation to beedis of their manufacture for business within the State of Madras and in certain districts in Andhra Pradesh. The petitioner claims that their business was established nearly sixty years ago, and that they have been doing the business, in accordance with the well-established usage of the beedi Industry by selling the beedis manufactured in their own factory, as well as those obtained through Independent contractors or on job work contract basis with outworkers in their own homes. In respect of the latter category, the work in the petitioner's factory consisted merely' in supplying at a price tobacco, beedi leaves, etc., to the contractors or outworkers, obtaining by a system of purchasing beedis manufactured by them from out of the material supplied to them which thereafter undergo a process of heating in the factory, then lapelled, packed and dispatched. It is Claimed that the turnover of the petitioner's business for the year 1958-59 was Rs. 47 lakhs. The petitioner Impugns the Act on the ground that it places a restriction in obliging him to take out a licence, and that it has rendered the business through contractors and outworkers impossible.

6. In Writ Petition No. 1141 of 1959, the petitioner firm is the proprietor of two trade marks No. 25 Double Peacock and No. 99 Beedis. The firm carries on Its business in the sale of beedis manufactured under what is known as contract system, its premises being utilized only for the purpose of packing and labelling beedis purchased from the contractors. The system adopted in obtaining beedis from outside is as practically the same as in the previous case. The petitioner complains that the Act has interfered with the manner in which the firm had been conducting business in selling beedis, using their registered trade marks,' and that, in order to continue their business, they would have to establish a factory or be vicariously liable for the contractors factory.

7. The petitioner in write Petition No. 592 of 1959 claims to be the branch manager for the manufacture of beedis sold under the trade mark of Diamond Beedis. He claims that about 82 persons, mostly women, are working in his branch. The affidavit filed by the petitioner was not very clear as to the precise interest he had in the concern which sells beedis using the trade mark, Diamond Beedis. An application to implead the firm selling Diamond Beedis as a party to the petition failed, as the proprietor of that business was not willing to come on record. The petitioner was, therefore, directed to appear before us to give evidence regarding his status in that concern and the interest which he possessed to sustain the present application. In the evidence, the petitioner admitted that he was only a contractor who took tobacco from the proprietor of the Diamond Beedis trade mark, employed labourers for rolling beedis and supplying the same to the Diamond Beedis Factory at a price. The petitioner's case is that the enforcement of the provisions of the Act would 'result in the annihilation of his business as a contractor.

8. The petitioner in Writ Petition No. 1149 of 1959 of an employee of the Buckingham and Carnatic Mills, Madras. He states that his work in\* the mills would be over by 3-15 p.m. each day, and that during the spare hours he engages himself in the subsidiary occupation of rolling beedis by obtaining tobacco and beedi leaves from the contractor of Latif Beedi Factory at Madras. He farther states that his wife and his minor daughter, the latter being aged about fourteen years, help him in cutting the beedi leaves to the requisite size and in rolling the beedis. He complains that, if the factory system envisaged by the Act is introduced for the manufacture of beedis, he would be denied the subsidiary occupation which enables him to earn a few rupees, and that his wife and child who were gosh a ladies would also be denied the opportunity of earning something.

9. Before considering the case of the petitioners, it is necessary to briefly refer to the process adopted in the manufacture of beedi and the organization of the Industry in this part of the country. The manufacture of a beedi is done in stages. The tobacco employed for beedis is blended very often with some other ingredient. A small quantity of it is put on 'a beedi. leaf which is previously wet to render It flexible and cut to size. The beedi loaf is then rolled keeping the tobacco within It

and its ends are then closed, sometimes at the fire end alone and in other cases at both ends. The beedis thus rolled are collected and warmed or roasted, after which they are ready for packing, labelling and sale. In a case where the ultimate proprietor owns the trade mark, the trade mark labels, are affixed to the individual beedis as also on the packets containing them. It will be thus noticed that the work of wetting and cutting of the wrapper leaves 19 one of the items of work in the process.

10. It is not and indeed cannot be disputed that making of beedis will be a manufacturing process. Power is seldom employed for the purpose, the industry depending entirely upon human labour. Therefore, if more than twenty workers are employed in a particular place for the manufacture of beedis, the provisions of the Factories Act, 1948<sup>f</sup> would apply to the premises, and the employer would be liable for the obligations cast on him by that enactment.

11. Three systems are adopted in the manufacture of beedis. In certain cases, more than one of them is adopted by the same proprietor:

(i) Where the manufacturer is the owner of a factory, workers gather and work under his supervision as his employees.

(ii) The contract system of employment (which is most prevalent), under which the proprietor gives to middlemen, called branch managers or contractors, quantities of beedi leaves, tobacco and packing materials, etc.

For the articles thus supplied, the proprietor fixes his own price, very often at a rate higher than the market rate, so that there would not be any temptation for the contractor to divert the tobacco or other article thus supplied to other traders. The price is debited in the accounts against the contractor, but is seldom paid in cash. It is adjusted against the amounts due to be paid to the contractor on delivering the finished beedis, that transaction also taking the form of sale and purchase. What in effect the contractor is paid is the difference between the cost price of materials delivered to him and the sale price of beedis given by him to the proprietor. It is a somewhat curious feature of the trade that even the sale price is not fixed by contract or according to the market rate, but by the proprietor who

evidently fixes the same so that it may offset the inflated price of the materials supplied by him and allow a margin as remuneration or profit for the contractor. The contractor, on receiving the materials, manufactures beedis

(i) by employing directly labourers and manufacturing beedis or

(ii) by distributing the materials amongst the home workers, as they are called, mostly women who manufacture beedis in their own homes with the assistance of other members of their family including children.

An outworker is paid on a piece rate.

12. A third system is also prevalent; the proprietor himself, without the agency of middlemen, supplies the tobacco and beedi leaves to the various outworkers who roll beedis and are paid at a particular rate. The beedis thus supplied, whether to the outworkers or contractors, are roasted, labelled and packed by the proprietor and sold to the public. So much has been established by the admitted facts and previous judgments of the court of which judicial notice could be taken, and there is no dispute in regard to the same.

13. With a view evidently to escape responsibility under the provisions of the Factories Act and other labour laws, a large number of proprietors adopt only the contract system. The contractor, in case he engages labourers directly, congregates less than the statutory number, that is, less than twenty in a particular place, so that the premises might not attract the application of the Factories Act. There are certain features of the prevailing system which are obvious:

(i) there is a fragmentation of the places of manufacture of beedis obviously with a view to evade the factory and similar legislation;

(ii) there is no definite relationship of master and servant between the actual worker and ultimate proprietor; the so-called branch-managers or contractors are very often men of straw; the ultimate employer, namely, the proprietor, will not be answerable for the wages of the outworkers, there being no privity of contract between them;

(iii) a large body of actual workers are illiterate pariah women who could with Impunity be exploited by the proprietors and contractors; more distressing than that is the indiscriminate and undetectable employment of child labour:

(iv) the contractor being himself dependent on the proprietor has generally very little means to have any organized system.

The system, however, provides an occupation to women and infirm persons and also to workers employed elsewhere who in their spare hours could earn something by themselves rolling beedis, which, it is said, requires very little muscular effort. But the very dependence of these people is its bane. They, particularly the purdah ladies, would have very little bargaining power against unscrupulous proprietors or contractors. The relationship between proprietor and the Independent contractor (though it cannot be assumed to be so in all cases) is well brought out by the terms of an agreement between them, of which a copy is filed within the petitioner's affidavit in Writ Petition No. 1028 of 1959. That is said to be typical of contracts which a contractor enters into with the proprietor. The contractor agrees under the contract that he shall purchase tobacco specially and suitably blended by the company (the petitioner) and shall pay for it at the ruling rate, as fixed by the company, and that he shall supply the company with such quantity of beedis as would be fixed by the company from time to time. He also undertakes not to use any tobacco other than that supplied by the company. The company has the authority to send its representative whenever necessary to Inspect the place or places of manufacture of beedis by the contractor or his men. The contractor also undertakes not to enter into any agreement of similar nature with any other concern to make beedis or sell or supply them, while the agreement subsists. The agreement expressly stipulates that he would be the sole employer answerable' In regard to disputes by the workers. In the counter-affidavit filed by the Government in Writ Petition No. 592 of 1959, it is stated that in certain cases the branch manager' expressly agreed limit the number of persons whom he collects in the premises to less than twenty evidently with a view to avoid the premises falling within the Factories Act. It is difficult to appreciate how in these cases it can be said that the proprietor has no control over the contractor; but yet under the system, lie would not be answerable to the workers for any of their

claims. The relationship between the proprietor, middlemen and the outworkers has been the subject-matter of adjudication by this Court as well as by the Supreme Court. In *Ahmed Hussain and Sons v. United Beedi Workers' Union* : (1958) IILLJ606 Mad a question arose whether the workmen employed by an intermediary could be held to be employees of the proprietor so that disputes could be referred to and adjudicated under the Industrial disputes Act. In that case a firm) of beedi manufacturers entered into a contract with an Intermediary under which they supplied him the necessary tobacco and beedi leaves for purposes of being rolled and delivered with a stipulation that the necessary labour should be employed by the intermediary in a licensed premises of his choice, and that he should obtain payment for the beedis supplied at a stipulated price less the cost of materials supplied; the relationship between the firm and the intermediary was held not to be that of a master and servant, but that of an independent contractor, and that the dispute could not be adjudicated under the Industrial Disputes Act. A similar question came up before the Supreme Court. In *Chintaman Rao and Anr. v. State of Madhya Pradesh* : 1958 CriLJ803 the proprietor of a 'beedi factory' was prosecuted under the Factories Act for non-compliance with its provisions. The proprietor pleaded that the workers were not under his employment, and that there was no contravention of the Factories Act, as the sattedars who were fountain the factory were independent contractors and were not workers. Under the system of beedi manufacture adopted by the factory, the management issued tobacco and sometimes beedi leaves to the sattedars who manufactured beedis in their own factories or by an arrangement with third parties. The sattedars confected the beedis thus made and supplied to the factories for a consideration. It was held that the sattedars were independent contractors and not the agents of the proprietor.

