PETITIONER:
THE BAGALKOT CEMENT CO. LTD.

Vs.

RESPONDENT:
R. K. PATHAN & ORS.

DATE OF JUDGMENT:
22/01/1962

BENCH:
GAJENDRAGADKAR, P.B.
BENCH:
GAJENDRAGADKAR, P.B.
SARKAR, A.K.
WANCHOO, K.N.

CITATION:
1963 AIR 439 1962 SCR Supl. (2) 697
CITATOR INFO :
D 1968 SC 585 (13,16,18)

ACT:
Standing Orders-Certification of draft submitted by employer-Power of Certifying Officer and Appellate Authority-If can fix quantum of leave and holidays-Indussrial Employrnent (Standing orders) Act, 1946 (20 of 1946), as amended by Amending Act of 1956, ss. 4,10, Schedule, cl. 5.

HEADNOTE:
The appellant company submitted draft Standing orders as required by s. 3 of the Industrial Employment (Standing Orders) Act, 1946, to the Certifying Officer. The Certifying Officer in certifying the said draft added a clause to paragraph 11 of the said draft which provided, inter alia, for certain festival holidays and causal and annual leave for a number of days. On appeal the Appellate Authority in substance agree with the additions made by the Certifying Officer. The question raised in the appeal was whether the Certifying Officer or the Appellate Authority had the jurisdiction under the Act to make the additions in the draft Standing Orders. Section 4 of the Act provides, inter alia, that the draft standing orders could be certified if they provided for every matter mentioned in the Schedule to the Act and cl. 5 of the Schedule provided as follows:

"conditions of, procedure in applying for, and the authority which may grant, leave and holidays."

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Held, that the Certifying Officer and the Appellate Authority had the jurisdiction in making the addition that they did.

The word "conditions" in cl. 5 should be construed not in a narrow way but in a broad and liberal sense consistently with the object of the

Act and, so construed, there could be no doubt that cl. 5 was not merely procedural but covered the substantive provision for fixing the quantum of
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holidays and leave so that the conditions of employment might be made precise and definite and prescribed in the form of Standing Orders having statutory effects.

Held, further, that the Certifying Officer as well as the Appellate Authority were in substance industrial authority, and having regard to the power given to them under the Schedule there could be no inconsistency in holding that they had also the power of fixing the quantum of holidays and leave as well. Any hardship that might be caused by their orders could be rectified under s. 10 of the Act.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 577 of 1960.

Appeal by special leave from the judgment and order dated October 15, 1959, of the Appellate Authority (Chief Labour Commissioner, Central, New Delhi), in Appeal under s. 6 of the Industrial Employment (Standing Orders) Act, 1946.

B. Narayanaswamy, S. N. Andley and Rameshwar Nath, for the appellant.

M. K. Ramamurthi, for the respondent.

1962. January 22.-The Judgment of the Court was delivered by

GAJENDRAGADKAR, J.-This appeal by special leave raises a short question about the scope and effect of clause 5 in the Schedule to the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946) (hereinatter called the Act ). That question arises in this way. The appellant Bagalkot Cement Co. Ltd. is a Limited Company registered under the Indian Companies Act, 1930; it carries on the business of manufacturing cement and for that purpose, it owns a factory as well as a limestone Quarry at Bagalkot in the State of Mysore. As required by s. 3 of the Act, the appellant submitted draft Standing Orders on the 3rd March, 1958, to the Certifying Officer and the Regional Labour Commissioner (Central), Madras, in order that they should be certified. The Certifying Officer considered
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the draft submitted by the appellant, heard the appellant and its employees, the respondents and passed an order of certification on the 16th June, 1959. While considering the draft for the purpose of certification, the Certifying Officer, however, made certain amendments in, and additions to, the a said draft. Amongst the additions made, clause (7) in paragraph 11 was one and it is with this addition made by the Certifying Officer that we are concerned in the present appeal.