14. It could not be said that the proprietor of a business did anything illegal in adopting a system of beedi manufacture, under which he did not become responsible to the actual workers. Therefore, the enforcement of factory and labour legislation could be rendered Impossible by adopting the simple device of disintegrating what normally would be a factory, each of the disintegrated elements being entrusted to a coo tractor, BO that no one of the units would be a factory. It cannot be said that such a system would ever be to the advantage of the



workers, but would rather facilitate the exploitation of sweated labour.

15. In 1944, the Government of India appointed a committee under the chairmanship, of Sri D.V. Rege. I.C.S., to investigate the conditions of industrial labour. The committee enquired into the conditions obtaining in the beedi, cigar and cigarette industries. Sri Rege's report made reference to the widely prevalent contract system, whereby the factory owners engaged a large number of middlemen, supplied them with raw materials and purchased finished products from them. The report referred to the fact that, although the Madras Government applied the Factories Act to beedi factories employing twenty or more persons, the measure proved unsuccessful as no prosecutions could be launched for the violation of the enactment as the branch men gave incorrect names and as working places were changed. It stated that, in view of the extremely large number of beedi-making establishments employing small number of persons, it would be futile to apply the Factories Act, but that the remedy lay in encouraging the establishment of big factories and licensing the same. The report concluded:

To conclude, matters requiring Immediate attention in the beedi and cigar industries are the unhealthy working conditions,, long hours of work, employment of women and children, deduction from wages and the sub-contract system of organization. It is desirable to abolish the outwork system and to encourage establishment of big factories, in the beedi and cigar industries if protective labour legislation is to be enforced with any degree of success. In view of the large number of women workers in the beedi industry, appointment of a woman factory inspector in the important beedi-making provinces is desirable.

16. In 1946, the Government of Madras appointed a Court of Enquiry into labour conditions in beedi, cigar, snuff, tobacco-curing and tanning Industries. The report of the Court of Enquiry gives valuable information in regard to the organization of those Industries in South India. It was found that approximately there were about ninety thousand workers dependent on the beedi industry in the Madras province, and of them about twenty-six thousand and five hundred were women. It is also stated that the employment of children in the industry was universal, and that two-fifths of the total workers would be children, for every three adults there being two

children working. The Court of Enquiry found that, except in regard to Mukkudal area where home workers were predominant, beedi workers were full-time workers, beedi-making being their main and not a subsidiary occupation. The wage-structure of the employees revealed that they were paid less than the fair wages. The report also mentions how the simple-minded purdah women were cheated by their employers. In Para. 58 of the report, the working conditions of the workers is described thus:

The occupation of beedi-rolling is carried on in all sorts of places--in large workshops housed in pucca buildings, small workshops, in houses, verandahs of houses small dingy rooms without windows, in kachchg, buildings under the shade of trees, banks of tanks and canals, in short, in all Imaginable places according as the industry is concentrated or diffused. Wherever direct employment of labourers by big manufacturers is found, hundreds of workers are generally massed together in old ramshackle houses, with rickety staircases unwashed and sometime unplastered walls and mostly unpainted windows and doors. Of course a few exceptions to this general rule are. found where the manufacturers have constructed new buildings in recent years; but most of the bigger workshops are houses improvised in rough and ready fashion into factories. Housed in new or old buildings, the workers everywhere squat on the floor on tattered mats surrounded by trays containing tobacco and cut or uncut wrapper leaves; the latter soaked in the previous night in water emits a peculiar odour while the tobacco exhales its characteristic smell. The mixing of these strong odours pervades the whole workshop. Men, children, heaps of waste remnants of wrapper leaves, leaf and tin trays stuffed with tobacco, or newly-made beedis, dirty and torn mats here and there, aluminium, brass and glass tumblers as well as bottles with dregs of tea and several other odds and ends strewn all over present a queer picture of Jumble and disarray. A few instances from the samples investigated of per capita floor space may be helpful in visualizing the degree of congestion in them; they are 4, 4.1, 4.3, 4.5, 4.9, 5 and 6 square feet. Very few of them have any latrine or urinal. Workers are expected to go outside the premises to answer calls of nature. Frequently workers pass urine in convenient nooks and corners of the buildings and premises, be they on the ground or the first floor. In the recently constructed buildings, urinal and lavatory arrangements have been made but nowhere they are

adequate. In kachcha buildings, conditions are worse due to mud floor and thatched roofs. I also visited a number of houses of workers in several centers where beedis are made by home workers. It is a misnomer to describe these low-roofed thatched sheds as houses; not even nine feet high at the centre, they are only four or five feet at the sides. In one slum area in North Madras, small hovel, less than forty-eight square feet in area, are divided into two rooms serving as kitchen, sitting, living and sleeping rooms-and also as workplaces. Their floors are at or below the level of the road outside. Eight hovels of this kind have one common latrine and one common tap. The inmates of these hovels number forty-two including eighteen children. In this, particular case, all the workers are Muslims and the womenfolk observe purdah. If industrial home workers are to work under such conditions, it will be a merciful act to take them out and put them to work in well-kept and sanitary' workshops satisfying all the requirements of factory legislation. In Madras City, Tiruchirappalli and a few other places, small groups of workers numbering time to six or seven were seen huddled together in kennel-like rooms with only one door two and a half feet by three and a half feet and a floor space of twenty or twenty-five square feet. These holes have no windows and workers keep the trays of tobacco leaves on their laps and ply their task. Floors in medium-sized workshops are generally cemented, stone or brick-laid; a good number of them show structural uniformity, being four verandahs enclosing an open square yard. These workshops have sufficient light and ventilation but are kept unkempt and unclean. On the whole, working conditions are extremely unsatisfactory from the standpoints of per capita floor space, sanitation, ventilation and lighting. Spending the better part of their lives in such miserable environments, workers in general and children in particular present a haggard appearance with yellowish eyes and hollow cheeks. Drinking water is kept in buckets or pots in most of the medium and large workshops. In smaller ones, street tube well or water tap is the only source by which workers can quench their thirst and they generally prefer the nearby tea shop to either.

17. In July 1954, the Government of India, observing the tendency on the part of the employers in beedi industry to resort to devices to circumvent the operation of the Factories Act, suggested to the various State Governments to assess the situation in all its aspects and with a view to affording maximum legislative

protection to the workers. The State Government appointed Sri M.A. Natarajan, the Regional Inspector of Factories, for this purpose. He submitted a report about the distressing conditions of work in that industry. Although the number of workers engaged in the manufacture of beedis in the State exceeded one lakh, his report shows that only seventeen thousand and five hundred and forty-four were employed as such in the factories and that the contract and home work systems enriched the proprietor at the expense of the worker, and also deprived the latter of his bargaining power in regard to the conditions of labour.

18. It must be remembered that every beedi manufacturer who has a large business should have a factory where the beedis supplied by the contractors or outworkers could be warmed, labelled and packed, A minimum number of employees is always necessary for those purpose. How much of the seventeen thousand and five hundred and forty-four factory workers belonged to that category or were engaged in the primary purpose of rolling beedis is difficult to say. Nor is it possible to obtain from the report any data as to how many of the outworkers were genuine tome workers, or how many comprised merely the groups of less than twenty in the units .employed by the contractors. Perhaps in the very nature of the things existing collection of such statistics was difficult. Sri Natarajan generally says that a large army of women are employed in the industry. It is not known how many were purdah women, nor is It possible to ascertain from the materials furnished, whether those women have to necessarily remain unemployed by the introduction of the factory system, and whether they could not take to some other Income producing work, like the charka.

19. Sri Natarajan observes that the poverty and illiteracy of the workers were taken advantage of by the employers for giving certain concessions so that they could carry on their trade without regard to their welfare. He also found in the industry long hours of work with low wages, deplorable working conditions, unrestricted employment of women and children. The report recommended, that legislation should be undertaken to regulate the working conditions of the workers in the beedi industry.

20. The three reports revealed a state of affairs which no civilized country could allow. The pitiable dependence of the illiterate women on what they were able to get from their employers, the Unsanitary conditions under which the work was done, and the large proportion of child labour, called for legislative interference. With the structure of the industry, as it existed, there was scope for evasion of any ameliorative legislation, as the Industry does not depend on machinery or power, and even a big manufacturer could so arrange the units of his workers that no one of the units could be said to work in a factory.

21. In addition to the three reports referred to above, there was material in the shape of evidence of certain persons tendered before the select committee. The learned Advocate-General sought to refer to that evidence. We are, however, of opinion that such evidence could not be looked into by the Court, even though the purpose for which it is tendered is to show the materials which the legislature had before enacting the statute. In *Weaver v. Palmer Brothers Co.* 70 L. Ed. 654. it was held that the invalidity of a statute might be shown by things which could be judicially noticed or by facts established by evidence. Evidence of the witnesses as set out in the proceedings of the select committee would belong to neither category. Reliance was placed on the decision in *Attorney-General for British Columbia v. Attorney-General for Canada* L.R 1937 A.C. 338 where in deciding a question as to the constitutional validity of a provincial legislation, the Privy Council referred to the report of the Royal Commission on Price Spreads on the ground, that when the suggestion was made that the legislation was not in truth criminal legislation but was in substance merely an encroachment on the provincial field, the existence of the report was a material circumstance. In *Ladore v. Bennett* L.R 1939 A.C. 468, on a similar question the Privy Council referred to the Report of the Royal Commission appointed to enquire into the municipal and other local affairs of the municipalities in question, as indicating only the materials which the Government of the province had before them before promoting in the legislature the impugned statute, but not as evidence of facts they found. In *Pillai v. Mudanayake* 1953 A.C. 514 on the question of the validity of the Citizenship Act, 1948, of Ceylon, the Judicial Committee observed at p. 528:

It was common ground between the parties, and is in their lordships' opinion the correct view, that judicial notice ought to be taken of such matters as the reports of Parliamentary Commissions and of such other facts as must be assumed to have been within the contemplation of the legislature when the Acts in question were passed (of. *Ladore v. Bennett*) 1939 A.C. 468 and both parties have referred their lordships to a number of paragraphs in the report of the Soul bury Commission, 1945.

22. In *State of Madras v. Rajagopalan* : [1955]2SCR541 , the Supreme Court approved the principle laid down by the aforesaid decisions, and held that previous material which led up to a particular legislative provision was admissible in evidence. In *Arunachala Nadar v. State of Madras* 1959 S.C.J. 297, the Supreme Court, in considering whether the Madras Commercial Crops Markets Act, 1933, contravened the provisions of Article 19(1)(g) and Sub-clause (6) of the Constitution, referred to the reports of the Royal Commission on Agriculture, the Indian Central Banking Committee, and also of the expert committee appointed by the State Government to review the working of the Act. The cases referred to only recognized the admissibility of reports and similar public documents for the purpose of ascertaining whether the enactment was within the competence of a legislature. The evidence of the witnesses tendered before the select committee could at best only be hearsay. It, therefore, follows that, while the proceedings of the select committee could be looked into for the purpose of ascertaining that the legislature proceeded to legislate on the proposed Bill after taking evidence, it cannot be relied for the purpose of Ascertaining as to what the oral evidence before the select committee was, and whether such evidence disclosed a necessity or justification for the legislation. We are, therefore, of opinion that evidence recorded by the select committee on the Bill to regulate the work in the beedi industrial premises could not be looked into.

23. Independent of that evidence, there, are enough materials in this case, namely, the admitted facts in the case, judicial recognition of the prevailing system, and the three reports, to which reference had already been made, as to the conditions of the Industry which made out a case that legislation was imperative.

24. The Act proceeded to solve the problem by adopting two principles:

(1) The entire manufacturing process, subject to the exceptions recognized in Section 29, was to be carried on in licensed premises which could be equated to factories.

(ii) The real manufacturer was to be made liable for the conditions of the work and wages.

This was achieved by giving a comprehensive definition of the terms employer and beedi industrial premises used in the Act, and making licensing of beedi industrial premises compulsory. Under the general scheme of the Act, any manufacturing process in connexion with the production of beedis should be carried out only in a beedi industrial premises which had to be licensed. The provisions of the Factories Act relating to hygienic condition and other similar amenities were incorporated in the Act. The provisions of the Madras Shops and Establishments Act relating to the working hours, overtime, spread-over holidays, leave, etc., were similarly incorporated. The Payment of Wages Act, 1936, the Industrial Disputes Act, 1947, and the Industrial Employment (Standing Orders) Act, 1946, were also made applicable.

25. Section 3 requires all beedi industrial premises to be licensed. Section 4 sets out the conditions of the grant of a licence. Section 5 provides for appeal against orders refusing to grant or renew a licence. Section 6 provides for the appointment of inspectors for the purposes of the Act, and Section 7 defines the powers of the Inspectors. Sections 8 to 27, which provide for hygienic surroundings to the workers and also labour welfare and working conditions, are taken from the Factories Act, Sections 30, 32, 34 and 35 are adaptations from the Factories Act. Section 31 is similar to Section 41 of the Madras Shops and Establishments Act. Section 28 applies the Payment of Wages Act, Section 36 the Industrial Employment (Standing Orders) Act and Section 37, the Industrial Disputes Act, to the beedi Industrial premises. Section 29 enables the Government to permit wetting and cutting of wrapping leaves by female employees outside the Industrial premises in respect of which the employer is to maintain a record in the prescribed form. Sections 32 and 33 provide for penalties for the offences, and

Section 35 for the cognizance of the same. Section 33 renders any person, who contravenes any of the provisions of the Act or any rule made thereunder, liable to punishment. For the first offence, the penalty is a fine which may extend to Rs. 250 and for second or subsequent offence, the penalty is imprisonment of not less than one month and not more than six months or fine or with both. Section 34 provides an indemnity for things done bona fide under the Act', Section 40 invests a power with the government to exempt any premises, industry or class of employees from the operation of the Act. Section 41 provides for the power to enact rules.

26. The important sections to which reference have to be made are:

Section 2(b)--Beedi industrial premises means any place or premises, including the precincts thereof in any part of which any manufacturing process connected with the production of beedis is being carried on or is ordinarily carried on with or without the aid of power;

Section 2(j)--Employee means a person employed directly or through any agency whether for wages or not in any beedi Industry to do any work, skilled, unskilled, manual or clerical, and includes any person who is employed in such industry and declared by the Government by notification to be an employee for the purposes of this Act.

Section 2(g)--Employer means the person who has the ultimate control over the affairs of any beedi industrial premises or who has, by reason of his advancing money, supplying goods or otherwise, a substantial interest in the control of the affairs of any beedi industrial premises and includes:

- (i) a proprietor or a registered user of a trade mark registered under the Trade Marks Act, 1940 (Central Act V of 1940), In relation to beedi; and
- (ii) any other person to whom the affairs of any beedi industrial premises are entrusted (whether such other person is called a managing agent, manager, superintendent or by any other name).



Section 2(j).--Manufacturing process means any process for, or incidental to, making, finishing or packing or otherwise treating any article or substance with a view to its use, sale, transport, delivery or disposal as beedis;

Section 3: Beedi industrial premises to be licensed.--Save as otherwise provided in this Act, no place or premises shall, on and after such date as the Government may, by notification, specify in this behalf, be used as a beedi Industrial premises without a licence obtained from the competent authority and except in accordance with the terms and conditions specified therein.

Section 4: (7) Licences.--(1) Any person who intends to use any place or premises as a beedi industrial premises shall make an application in writing to the competent authority for a licence there for, together with such particulars as may be prescribed.

(2) The application shall specify the maximum number of employees proposed to be employed at any time of the day in the place or premises and shall be accompanied by a plan of the place or premises prepared in such manner as may be prescribed.

(3) The competent authority shall, in deciding whether to grant or refuse a licence, have regard to the following matters, namely:

(a) the suitability of the place or premises which is proposed to be used for the manufacture of beedis;

(b) the status and previous experience of the applicant;

(c) the financial resources of the applicant Including his financial capacity to meet the demands arising out of the provisions of the laws for the time being in force relating to welfare of labour;

(d) whether the application is made bono fide on behalf of the applicant, him self or benami on behalf of any other person;

(e) whether the beedi manufactured by the applicant will be sold and marketed by himself or through a proprietor or a registered user of a trade mark registered

under the Trade Marks Act, 1940 (Central Act V of 1940), in relation to beedi or any other person;

(f) the welfare of labour in the locality;

(g) the interest of the public generally; and

(h) such other matters as may be prescribed.

(4)(a) A licence granted under this section shall be valid for a financial year and shall be renewed from financial year to financial year.

(b) The competent authority shall, in deciding whether to renew a licence or to refuse a renewal thereof, have regard to the matters specified in Sub-section (3).

(5) The competent authority shall not grant or renew a licence unless it is satisfied that the provisions of this Act and the rules made thereunder have been substantially complied with.

(6) The competent authority may cancel or suspend any licence granted or renewed under this Act if it appears, to it, after giving the holder thereof an opportunity of being heard, that such licence has been obtained by misrepresentation or fraud or that the licensee has contravened, or failed to comply with, any of the provisions of this Act, or the rules thereunder or any of the terms or conditions of the licence.

(7) The Government may issue to competent authorities such orders and directions of a general character as the Government may consider necessary in respect of any matter relating to licences under this section.

(8) Subject to the foregoing provisions of this section, the competent authority may grant or renew licences under this Act on such terms and conditions as it may determine. Where the competent authority refuses to grant or renew any licence, it shall do so by an order communicated to the applicant, giving the reasons in writing for such refusal.

Section 5: Appeals.--Any person aggrieved by the decision of the competent authority refusing to grant or renew a licence or cancelling a licence under Section 4 may, within such time as may be prescribed, appeal to such authority as the Government may specify in this behalf and such authority may make such order in the case as It may think fit.

Section 29: Special provisions.--(1) The Government may permit the wetting or cutting of wrapping leaves by female employees outside the beedi industrial premises on an application made by the employer on behalf of such employees.

(2) The employer shall maintain in the prescribed form a record of the work permitted under Sub-section (1) to be carried on outside the beedi Industrial premises.

(3) Save as otherwise provided in this section, no employer shall require or allow any manufacturing process connected with the production of beedis to be carried on outside the beedi industrial premises.

Section 40: Power to exempt.--The Government may, by notification, exempt, subject to such conditions and restrictions as they may impose

(a) any beedi industrial premise.,

(b) any beedi industry, or

(c) any class of employees,

from all or any of the provisions of this Act or of any rules made thereunder.

27. The definition of the term beedi industrial premises would be wide enough to cover even a private house, if the manufacturing of beedi or any part of the process is being carried out there. Section 3 provides that no place shall so used as a beedi Industrial premises without a licence obtained from the competent authority and except in accordance with the terms and conditions specified therein. The terms employer and employee are so defined that an employer on whom several obligations under the Act are cast would comprehend a proprietor who does beedi business through his contractor. The contractor would also be an

employer. In regard to the workmen employed by Mm. If the contractor happens to supply the beedis manufactured to the proprietor and that proprietor has any substantial interest in the beedis so manufactured, the proprietor would be considered as employer for the persons employed under the contractor.

28. The contention urged on behalf of the petitioners is that the enforcement of the Act would effect a complete change in the Industry by substituting a factory system in the manufacture of beedis in the place of what is essentially a cottage industry. The proprietor will be obliged to have a factory. Otherwise, he will be vicariously liable for act and omissions of his contractors without having any right to control them. It is said that the most remunerative form of doing business in the sale of beedi by entrusting the work of manufacture to contractors will be denied to him, and instead, he would have to take the risk and responsibility of having a factory with the onerous conditions attached to it by the Act, or be liable for the defaults of the contractor through whom he was doing business and thus he being denied a choice in the manner of doing his business. As regards the contractor, it is contended that the Act by its economic operation would eliminate his business altogether. The contractor would, under the Act, be an employer, and would be bound to take out a licence and be liable as an employer to secure the amenities prescribed by the Act for all the places including the house of a worker. On behalf of the outworker, it was contended that the legislation will have the effect of denying to them the right of doing work at home, the part-time worker would be eliminated if the factory system were adopted, and the purdah ladies would share a similar fate and be denied the opportunity of earning a living. It was, therefore, contended that the Act would result in the prohibition of the carrying on of their business by these persons and would amount to infringement of the fundamental right guaranteed under Article 19(1)(g).