Paragraph 11 of the draft Standing Orders submitted by the appellant dealt with the question of leave. Paragraph 11 (1) of the draft provided

that holidays with pay will be allowed as provided for in the Factories Act, 1948, and other holidays in accordance with law and contract. Clauses (2) to (6) dealt with allied matters. In the Standing Orders as they were finally certified, clause (1) of paragraph 11 was slightly changed and it provided that holidays with pay will be allowed as provided for in the Mines Act. No grievance is made of this alteration. Clause (7) has been added to paragraph 11. It reads thus:

"7. The workmen shall be allowed during the course of a year:-

(a) Ten festival holidays with pay for the celebration of important festivals (which will be fixed before the commencement of every calendar year in consultation with the workmen) including the Republic Day (26th January) and the Independence Day (15th August) and or any other paid holidays as may be declared and notified by the Government from time to time. Those workmen that are required to work on festivals and National Holidays shall be given an equal number of compensatory holidays on day convenient to the company, and

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(b) Fifteen days' casual leave with wages. This will include all kinds of leave due to sickness or any other cause.

(c) Casual leave will not be allowed for more than 3 days at a time except in the case of sickness and emergencies at the discretion of the company.

(d) Wages shall be allowed for those days remaining un-availed by the workers at the end of the year.

(e) Fourteen days annual leave to all classes of workers who have put in 265 attendances in a year as defined in the Mines Act. This includes statutory leave.

All leave should be applied for only in the prescribed form. The workmen after filling the particulars of the leave required by them shall hand over the same to the head of the section in which they are working."

The appellant apparently contended before the Certifying Officer that it was outside his jurisdiction to deal with the topics covered by clause (7) which he wanted to add but its objection was over ruled.

Against the order passed by the Certifying Officer certifying the Standing Orders with the additions and amendments made by him, the appellant preferred an appeal under section 6 of the Act to the appellate authority, viz., the Chief Labour Commissioner (Central), New Delhi, on the 5th July 1959. The appellate authority, in substance, agreed with the view taken by the Certifying Officer and retained the addition made by him by the insertion of clause (7) to paragraph 11. He, however, made slight modifications by directing that in clause (a) there will be seven festival holidays instead of ten festival holidays and in clause (b) there will be ten days' casual leave instead of fifteen days. Clause

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(d) was amended by the appellate authority by substituting a new clause in its place. The substituted clause reads thus:

"Casual leave will not be allowed to be accumulated. Unavailed casual leave shall lapse at the close of the calendar year."

Then in regard to cl. (e), the appellate authority held that the said clause amounted to a repetition of statutory provision. Therefore, the said clause was amended to read thus:

"Annual leave with wages will be allowed as per provisions of the Mines Act."

The appellate authority made certain other amendments in the Standing Orders as they were certified by the Certifying Officer and ultimately. the Standing Orders were certified, with the modifications and alterations suggested by the order of the appellate authority. The order of the appellate authority was passed on October 15, 1959.

Against this order, the appellant applied for special leave to this Court and special leave was granted to it on the 1st February, 1960. It is with the special leave thus granted that the appellant has come to this Court and on its behalf Mr, Narayanaswami has urged that the addition made by cl. (7) in paragraph 11 of the Standing Orders is outside the jurisdiction of the certifying authority. He contends that the jurisdiction conferred on the certifying authority by clause 5 in the Schedule does not empower the certifying authority to deal with the substantive question of the extent and quantum of leave and holidays. It only requires the Standing Orders to provide for conditions subject to which leave and holidays can be granted and the procedure in respect thereof and the authority which may grant such leave and holidays. The quantum of leave and holidays which should be granted to the workmen is outside the purview of the Schedule

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and as such, cannot be included in the Standing Orders. That is how the narrow question which arises for our decision in the present appeal is to determine the scope and effect of cl. 5 in the Schedule.

Before dealing with this question, it would be convenient to consider broadly the scheme of the Act. The Act was passed in 1946 because the Legislature thought that it was "expedient to require employers in individual establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them." Prior to the passing of the Act, conditions of employment obtaining in several industrial establishments were governed by contracts between the employer and their employees. Sometimes the said conditions were reduced to writing and in many cases they were not reduced to writing but were governed by oral agreements. Inevitably in many cases, the conditions of service were not well-defined and there was ambiguity or doubt in regard to their nature and scope. That is why the

Legislature took the view that in regard to industrial establishments to which the Act applied, the conditions of employment subject to which industrial labour was employed should be well-defined and should be precisely known to both the parties. With that object, the Act has made relevant provisions for making Standing Orders which, after they are certified, constitute the statutory terms of employment between the industrial establishments in question and their employees. That is the principal object of the Act.