29. The Act does not, in terms, prohibit either a contractor or home worker from doing business. What it prescribes is that a licence should be taken for the premises in which beedi-rolling is 'done'. But there can be no doubt that the effect of the statute would be to deprive the home worker of manufacturing beedis in his home. The provisions relating to hygiene and sanitation, etc., are too onerous to be observed by a home worker in his house. Even for a contractor or the

proprietor, It would be difficult, if not Impossible, to provide the amenities for all - the houses where the workmen reside and work.

30. In order to ascertain whether, a statute deprives a citizen of his rights secured to him under the Constitution, it is well-settled that it is not the apparent form of the enactment, but its practical operation and effect that have to be considered. To ascertain whether the legislature has transgressed the limits of Its authority, the Court is entitled to look at the substance of the legislation, and not to confine itself to its mere form. In *Near v. Minnesota Ex. Rel. Olson* 75 L.E.d. 1358, Chief Justice Hughes observed at p. 1363:

With respect to these contentions it is enough to say that in passing upon constitutional questions the Court has regard to substance and not to mere matters of form, and that, in accordance with familiar principles, the statute must be tested by its operation and effect.

The same principle was stated in *Gregg Dyeing Co. v. Query* 76 L.Ed. 1232 where it was held that in maintaining rights asserted under the Constitution the decision of the Court must not depend upon the form of a scheme, and that the Court should regard the substance rather than the form, the controlling test being found in the operation and effect of the statute as applied and enforced by the State. In *Attorney-General for Alberta v. Attorney-General for Canada* 1939 A.C. 117, a question arose whether a provincial Act indirectly Interfered with the powers of the dominion, and whether it was or was not ultra vires. At p. 130, Lord Maugham observed:

The next step in a case of difficulty will be to examine the effect of the legislation.... For that purpose, the Court must take into account any public general knowledge of which the Court would take judicial notice, and may in a proper case require to be informed by evidence as to what the effect of the legislation will be. Clearly, the Ac is passed by the provincial legislature may be considered, for It la often Impossible to determine the effect of the Act under examination without taking into account any other Act operating or Intended to operate or recently operating in the province.

A closely similar matter may also call for consideration, namely, the object or purpose of the Act in question.... It is not competent either for the central government or a province under the guise or the pretence, or in the form of an exercise of its own powers, to carry out an object which is beyond its powers, and a trespass on the exclusive powers of the other.... Here again, matters of which the Court would take judicial notice must be borne in mind, and other evidence in a case which calls for it. It must be remembered that the object or purpose of the Act in so far as it does not plainly appear from its terms and its probable effect, is that of an incorporeal entity, namely, the legislature, and generally speaking, the speeches of individuals would have little evidential weight.

31. That principle, namely, that it is not the form but the operation and effect of the Act that has to be looked into, would undoubtedly apply where the question is whether a particular statute is invalid as contravening the fundamental rights. In *Mohammad Yasin v. Town Area Committee, Jalalabad, and Anr.* : [1952]1SCR572 the Supreme Court, in considering whether the bylaw enacted by the municipality was ultra vires, held that, although in form there was no prohibition against carrying on any wholesale business by any person, in effect and in substance the bylaws had brought about a total stoppage of the wholesale dealers' business in a commercial sense. The principle has been lucidly stated, if we may say so with respect, by Sri Mukherjee J., in *K.C. Gajapati Narayan Deo and Ors. v. State of Orissa* : [1954]1SCR1 thus:

In other words, it is the substance of the Act that is material and not merely the form or outward appearance, and if the subject-matter in substance is something which is beyond the powers of that legislature to legislate upon, the form in which the law is clothed would not save it from condemnation. The legislature cannot violate the constitutional prohibitions by employing an indirect method. In cases like these, the enquiry must always be as to the true nature and character of the challenged legislation and it is the result of such investigation and not the form alone that will determine as to whether or not it relates to a subject which is within the power of the legislative authority. For the purpose of this investigation, the Court could certainly examine the effect of the legislation and take into consideration its object, purpose or design. But these are only relevant for the

purpose of ascertaining the true character and substance of the enactment and the class of subjects of legislation to which it really belongs and not for finding out the motives which induced the legislature to exercise its powers.

32. Although the Act does not in form prohibit the contract system of work or home work system as it now obtains in the beedi industry, it cannot be and has not; been disputed that its object, purpose and effect will be to eliminate that system and put the beedi industry on a factory basis. That would undoubtedly result in the proprietor not being able to do business in the manner in which he has done so far. The business of the contractor would also be attenuated. He could continue his business only, if he obtains a licence for the premises where his workers do the manufacturing business. The outworkers will have to get themselves employed in licensed premises and work under factory conditions.

33. The question for consideration, then, is whether the restrictions thus imposed by the Act on the various persons would be reasonable restrictions in the interest of the public so as to render the legislation valid. Sri M.K. Nambiar, the learned Counsel for the petitioners in Writ Petitions Nos. 1141 and 1149 of 1959 subjected the provisions of the Act to a meticulous examination, and submitted that if made it impossible for the proprietor or a trade-mark holder, if he were to comply with the provisions thereof, to carry on his business in accordance with the prevailing contract system. The learned Counsel contended that the definition of the word employer in Section 2(g) was so wide that the proprietor or trade-mark holder would be made liable for the acts and omissions of independent contractors, their employees and home workers, with whom he had no sort of contractual relationship, and over whom he had no manner of control whatsoever. The learned Counsel further contended

(i) by the licensing system adopted by the Act, the employer would be compelled to take out licences for the premises of the home workers or Independent contractors [9a. 2(g), 3, 4, 29 and 32(4)];

(ii) that the grant of the licence was dependent on the arbitrary will and pleasure of the authority, the conditions and down by the Act being vague and Indefinite;

(iii) that the term employer as defined would render him liable;

(a) for the due maintenance of the licensed premises (Sections 8 to 16 and Rules 13 to 28) over which he had no control; and

(b) for the payment of wages and responsibility for the conditions of service of the workers with whom he had no contractual relationship (Sections 17 to 26 and Rules 29 to 32).

The imposition of such obligations, even according to the report of Sri Natarajan, would be too onerous for any small beedi merchant to bear, unless State aid were given; and above all the Act imposed a criminal liability under, Section 33, Sub-clauses (1) to (3), for violation of any of the provisions of the Act on the employer who had no control or relationship with the persons in respect of whom there had been infringement. It was contended that the effect of the provisions was to interfere seriously with the rights of the proprietor who would practically be denied the right to carry on his business.

34. The contention of Sri K.V. Venkatasubramania Ayyar, the learned Counsel who appeared for the petitioners in Writ Petition No. 1028 of 1959, is that every citizen is guaranteed under Article 19(1)(g) a right to do a business of his choice in such a manner as he may consider most beneficial to himself, and that, so long as there is nothing inherently immoral or vicious in the nature of the business, the legislature, while it would have a right . to regulate, cannot impose any restrictions in the conduct of the same in such a manner that it amounts to a prevention of a segment of the business. According to the learned Counsel, the Act imposes not merely a restriction on the business, but actually prevents

(i) the proprietor from carrying on a business on the contract system, as he was accustomed to do, that is, in such manner as he may choose,

(ii) the contractor from doing business, and

(iii) the home worker from doing business of his own or as a part-time engagement, as the conditions imposed by the Act are too onerous to enable them to carry on the business as before.



35. The further contention is that the grant of licence under Sections 3 and 4 being discretionary, a person would not be entitled to obtain the licence as of right, and that, therefore, the imposition of licence for carrying on a business in the manufacture and sale of beedis would amount to an unauthorized restriction in regard to the same.

36. The Act does not prevent any person from manufacturing beedis and it cannot be said that there has been any prohibition of the business in manufacturing and selling beedis. The petitioners could continue their business but what the Act in substance requires is that the manufacturing part of the business should be carried on in licensed premises, with the result that the workers engaged in the manufacturing process could work only in such premises, where the sanitary and other amenities would be provided by the employer. The contract system could be adopted, but the contractor who would also be an employer would have to obtain a licence for the work-place and act in conformity with the conditions thereof.

37. The learned Counsel for the petitioner contended that the restrictions imposed are unconstitutional in that the traditional method of beedi manufacture could no longer be continued, and that the liberty of the individual regarding the choice and manner of conducting it was impaired. In support of that contention reliance was placed on the observations of several eminent Judges of the Supreme Court of America.

38. Before considering the decisions of the American Courts, it would be useful to refer first to the provisions of the Fifth and Fourteenth Amendments of the American Constitution. The Fifth Amendment, which related to Federal Legislation, provided that no person would be deprived of life, liberty and property without due process of law. The Fourteenth Amendment related to the State laws. Section 1 of that amendment prohibited a State from making or enforcing any law abridging the privileges or immunities of citizens of the United States, from depriving any person of life liberty and property without due process of law, and from denying to any person within its jurisdiction equal protection of law. The term due process of law has been held to be synonymous with the law of the land. It recognized the fundamental personal and property right and freedom of an individual from

arbitrary and unnecessary restrictions and exactions, Such laws would be invalid. But it has been held that due process requires only that the law should not be unreasonable, arbitrary or capricious and that the means selected shall have a real and substantial relation to the object sought to be attained. It was also recognized in the American Jurisprudence that the State would have an Inherent power, called police power, by which it could Impose such restrictions upon the fundamental rights as are necessary for the protection of the common good, namely, public health, safety and morals. Such a power also called internal police power is held to be inherent in every sovereignty to the extent of its dominion,

to advance the safety, happiness of of people and to provide for its general welfare.

39. The power is regulatory in nature and is defined in Rottschaefer's Constitutional Law, at p. 451 thus

The regulatory power of the States is known as their police power, and is broadly definable as their power to regulate their internal affairs for the protection and promotion of the public health, safety and morals, and of the general welfare.

40. The Federal Government has also a similar power in regard to the subject to legislation which it possesses.

41. Thus the powers of regulation which a State could possess would very often be the result of judicial adjudication of the question whether the deprivation of the rights of an individual was by due process or as a result of the police power of the State. There was no express provision in the American Constitution like Article 19(2) to (6) of our Constitution specifying the extent to which the exercise of the fundamental rights by an Individual could be restricted. The point of view from which invasion of the individual's right by the State could be justified would, by the very nature of the subject-matter, be influenced to some extent at least by the current ideas of social philosophy varying from *laissez faire* of the nineteenth century to the modern ideas of a welfare State. It would, therefore, be more apposite to look to the later decisions of the American Courts for guidance in the interpretation of Article 19(6). We shall now consider the cases relied on by the

petitioner.

42. In *Smith v. Texas* 58 L.Ed. 1129 the validity of a State legislation, which made it a misdemeanor for a person to act as conductor of a passenger train without having served for two years as a conductor or brake-man in a freight train. The respondent in that case was not so qualified as a brakeman or conductor, but he had been for several years working as fire man and engineer of both passenger and freight trains. In declaring the statute invalid, Lamar, J. observed at p. 1132

Life, liberty, property, and the equal protection of the law, grouped together in the Constitution, are so related that the deprivation of any one of these separate and independent rights may lessen or extinguish the value of the other three. In so far as a man is deprived of the right to labour, his liberty, is restricted, his capacity to earn wages and acquire property is lessened and he is denied the protection which the law affords those who are permitted to work. Liberty means more than freedom . from servitude, and the constitutional guarantee is an assurance that the citizen shall be protected in the right to use his powers of mind and body in any lawful casing.

43. The learned Judge recognized that qualifications might be reasonably necessary for protecting public, and that the State could validly prescribe qualifications and require an examination to test fitness of any person for engaging him in a public calling or service. The extent to which prior experience might be made a- condition precedent to the pursuit of trade was held to depend upon reasonableness of such requirements and the degree to which the protection of public interest demands. It was held that it was unreasonable to require that conductors of passenger trains should have served two years as conductors of freight train or as brakeman, while the candidates were otherwise competent for the job. It must be noticed that the actual decision was not based on any theory of an unrestricted liberty to do a business but on the reason-beelines of the requirements prescribed for the occupation in question,

44. In *New State Ice Co. v. Liebmann* 76 L Ed. 747 a State legislation required a licence or permit for. manufacturing, selling and distributing ice. The legislation provided that a licence could be refused to any applicant, except on proof of

necessity for the supply of ice at the place where the business was sought to be established. The result of such a provision was a denial of a right to do business where the prevailing supply was sufficient to meet the needs of that place, thus Industry creating a monopoly in the existing persons. The licensing provisions were thus in essence a permit system. The Court held that as the business was a private one, not one charged with public use, the State would have no power under the Fourteenth Amendment arbitrarily to deny and unreasonably curtail the common right to engage in a lawful private business, such as the manufacture and sale of ice. Sutherland, J., observed at pp. 754 and 755:

Plainly, a regulation which has the effect of denying or unreasonably curtailing the common right to engage in a lawful private business, such as that under review, cannot be upheld consistent with the Fourteenth Amendment....

The opportunity to apply one's labour and skill is an ordinary occupation with the proper, regard for all reasonable regulations is no less entitled to protection.

The decision declaring the statute invalid was rested on the ground that the business was an ordinary private business and not one which could be said to be affected with public interest. Formerly, under the law obtaining in America, the business was classified into

(i) private and

(ii) those affected with public interest.

The distinction was useful to facilitate the regulating of the business by the State in exercise of its police power, the latter class of business being open to such control, while the former was not. That theory however was later abandoned. It was held that the police power of a State could be exercised both In respect of a business charged with public use and a private one so long as the object sought to be achieved by legislation was for the public good. In *Nebbia v. New York* 78 L.Ed. 940 the Court observed:

It is clear that there is no closed class or category of businesses affected with public interest, and the function of courts in the application of the Fifth and

Fourteenth Amendments is to determine in each case whether circumstances vindicate the challenged regulation as a reasonable exertion of Governmental authority or condemn it as arbitrary or discriminatory.... The phrase affected with a public interest can, in the nature of things, mean no more than that an industry for adequate reason, is subject to control for the public good.

The decision in the New York Ice Company case 76 L.Ed. 747, proceeding as it does that private businesses could not be regulated by the State, could have no application in the interpretation of Article 19 of our Constitution which recognizes restrictions on the individual rights; nor has that principle been accepted by the later American decisions.

45. Jiggett Co. v. Baldrige 73 L.Ed. 204 was the case next relied on. In that case the validity of a State legislation, which required that a person owning a pharmacy should be qualified and registered as a pharmacist;, was Impugned. It was held that a business is a right of property entitled to protection against State legislation. The Court recognized that a State could prescribe by appropriate legislation for the prescription, compounding of prescriptions, purchases and sale of medicines, etc., in order to protect, public interest, but it held that the impugned statute went beyond this in that It required that even for owning the business, such qualifications were necessary. This is made clear by the following observations at p. 209:

The Act under review does not deal with any of the things covered by the prior statutes above enumerated. It deals in terms only with ownership. It plainly forbids the exercise of an ordinary property right and, on its face, denies what the Constitution guarantees. A State cannot, under the guise of protecting the public, arbitrarily interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them....

In the light of the various requirements of the Pennsylvania statutes. It is made clear, If It were otherwise doubtful, that mere stock ownership in a corporation, owning and operating a drug store, can have no real or substantial relation to the public health; and that the Act in question creates an unreasonable and unnecessary restriction upon private business.

What then the case decided was not that there could be no restriction in regard to a business but the restriction imposed, viz., the special qualification for the ownership of property, was unreasonable.

46. It was urged on behalf of the petitioners that there could be no regulation of a business so long as there was nothing inherently Immoral or vicious about it, and it cannot be said there would be any scope for the exercise of the police power of the State to restrict such a business. Support for the said doctrine is sought in the observations of Mao Reynolds, J. in *Adams v. Tanner* 61 h. Ed. 1336:

Because abuses may, and probably do, grow up in connexion with this business, is adequate reason for hedging it about by proper regulations. But this is not enough to Justify destruction of one's right to follow a distinctly useful calling in an upright way. Certainly there is no profession, possibly no 'business which does not offer peculiar opportunities for reprehensive practices; and as to every one of them, no doubt some can be found quite ready earnestly to maintain that its suppression would be in the public interest. Skillfully directed agitation might also bring about apparent condemnation of any one of them by the public. Happily for all, the fundamental guarantees of the Constitution cannot be freely submerged if and whenever some ostensible justification is advanced and the police power invoked.

47. Brandels, J. expressed dissent. In that case a statute made it illegal for an employment agency to collect fees from workers for famishing them with employment chances or with information leading thereto. It was held that prohibition and not regulation was what was aimed at by the provisions of the statute and that the right of an individual to engage in useful and lawful business was unwarrantably infringed by the provisions of the statute. The argument that abuses that exist in business could not be restrained even reasonably in the interests of the public cannot, therefore, be sustained on the basis of the above observations. *Adams v. Tanner* 61 L.Ed. 1336, proceeded on the basis that there was a total prohibition of that business. But even so It cannot be said that the Supreme Court of America has unqualifiedly accepted the principles laid down in that case in the latter oases. In *Olsen v. Nebraska* 85 L.Ed. 1305 a State statute

fixing the maximum compensation which a private employment agency may collect from an applicant for employment was held to be valid, the business being one subject to the control for public good. The decision expressly overrules the decision in *Ribnik v. McBride* 72 L.Ed. 93. It was contended by Sri K. V. Venkatasubramania Ayyar that the effect of the decision in *Olsen* case 85 L Ed. 1305 (supra) was to discredit the doctrine of *laissez faire* and that it could not in any way be held to be in conflict with the principles laid down in *Adams v. Tanner* 61 L.Ed. 1336 (supra). We cannot, however, agree with this. The decision in *Olsen* case 85 L.Ed. 13051 (supra) has certainly wader-mined the basis of the decision in *Adams v. Tanner* 61 L. Ed. 1336 (supra). That recognized the principle that there could be a restriction or regulation of a business even if there was nothing inherently Vicious or harmful about It. In *NeSbia v. New York* 78 L. Ed. 940, Roberts, J. who delivered the judgment of the Court, observed at p. 958 thus:

The Constitution does not secure to any one liberty to conduct his business in such fashion as to inflict injury upon the public at large, of upon any substantial group of the people.

48. In *West Coast Hotel Co. v. Parrish* 81 L. Ed. 703, the validity of a statute authorizing fixation of minimum wages for women and minors by the State authority was considered and upheld as a proper exercise of the police power of the State. Chief Justice Hughes observed at p.708:

In each case the violation alleged by those attacking minimum wage regulation for women is deprivation of freedom of contract. What is this freedom? The Constitution does not speak of freedom of contract. It speaks of liberty and prohibits the deprivation of liberty without dub process of law. In prohibiting that deprivation the Constitution does not recognize an absolute and uncontrollable liberty. Liberty in each of its phases has Its history and connotation. But the liberty safeguarded is liberty in a social organization which requires the protection of law against the evils which menace the health, safety, morals and welfare of the people. Liberty under the Constitution is thus necessarily subject to the restraint of due process, and regulation which is reasonable in relation to its subject and is adopted in the interest of the community is due process.

It cannot, therefore, be said that the decisions of the Supreme Court of America support an unqualified or absolute right in doing business. Though a trade or business would be protected as coming within the liberty clause contained in the Fourteenth Amendment, such liberty would be conditioned by the public weal, and regulations of the individual's right could be made in the interests of the public.

49. Article 19(1)(g) of our Constitution confers fundamental right to carry on business. The provisions in Sub-clause (6) enable the law to prescribe reasonable restraints on such rights in the interest of the public. The article contains no express guarantee in regard to the methods or the manner of doing business. The guarantee is in regard to the business as a whole. Even in respect of that right, restrictions could be Imposed provided they .are reasonable and also necessary in the public interest. The reasonableness of such restrictions is not to be judged only from the point of view of the individual affected but also from the point of view of the public, namely, whether the restrictions Imposed are reasonable and related to the objects sought to be achieved by a legislation.