The Act applies to every industrial establishment wherein one hundred or more workmen are employed or were employed on any day of the preceding twelve months. It can be extended even to establishments whose complement of labour is less than

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one hundred and it does not apply to any industry to which Chapter VII of the Bombay Industrial Relations Act, 1946, applies or to any industrial establishment to which the provisions of the Madhya Pradesh Industrial Workmen (Standing Orders) Act, 1959, apply. In other words, normally, Standing Orders have to be drafted by the employer and their certification obtained under the Act wherever the employer employ a more than one hundred industrial workmen: s. 1(3). The certifying authority under the Act means a Labour Commissioner or a Regional Labour Commissioner and includes any officer appointed by the appropriate Government by notification in the Official Gazette to perform all or any of the functions of a Certifying Officer under the Act: s. 2(c). The Act provides for an appeal against the order passed by the Certifying Officer and the "appellate authority" means an Industrial Court, wherever it exists or in its absence an authority appointed by the appropriate Government by notification in the Official Gazette to exercise in such area as may be specified in the notification the functions of an appellate authority under the Act: sec. 2(a). "Standing Orders" are defined to mean rules relating to matters set out in the Schedule: s. 2(g). Thus, the matters which have to be covered by the Standing Orders and in respect of which the employer has to make a draft for submission to the Certifying Officer are matters specified in the Schedule. Section 3 requires the submission of the draft of Standing orders within six months from the date on which the Act becomes applicable to an industrial establishment. Under s. 4, the Standing Orders become certifiable if provisions are made therein for every matter set out in the Schedule and they are found to be otherwise in confirmity with the provisions of the Act. After the amendment of this section made in 1956, the Legislature has imposed upon the Certifying Officer and the appellate authority the duty to adjudicate

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upon the fairness or reasonableness of the provisions of any standing orders. Prior to the amendment, it was not open to the said authorities

to examine the fairness of the Standing Orders submitted by the employer. The result of s. 4, therefore, is that the Standing Orders have to provide for all the topics specified in the Schedule and they have to be in conformity with the Act. Their reasonableness can be examined by the appropriate authorities and suitable modifications can be made by them in accordance with their decision. Section 5 provides for the procedure which has to be followed by the Certifying Officer before certifying the Standing Orders. The procedure is intended to give an opportunity to both the parties to be heard before the final order is passed. Section 6 provides for an appeal and s. 7 lays down that the Standing Order shall come into operation on the expiry of 30 days from the date on which authenticated copies thereof are sent as required by s. 5. sub-s. (3), or where an appeal is preferred, on the expiry of seven days from the date on which the copies of the appllate order are sent under s. 9, the said Standing orders Certifying Officer to keep a register of standing orders and under s. 9, the said Standing Orders have to be prominently posted by the employer in English and in the language understood by the majority of the workmen on special boards. Section 10 deals with the duration and modification of standing orders. It provides that except by agreement, the standing orders, after they are certified, shall not be liable to modification until the expiry of six months from the date on which they came into operation. Section 10(2) empowers both the employer or the workman to apply for a modification in the said standing orders. It would thus be clear that after they are certified, the standing orders have to remain in force for six months unless, of course, they are modified in the meanwhile by, consent. After six months are over, an application
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for modification in the standing orders can be made either by the employer the employees and the problem would be considered after following the procedure prescribed by the Act for certifying the original standing orders. Section 11 confers the necessary powers of a Civil Court on the Certifying Officer and the appellate authority and s. 12 prohibit admission of oral evidence which has the effect of adding or otherwise varying or contradicting standing orders as finally certified under the Act, in any Court. Section 13 provides for penalties and the procedure to enforce them. Section 13A deals with the problem of interpretation of the standing orders and s. 13B provides for exemption of industrial establishments therein specified. Section 14 confers on the appropriate Government power to exempt, conditionally or unconditionally, any industrial establishment, and s. 15 confers on the appropriate Government the power to make rules to carry out the purposes of the Act, and, in partioular, to provide for the matters covered by cls.(a) to (e) of sub-cl. (2). Section 15(3) contains the salutary provision that every rule

made by the Central Government under s.15 has to be placed before the House in the manner prescribed by it. The Schedule to the Act contains 11 clauses, clauses 1 to 10 deal with the several topics in respect of which standing orders have to make a provision and cl. 11 refers to any other matter which may be prescribed. This last clause shows that an addition may be made by the appropriate Government if it is thought necessary to do so, That, in brief, is the scheme of the Act.