50. Sri Venkatasubramania Ayyar next contended that the restrictions imposed under the Act are in the nature of advance restrictions and would be contrary to the fundamental rights of the individual, as It could not be said to be a regulation but an anticipatory prevention of It. He relied in this connexion upon the decision in *Murdoch v. Pennsylvania* 87 L.Ed. 1292, In that case the impugned law required that persons who solicited or canvassed business in a city should obtain a licence, the fee for which was fixed at a flat rate. Certain persons belonging to a religious sect, who were known 'as Jehwa's witnesses were prosecuted for disseminating religious literature without taking a licence. Although religious sects collected moneys for the pictures, literature, etc., sold by them to the inhabitants. It was held by a majority of the Judges that the activities of the sect were religious rather than commercial and the tax levied on such persons interfered with the freedom of religion, and therefore unconstitutional. It was urged before us that under the First Amendment to the American Constitution, only the freedom of the press, freedom of speech and the freedom of religion and freedom of assembly referred to sometimes as preferred freedom were guaranteed, and that It was, by virtue of the Fifth and Fourteenth Amendments that the Federal and the State Governments



were prohibited from depriving any person of life, liberty and-property without due processor law. Liberty under the Fifth and Fourteenth Amendments were first considered to relate to personal liberty as envisaged in Clause 39 of the Magna Carta and It was only as late as 1897 that it was recognized that liberty would include liberty of the faculties. Reference was made to *Atlgeyer v. State of Louisiana* 41 L Ed. 832 for the following observations made therein:

The liberty mentioned in that amendment means, not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will, to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned.

51. The contention advanced by the learned Counsel for the petitioner was that the freedoms guaranteed under Article 19 of our Constitution are similar to the preferred freedoms in America, there being specific constitutional provision in regard to them, and that, therefore, the same standard of protection that the American Law gave to the preferred freedoms, e.g., religious freedom, should be accorded in India to all the constitutionally guaranteed freedoms. It was, therefore, urged that the principle of, the decision in *Murdoch v. Pennsylvania* 87 L.Ed. 1292 (supra) should be adopted when a statute, restricts the fundamental right of carrying on a business which may not perhaps carry the same protection in America, not being one of the preferred freedoms.

52. We cannot, however, accept the argument. Article 19 itself makes a distinction in regard to restrictions that may be imposed on the several freedoms enumerated therein. The freedoms guaranteed under Article 19(1)(f) and (g) are subject to reasonable restrictions that may be imposed in the interest of the public, whereas the freedoms guaranteed in respect of speech, assembly, association and movement and settling in any part of the territory of India could be subjected only to a different type of restrictions. Therefore, the principle applicable to the cases of

freedom enumerated in Article 19(1)(a) to (d) cannot be held to apply to those under Clause (f) and (g),

53. A similar argument was advanced in *Ananthakrishnan v. State of Madras* : AIR1952 Mad395 , where it was held that the decision in *Murdoch v. Pennsylvania* 87 L. Ed. 1292 (supra) could not apply to the freedoms relating to property and trade, but only to the three freedoms mentioned in the First Amendment of the American Constitution. But even so it was urged that desirable ends could not be achieved by prohibited means, and when a statute attempted to curtail the freedom of contract and the enjoyment of privileges enjoyed till now in the manner of doing a business, it was transgressing the limits of constitutionality. In support of that contention reference was made to certain passages in the decision in *Mayer v, Nebraska* 67 L.Ed. 1042, where It was observed that liberty denoted not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.

54. *Pierce v. Society of Sisters of Holy Names* 69 L.Ed. 1070 was also referred to.

55. The two cases related to the freedom of teaching and learning. In the former the statute prohibited teaching in any school or building in any foreign language, and the teaching of the other (sic) subject except in English, before the pupil had passed a particular stage. In the latter case, the impugned statute required all children to attend public schools and prohibited the parents from providing for the education of their children in any private school. It was held in both the. cases that the statutes amounted to an unconstitutional Interference with the liberty of parents with regard to education of their children.

56. Freedom of speech, expression of religion, etc., are different from freedom of holding property or of practice of a business on trade and they cannot be judged by the same standards. The limitations in regard to the former type imposed, by the Constitution are different from those on the latter. Decisions of court rendered

when there was an infringement of the former could not always be applied when, the infringement complained of was with respect to the latter.

57. The contentions of the learned Counsel, for the petitioner would in their logical sequence imply that there should be no restriction of an individual's business even if that were to result in an injury to the public. That the carrying on of a business or the entering into of contracts by an individual should \*be free from State interference cannot mean that such rights could be exercised in detriment of others or in such a manner as to nullify the correlative rights of the State to improve the general welfare and to raise the standard of living of its citizens. Society is as much entitled to the pursuit and enjoyment of happiness as the individual. In a welfare State where the State is engaged in improving the living conditions of persons in the lower rungs of society, It would be impossible to recognize any unrestricted or unlimited freedom of business. It stands to reason, therefore, that the manufacturer or proprietor should not be allowed to exploit the misery of the workers. An individual's right to conduct his business must necessarily be considered in relation to the social organization of which he is a member. The American oases, referred to already, far from laying down any different principle, uphold it. Liberty was held always to be subject to restraints and regulations adopted in the interests of the community, reasonable in relation to the subject. In the words of Roberts, J. in *Nebbia v. New York* 78 L.Ed. 940:

Equally fundamental with the private right is public right to regulate it.

58. But there is bound to be conflict in the actual exercise of the individual and the society of their respective rights. Article 19 of our Constitution strikes a balance between such conflicting' rights. It guarantees an individual the seven freedoms mentioned in that Article and the religious freedom mentioned in Art. 25. But it also empowers the State to restrict such rights in the interest of the publics in certain circumstances. In *A.K. Oopalan v. State* (1950) 2 M.L.J. 42 : 1950 S.C.J. 174 : 1050 S.C.R. 88, Mukherjee, J., observed at p. 253:

The object of the framers of the Constitution obviously is to enumerate and guarantee those forms of liberty which come under well-known categories recognized by constitutional writers and are considered to be fundamental and of

vital importance to the community.

There cannot be any such thing as absolute or uncontrolled liberty wholly freed, from restraint for that would lead to anarchy and disorder. The possession and enjoyment of all rights...are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, general order and morals of the community. The question, 'therefore, arises in each case of adjusting the conflicting interests of the individual and of the society. In some cases, restriction have to be placed upon free exercise of Individual rights to safeguard the interests of the society; on the other hand, social control which exists for public good has got to be restrained, lest it should be flights to the detriment of individual flights and liberties. Ordinarily, every man has the liberty to order his life as he pleases, to say what he will, to go where he will, to follow any trade, occupation or calling at his pleasure and to do any other thing which he can lawfully do without let or hindrance by any other person. On the other hand, for the very protection of these liberties the society must; arm itself with certain powers. No man's liberty would be worth its name if it can be violated with impunity by any wrong-doer and If his property or possessions could be preyed upon by a thief or a marauder. The society, therefore has power to exercise certain powers for the protection of these liberties... What the Constitution, therefore, attempts to do in declaring the rights of the people is to strike a balance between individual liberty and social control.

59. The point for consideration, therefore, is not so much as to whether every interference by State with the individual's fundamental right is invalid, but whether a particular invasion by a statute is one beyond the provisions of Article 19(6), viz., whether it is not a reasonable restriction made in the interest of the public. That a person has a fundamental right to carry on a business does not necessarily mean that he has fundamental right in adopting a particular mode of conducting the business. In *T.B. Ibrahim v. Regional Transport Authority, Tanjore* (1953) 1 M.L.J. 205 : 1953 S.C.J. 31 : 1953 S.C.R. 29 ft, a similar contention was rejected. In that case the transport authority altered a bus terminus from its original place to a different one. By reason thereof the owner of the site was deprived of the income he used to enjoy when his property was used as the bus-stand. The Supreme

Court refused to recognize any fundamental right in the individual to carry on business wherever he chose, and held that his right must be subject to any reasonable restriction imposed by the executive authority in the interest of the public convenience, and that, although the restriction might have the effect of eliminating the use to which the bus-stand had been put till that date, it could not be regarded as unreasonable.

60. On the footing that what the Act aims at is a prohibition and not a mere regulation of the beedi manufacturing business, it was contended that the legislation would be invalid; the reason advanced was that Article 19(6) empowers the legislature (provided the other conditions are satisfied) only to restrict the right guaranteed under Article 19(1)(g) and not to prohibit or put an end to it, as the word restriction connotes an idea of the right continuing to exist in some form. Learned Counsel relied upon the decision in *Municipal Corporation of City of Toronto v. Virgo* 1896 A.C. 88, *Attorney-General for Ontario v. Attorney-General for the Dominion* 1896 A.C. 348, *Lachmeswar Prasad Shukul v. Girdhari Lal Chaudhuri* 1940 F.C.R. 17, *Stone v. Farmers Loan and Trust Co.* 29 L. Ed. 636 and *Weaver v. Palmer Brothers* 70 L. Ed. 654. That question has been left open by the Supreme Court in *Mohammad Hanif Quareshi v. State of Bihar* : [1959]1SCR629 . It is unnecessary for the purpose of the present case to decide whether the restrictions contemplated by Article. (6) would not include, prohibition, as in our opinion there has been no prohibition of the beedi manufacture by the Act. The proprietor could continue to manufacture beedis but only certain obligations are imposed on him in so doing. The middlemen could still carry on the business after obtaining the licence. The home worker too can carry on his business, but He is required to do so in a licensed premises. It, therefore, follows that there has been no prohibition of the business of manufacture and sale of beedis, though there is a restriction or regulation in regard to the mode of manufacture.

61. It was next contended that the requirements as to licensing contained in Sections 3 and 4 of the Act are in the nature of a permit system, and, therefore, invalid. It was admitted, indeed there cannot be any possibility of doubt on that matter, that no naked or arbitrary power is granted to the authority to issue or

refuse a licence. The statute has fixed standards, and indicated the grounds which would be relevant for the issue of a licence. The power given is a quasi-Judicial one with right of appeal to the aggrieved person. But yet it is said that there is an element of precariousness about the exercise of the power in that a person who obtained a licence for one year could not demand as of right for a renewal. That, according to the learned Counsel, would leave continuance of an individual business at the mercy of the licensing authority as the provisions of the Act require that licence should be renewed every year. This is stated to be midway in the swing of the pendulum between a licence properly so called and a permit. According to the learned Counsel where regulations are made in the matter of the exercise of an individual of his fundamental right by adopting a licensing system, the licence should be obtainable as a matter of right on the payment of the necessary fee, and that any system by which the issue of a licence is made dependent on the discretion of an authority would carry with it some degree of uncertainty or precariousness and a scope for the exercise of an arbitrary power; it should, therefore, be held to be violative of the fundamental right. We cannot agree with the contention. In Rottschaefer's Constitutional Law, it is stated at p. 466:

It has been judicially affirmed that a State is free, notwithstanding the due process and equal protection clauses to adopt whatever economic policy may reasonably be deemed to promote the public welfare, and to enforce that policy by legislation adapted to that purpose. 1950 S.C.J. 571. It may, therefore, impose restrictions on the rights to enter a business or profession' if those restrictions are reasonable means for protecting or promoting the general welfare. A common form of regulation of this character is requiring a licence as a condition precedent to pursuing certain businesses and professions. The essence of such a requirement is generally the necessity for procuring the consent of the State before a person may lawfully pursue the licensed business or calling. The due process clause permits a State to impose this condition upon the right to pursue practically all, if not all, the ordinary businesses and callings, even those that it could not validly prohibit absolutely.... The reasoning on which the power to impose this requirement in those cases was based is broad enough to warrant the conclusion that the mere imposition of this requirement would in no case violate due process.

62. it cannot, therefore, be said that the mere requirement that the beedi industrial premises should be licensed would be invalid, But any system of licensing which leaves the issue of the licence to the unfettered discretion of the executive would amount to a permit system and would be invalid restraint on the exercise of the fundamental right. That, however, cannot be said of the powers granted under Sections 4 and 5 of the Act.

63. Under Section 4 of the Act, the authority could only act in conformity with the provisions of the Act, failing which the aggrieved party could appeal. If even the appellate authority acts arbitrarily, it would be open to this Court to correct such errors under Article 266. A quasi-judicial power cannot be said to be either naked or arbitrary. It has to be exercised objectively in accordance with the standards laid down by the statute. There could, therefore, be no valid objection to the regulation of beedi business by reason of the provisions of Sections 3 to 5 of the Act.

64. The substantial question, then, to be considered is whether the restrictions imposed by the Act are reasonable and in the interests of the public. Considerable reliance was placed on the observations of the Supreme Court in *Chintaman Rao v. State of Madhya Pradesh* 1950 S.C.R. 759. In that case, the law of a State, with the object of providing labour for agricultural operations, prohibited the beedi manufacture during the agricultural season. It was held that the object of the statute, namely, to provide measures for the supply of adequate labour for agricultural purpose in the beedi manufacturing areas of the province could be achieved by legislation restraining the employment of agricultural labourers alone in the beedi manufacture during that agricultural season without prohibiting all the persons, whether agricultural labourers or other labourers, from engaging themselves in beedi manufacture. The provisions of the Act were, therefore, held to have no reasonable relation to the object in view. Mahajan, J observed that the phrase 'reasonable restriction' would be inconsistent with a restriction which arbitrarily or excessively invaded the fundamental right, and\* that, in order to be valid, the restriction should strike a proper balance between the freedom guaranteed under Article 19(1)(g) and the Social control permitted by Article 19(6). The learned Judge observed at p. 763:

The statute in substance and effect suspends altogether the right mentioned in Article 19(1)(g) during the agricultural seasons and such suspensions may lead to such dislocation of the Industry as to prove its ultimate ruin. The object of the statute is to provide measures for the supply of adequate labour for agricultural purposes in beedi-manufacturing areas of the province and it could well be achieved by legislation restraining the employment of agricultural labour in the manufacture of beedis during the agricultural season. Even in point of time a restriction may well have been reasonable if it amounted to a regulation of the hours of work in the business. Such legislation, though it would limit the field for recruiting persons for the manufacture of beedis and regulate the hours of the working of the Industry, would not have amounted to a complete stoppage of the business of manufacture and ambit well have been within the ambit of Clause. (6). The effect of the provisions of the Act, however, has no reasonable relation to the object in view but is so drastic in scope that it goes much in excess of that object.

65. The enactment in that case which prohibited beedi manufacture entirely during the agricultural season was in excess of what was necessary and there was no reasonable or just relation between the restrictions imposed and the object sought to be achieved by the legislation. In the present case, however, the legislation is directed to regulate the conditions of working of the labourers engaged in the beedi business. No question of stoppage of the business at all arises. The legislation only limits the number of (sic) doing the business and that too is done with a view to secure a benefit for the workers. In the absence of such restrictions the object of the Act cannot be achieved.

66. Sri Nambiar contended that there was no necessity for imposing a restriction as the existing factory and labour legislation would be sufficient to improve the position of the workers. We have already pointed out that the existing legislation was quite inadequate to achieve the object of the legislature, as evasion was easy and frequently resorted to, and that the Act was enacted with a view only to check the evasion of those statutes.

67. Learned Counsel next contended that the Act has imposed unreasonable restrictions on proprietors of beedi business by giving a wide definition of the term



employer which will bring within its fold of number of persons who would be made liable vicariously for the duties and penalties imposed by the Act.

68. The term employer as defined would include the following persons:

(i) a person who has ultimate control over the affairs of any beedi Industrial premises,

(ii) a person who has, by reason of his advancing money, supplying goods or otherwise, a substantial interest in the control of the affairs of any beedi industrial premises,

(iii) a proprietor or a registered user of a trade mark registered under the Trade Marks Act in relation to beedi, and

(iv) any other person to whom the affairs of any beedi Industrial premises are entrusted.

69. Under the Act, the employer has the duty of implementing the various requirements prescribed therein and he would be liable for any omission to comply with them. There could be no objection to the definition so far as it covers the first of the four categories mentioned above. There is nothing unreasonable in making a person who has ultimate control over the beedi industrial premises responsible for the 'enforcement of the provision s of the Act. The Factories Act contains a similar definition. See the definition of occupier. The second category presents some difficulty. The object of this part of the definition was to apply the Act to proprietors of beedi business who adopting the device of ostensibly entering into a contract with middlemen escaped liability of employers under the factory and labour welfare legislations. The learned Advocate-General sought to contend, by a reference to a number of English cases, that middlemen or branch managers of the type that have come into beedi business could not be held to have an independent calling, but would in reality be servants of the proprietor and would be the employees of the proprietor. We consider that it is unnecessary to consider those decisions for the following reasons.

70. The Supreme Court has considered the position of a contractor in *Chintaman Rao and Anr. v. State of Madhya Pradesh* : 1958 CriLJ803 and held that sattedars or persons, who were analogous to the branch managers in this part of the country who, for a consideration, in their own factories or by arrangement with third parties got the beedis made, would not be the employees of the proprietor but only independent contractors. The Supreme Court also pointed out that it could not be laid down as general proposition that under no circumstances could the sattedar be considered as a worker, and that the question had to be decided upon the terms of contract entered into between him and the employer. Recently one of us had to consider a similar question in a decision in *Abdul Rahim and Co. v. N.A. Beedi Workers Union* 1958 II L.L.J. 736. The various tests that could properly be applied for determining whether the relationship of employer and employee subsisted between a proprietor, middlemen and workers was considered in that case. The question, therefore, cannot be approached as a pure question of law. Secondly, the statute, with a view to solve this uncertainty and with the particular object of bringing within the ambit of the Act persons, who are de facto the employers, had created a fiction by making a person who has a substantial interest in the business, an employer.

71. The terms, as defined, will include a person who gets beedis manufactured on the contract system, but having a control over the business, though under the common law he may not be one such. The result of it will be that such a person should either do the business subject to all life liabilities imposed by the Act or cease to do that type of business. The question is whether such a comprehensive definition is reasonable. That the question has to be considered on the basis of the historical and other background of the legislation is settled by the authorities. In *Rottschaeferon Constitutional Law*, at p. 459, it is observed--

The reasonableness of the legislature's action, however, cannot ordinarily be determined without considering the factual situation existing when the legislation was enacted. It is only by taking account thereof that a Court can determine the reasonableness of the legislative judgment that evils existed and that the means adopted for dealing with them had a real and substantial relation to the attainment of the object aimed at. It is, therefore, essential that the factual background of

such. legislation be considered, and this requires that it be before the Court when it passes on its validity. The facts may be of such character that the Court can take judicial notice of them, but, if not of that class, they are properly the subject of evidence which should be presented to the Court so that the decision of the constitutional issue can be based on adequate factual support. This consideration is primarily important in its relation to the presumption of validity that attaches to all legislative action.

We have already referred to the circumstances under which the legislation came to be enacted. More than one committee found that the Factories Act, etc., were skillfully evaded by the simple device of engaging<sup>1</sup> contractors and that for the wellbeing of the large number of workers, the factory system should be introduced. The purposes of the legislation could not be achieved if the definition of the term employer were to be confined only to de jure employer. Very often, the so-called independent contractor was a man of straw, there was very little independence in him, as the provisions of the typical contract to which we made reference earlier would show. In a case where the manufacturing process is controlled by a person having a substantial interest therein, the economic reality is that that person is the employer. The fiction enacted by the section is for the purpose of making such a person who could be said to be the de facto proprietor responsible as an employer,. No doubt the Act imposes a fair amount of various liabilities on the proprietor of the trade mark, If he wants to have his beedis manufactured in premises other than those over which he has a direct control. Imposition of vicarious liability is by itself and with nothing more cannot always be viewed as unconstitutional. In the present case, we have pointed out that the legal fiction of making such a proprietor an employer subjected to all the statutory rights and liabilities of an employer really accords with the economic reality. The Imposition of liabilities, apparently vicarious, does not amount to an unconstitutional restriction of the fundamental right of the proprietor.