Mr. Narayanaswami contends that having regard the nature and scope of the several clause in the Schedule, it would be appropriate to construe cl.5 as not including a provision for the quantum and extent of leave and holidays His argument is that cl, 5 is really intended to provide merely for
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the conditions and the procedure to be adopted in applying for leave and holidays Clause 5 reads thus:

> "Conditions of, procedure in applying for, and the authority which may grant, leave and holidays."

How many holidays the employee will have and how much leave, either casual or on medical ground, he would be entitled to get, are matters outside the scope of the Schedule; they would be governed by the relevant provisions of any other law or by contract between the parties; they cannot be the subject-matter of standing orders. The standing orders would provide for the conditions subject to which leave and holidays can be applied for, for the procedure in applying for the same and for the authority fying may grannt the same. That being so, the certifying Officer and the appellate authority exceeded their jurisdiction in making substantive provisions in that behalf by paragraph 11(7). That is the case for the appellant as presented by Mr. Narayanaswami.

In support of this contention, reliance has been placed on cl.3 in the Schedule which refers to shift working. It is urged that since the clause refers to shift working, the substantive provision in respect of shift working as well as the conditions subject to which it should be allowed would legitimately fall within its purview. If the Legislature had intended that the substantive provision as to leave and holiday should be the subject-matter of standing order it may will have referred to leave and holidays only in cl 5 without any further addition. The additional words introduced in cl. 5 are words of limitation and they show that the substantive provision as to leave and holidays is outside the purview of that clause, It may be conceded that there is some force in this contention.
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There are, however, other considerations which have to be borne in mind in construing cl. 5. The object of the Act as we have already seen, was to require the employers to make the conditions of employment precise and definite and the act ultimately intended to prescribe these conditions in the from of standing orders so that

what used to be governed by a contract hereto before would now be governed by the statutory standing orders and it would not be reasonable to hold that conditions of employment to which the preamble of the Act specifically refers would not include a provision for the quantum of leave and the quantum of holidays to which the employee would be entitled. Therefore, the word "conditions" in cl. 5. of the Schedule has to be reasonably construed in a broad and liberal sense. The dictionary meaning of the word "condition" is a provision or a stipulation. Now a provision or a stipulation as to leave and holidays would necessarily include a provision for the quantum of holidays and leave and this construction would be consistent with the meaning of the word "condition" as employed in the preamble to the Act. Mr. Ramamurthi who appeared amicus curiae for the respondents at our request contended that to adopt the narrow construction of the word "conditions" in cl. 5 would defeat the very purpose of cl. 5. He argued that merely providing for the procedure of application and for the authority who would grant leave and holidays without stipulating as to the quantum of leave and holidays would be almost meaningless. In our opinion, there is force in this contention and so, we, are inclined to adopt the broad and liberal construction of the word "condition" in cl.5.

Besides, the first three clauses dealing with the conditions, the procedure and the authority would apply both to leave and holidays and it is not easy to appreciate what conditions could be
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prescribed by the standing orders for the purpose of holidays. No doubt Mr. Narayanaswami suggested that the conditions in the context of holidays may mean conditions as to holidays with pay, or without pay or with half pay and that is what is contemplated by the first clause in relation to holidays. Theoretically, it may be conceivable that the word "conditions" may have that meaning in respect of holidays; but it seems to us that it would serve no useful purpose merely to provide for such conditions and to prescribe the procedure to be adopted in applying for leave and holidays unless the quantum of leave and the quantum of holidays are also intended to be prescribed by the standing orders. On the broad construction of cl. 5, it becomes a self sufficient and reasonable provision. The standing orders will provide for the leave to which the employees are entitled and will prescribe the number of holidays which they will be able to enjoy. Having provided for the quantum of leave and holidays, the standing orders will also provide for the conditions in respect of them, for the procedure in applying for them and for the authority which may grant them. It is true that it is not easy to understand why an application has to be made for holidays, but it may be that if there are sectional holidays, employees belonging to a particular section entitled to them may have to apply for them. There fore, in our opinion, it cannot be said that the authorities below have adopted an unreasonable

constructions of cl. 5 in the Schedule when they held that they were entitled to make the additional provisions in respect of leave and holidays which they have purported to make by adding cl. 7 in paragraph 11 of the standing orders.

In this connection reference, may be made to the Model Standing Orders framed by the Central Government in 1946. Clause 9 of the Model Orders provides that holidays with pay will be allowed as 709
provided for in Chapter VI of the Factories Act, 1948, and other holidays accordance with law contract, custom and usage. In fact, it is significant that paragraph 11 (1) of the draft-submitted by the appellant has also provided that holidays with pay will be allowed as provided for in the Factories Act and other holiday in accordance with law and contract. If this provision is legitimately included in the Standing Orders and that too under clause 5 of the Schedule, it is difficult to understand why a more specific provision cannot be made under the said clause by clearly stating the number of holidays to which the employees would be entitled and that is precisely what paragraph 11 (7) purports to do.

Then cl. 10 of the Model Standing Orders provides for casual leave. It lays down that a workman may be granted casual leave of absence with or without pay not exceeding 10 days in the aggregate in a calendar year. Then it lays down further conditions in respect of the grant of the said causal leave. It would be noticed that the quantum of casual leave to which the employee is entitled is thus specifically provided by. cl. 10 of the Model Standing Orders. It is perfectly true that if clause 5 of the Schedule is read in the narrow sense for which Mr. Narayanaswamy contends, cl. 10 of the Model Standing Orders would be invalid and from that point of view the existence of clause 10 in the Model Standing Orders cannot be of any assistance in interpreting cl. 5 of the Schedule. But if clause 5 is construed the broad sense for which Mr. Ramamurthi contends, it would follow that clause 10 of the Model Standing Orders is consistent with the aim and object of the Schedule and that, incidentally, may support the agreement for the broad construction. That is about all.

In regard to the argument based on the scope of the 10 clauses in the Schedule, it is certainly 710
not correct to say that the scope of the Schedule is intended to be very narrow. Take for instance, clause 8 which deals with the termination of employment or clause 9 which deals with the suspension or dismissal for misconduct, and acts or omissions which constitute misconduct. These are matters of general importance and it is conceded that all relevant and material provisions in respect of these matters have to be included in the Standing order. Therefore, it would not be inconsistent with the scheme of the Schedule if we were to hold that the substantive provisions for the granting of leave and holidays along with the

conditions in respect of them have to be made by the Standing Orders under cl. 5 of the schedule.

It would be recalled that s. 10 of the Act provides for the duration of the standing orders and if any standing orders are found by experience to be unreasonable or inconvenient either by the employer, or the employees, an application can be made for the modification of the said standing orders after the expiration of six months from the date on which they came into operation. Therefore. there would be no hardship in requiring the standing orders to include a provision as to leave and holiday. The provisions made in that behalf can be modified after following the procedure prescribed by s. 10. It is not disputed that the claim for leave and holidays can become the subject matter of an industrial dispute and if such a dispute is referred for adjudication to an Industrial Tribunal, the Tribunal can fix the quantum of holidays and leave. What the Tribunal can do on such reference is now intended to be achieved by the Standing orders themselves in respect of Industrial establishments to which the Act applies. We have noticed that the Certifying officer as well as the appellate authority are, in substance, industrial authorities and if they are given power to make provision for leave and holidays as

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they undoubtedly are given power to provide for termination of employment and suspension or dismissal for misconduct, there is nothing inconsistent with the spirit of the Schedule or with the object of the Act. Therefore. we are not satisfied that the authorities below were in error in holding that it was competent to them to make the additional provision in the Standing orders as prescribed by paragraph 11(7).

In the result, the appeal fails and is dismissed. No order as to costs.

Appeal dismissed.