72. It was contended that on the terms of the definition, a person who merely purchases from another beedi and sells it as an owner would be liable. That however is not correct. The terms of the section provide that an employer should have a substantial interest in the control of the affairs of the beedi business by

reason of his advancing money, supplying goods or otherwise. The liability of such an employer would be analogous to that of a guarantor and having regard to the fact that such a person has a control over the business, It cannot be said that the legislation Imposing an obligation on him, to see to his branch manager complying with the provisions of the Act, is unreasonable. Further the question whether a person has sufficient Interest so as to make him liable as an employer would be a justiciable one. It cannot, therefore, be said that the definition was in any measure unrelated to the object which the legislature had in view to set right the evil that enveloped the system of beedi manufacture. We are, therefore, of opinion that the first and second limbs of the definition are reasonable and, therefore, valid.

73. That however cannot be said of the third limb which makes a trade mark holder or registered user liable. On the terms of the definition, a. person who merely purchased beedis in the market, and sold them by using his own trade mark would be liable for the defaults of the person from whom he purchased the beedis. The learned Advocate-General contended that the definition in Section 2(g)(i) should be read in conjunction with the provisions of Section 4(3)(e) which enacts that the supplier of the beedis should be exclusively connected with the proprietor or registered user of the trade mark, and that therefore, the statute aimed at those cases in which beedis were manufactured by an independent contractor exclusively for the proprietor of a trade mark. No such restricted interpretation could be given to Section 2(g)(i). In its actual application the provision will produce perhaps unintended results contrary to the constitutional guarantees. Suppose a manufacturer of beedis supplied to various owners who have separate trade marks; it will be unreasonable to hold that one trade mark owner should be answerable for the beedis manufactured for another,, Yet that is what would happen, if the definition 1B allowed to remain. In our opinion the definition contained in Section 2(a) which Included proprietor or the registered user of trade mark is unreasonable and unrelated to the mischief Bought to be remedied. The case of proprietor of a trade mark who is substantially interested and has control over the affairs of another beedi industrial premises would be covered by second limb of the definition, and there would really be no necessity for the third. It is not necessary for the purpose of securing proper conditions of work for the beedi workers that all purchasers of beedis manufactured by them if they

happen to market under their own trade mark should be made liable as their employers. We are, therefore, of opinion that Section 2(g)(i) is invalid and has to be struck down.

74. It cannot be disputed that the case of a manager or similar authority covered by Section 2(g)(ii) would be constitutional.

75. The next objection to the licensing provision is that the criteria laid down by Section 4 are vague and unrelated to the requirements of trade, and would be arbitrary in operation, far in excess of the public interest or public welfare. It is not, however, stated as to how any lesser standard would have met the evil in the trade. There was ample material before the legislature to show that a substantial portion of the employers are running it by remaining behind the screen and the requirements set out in Section 4 were evidently prescribed in order to ascertain who the real employer was. As stated already, the grant of a licence could not be arbitrary but judicial.

76. It is contended that the various provisions in the enactment would render it impossible for the worker manufacturing beedis in his own house; and that Sections 8 to 28 are unreasonable in regard to a private residence. Further objection was taken to the provision which empowers the inspector to inspect the premises in which purdah ladies might be residing. Such difficulties can never arise as the effect of the Act will be to confine the beedi-manufacturing process to factories.

77. There is no basis for the contention that the women workers would be rendered without employment. In the report of Sri Narayanaswami Naidu, it is stated that almost all the workers except in Mukkudal area were full-time labourers. It is not shown how all of them would be rendered unemployed by the mere process of converting the industry into a factory controlled one. Even in the Mukkudal area, it is not shown how many workers would be rendered unemployed by the adoption of the factory system. It is no doubt contended that some workers particularly the part-time workers and some purdah ladies would lose their employment if the provisions of the Act were to be enforced. That may be so. No materials are placed before us to find as to how many of the workers will have to

go unemployed. The fact that factory system is to be introduced cannot mean that all women will go out of work. Many may be willing to work in the factories, and with the prospects of fair pay, regulated work and better conditions of labour, many of the present workers might prefer to do the work in the factories. Further the Act has provided for a part of the beedi-rolling work being done outside the licensed premises. Wetting or cutting of wrapper leaves is an integral part of the manufacturing process. Section 29 provides that on an Application made by an employer the Government could permit the wetting or cutting of wrapper leaves by female employees outside the beedi Industrial premises, This would undoubtedly provide employment for certain purdah women who are unwilling to go to the factory, and the employer too will have the advantage of cheaper or competitive labour for it.

78. It is stated that one, of the main objects of the legislation was to foster trade unionism amongst the beedi workers and that it could not be a proper purpose for a legislation. We do not consider that there is any substance in the objection. The legislation was necessitated by the evils from the contract system to which references have been made. It was found that there existed an exploitation of the workers by the contractors or the employers. It cannot be said that in the context, in which the Act was passed, provisions which would enable trade unionism amongst the workers so as to invest the workers with a legitimate bargaining power with the employer, would be unreasonable.

82. Sri Nambiar referred to us Natarajan's report to show that the Act would result in the imposition of pecuniary liability on small investors beyond their capacity. The report recommended that State aid should be given to small investors. That cannot mean that the industry cannot bear the financial burdens resulting from the observance of its provisions. State aid is not State subsidy. It cannot however follow that by reason of the Act the business would become uneconomical. That however is not relevant for the present purpose. It is stated that a number of manufacturers in Coimbatore district have issued notices of closure with a view to establish and to obtain their requirements from the neighboring States. Whether such conduct on the part of the proprietors is the result of an anxiety to make their accustomed profit or one dictated by economic necessity or a part of a scheme to

stage a demonstration against the legislation, it is unnecessary for us to enquire. There is no material placed before us to show that the legislation will have the effect of driving out the Industry from the State.

83. The question as to the necessity of a legislation is before entirely for the State to decide. Its constitutionality alone is before us. It cannot be said that merely because a beedi manufacturer may not be able to make the same extent of profit after the Act as before, is a ground for declaring the statute unconstitutional. Nor can it mean that he has a right to the continuance of the existing conditions of labour in the Industry working in squalid surroundings, employing child labour and providing scope for the exploitation of the indigent and the weak members of society.

84. The proper approach to the question whether particular legislation which has the effect of depriving certain persons of their employment, is valid or not is laid down in *Mohammad Hanif Quareshi v. State of Bihar* 1059 S.C.R. 629, thus:

Clause (6) of Article 19 protects a law which imposes in the interest of the general public reasonable restrictions on the exercise of the right conferred by Sub-clause (g) of Clause (1) of Article 19. Quite obviously it is left to the Court, in case of dispute, to determine the reasonableness of the restrictions imposed by the law. In determining that question, the Court, we conceive, cannot proceed on a general notion of what is reasonable in the abstract or even on a consideration of what is reasonable from the point of view of the person or persons on whom the restrictions are imposed. The right conferred by Sub-clause (g) is expressed in general language and if there had been no qualifying provisions like Clause (6), the right so conferred would have been an absolute one. To the person who has this right, any restriction will be irksome and may well be regarded as unreasonable. But the question cannot be decided on that basis. What the Court has to do is to consider whether the restrictions imposed are reasonable in the interest of the general public.

85. In that case the validity of a legislation on prohibiting cow-slaughter was questioned. The effect of the legislation was to render a large number of butchers without employment. That did not however prevent the Supreme Court from

pronouncing upon the validity of the legislation. Restrictions were imposed by the Madras Commercial Crops Market Act. This Court and on appeal the Supreme Court upheld the validity of that enactment vide *Kutty Keya v. State of Madras* (1954) 1 M.L.J. 117; *Arunachala Nadar v. State of Madras*--mm S.C.R. 370,

86. Learned Counsel for the petitioners urged that the impugned Act also offended against the fundamental right guaranteed by Article 19(1)(f); the registered holder of a trade-mark could not purchase beedis manufactured by others without subjecting himself to the vicarious liabilities imposed by the Act on such a person as an employer. We have struck down Section 2(g)(i) of the Act as an unconstitutional restriction even of the fundamental right under Article 19(1)(g). If that goes, the rest of the Act does not operate as an unconstitutional restriction of the freedom guaranteed by Article 19(1)(g) and there is little basis for an independent attack on the validity of the Act based on Article 19(1)(f) of the Constitution, i.e., independent of the arguments we have considered and rejected in relation to Article 19(1)(g).

87. The reasonableness of the restrictions imposed by the Act was impugned by reference to Article 43 of the Constitution which directs that the State shall endeavour to promote cottage industry on an individual or co-operative basis in rural areas. It was said 'that the legislation instead of fostering the cottage industry would really kill it. As we pointed out already except in the Mukkudal area, beedi-making is not a subsidiary but a primary occupation for most of the employees. The features of a cottage industry are generally understood to be:

- (i) indigenous products should be used in it,
- (ii) the worker should take to it as a subsidiary occupation,
- (iii) the worker is his own master investing his own though small capital; and
- (iv) it should be done in the home of the worker.

It will be misnomer to call the beedi industry as a cottage industry as none except perhaps the last condition is present in it and is satisfied. Even that is absent where the branch manager collects less than twenty persons in a place and gets



the work done. On the other hand the materials before the legislature indicated that the Industry satisfied all the criteria of sweated labour.

88. Objection was taken to the validity of Section 40 which invests the Government with a power to exempt from all or any of the provisions of the Act or rules made thereunder any beedi industrial premises, any beedi industry or any class of employees on the ground that it would enable the Government to act in a discriminatory manner. We are unable to accept the argument that an arbitrary power is given to the Government under that provision.

89. There is ample material to show that in regard to the beedi industry in this State, there existed a state of affairs which made it imperative for the legislature to intervene in the interests of the public. It was necessary for the successful working of the enactment that certain restrictions should be imposed on individuals in regard to the manner of doing business. We are of the opinion that except for the provisions of Section 2(g)(i), the restrictions and limitations Imposed on the freedom of business are, reasonably related to the object sought to be achieved by the legislature in the Interests and welfare of the public for dealing effectively with the evil which had, in course of years, become feature of beedi manufacture in the State. We are, therefore, of opinion that Section 2(g)(i) should be struck down as contravening the fundamental right guaranteed under Article 19(1)(g) of the Constitution, but that the rest of the Madras Beedi Industrial Premises (Regulation of Conditions of (Work) Act, 1958, is valid. A writ In appropriate form containing the above direction will issue. There will be no order as to costs.