Before D. S. Tewatia and A. S. Bains, JJ.

I.T.C. LTD.—*Petitioner*

versus

REGIONAL PROVIDENT FUND COMMISSIONER and others,—*Respondents*

Civil Writ Petition No. 412 *of* 1977

December 12, 1986

Constitution of India, 1950—*Article* 226—*Employees' Provident Funds and Miscellaneous Provisions Act* (*XIX of* 1952)—*Sections* 2(*b*), 6 *and* 19-*A*—*Punjab Shops and Commercial Establishments Act* (*XV of* 1958)—*Section* 7—*Factories Act* (*XLIII of* 1948)—*Section* 51—*Basic Wages*—*Wages paid for work done during additional hours*—*Whether form part of basic wages*—*Normal working hours fixed by settlement*—*Additional hours worked being less than statutory hours*—*Additional hours*—*Whether will amount to overtime*—*Establishment*—*Whether liable to pay contribution on remuneration paid for additional hours*—*Fixation of working hours for a factory or establishment*—*Maximum working hours for any one day or a week*—*Such statutorily fixed hours*—*Whether normal working hours of a given factory or establishment*—*Section* 19-*A*—*Central Government while acting under*—*Whether performs administrative functions*—*Remedy under section* 19-*A*—*Whether alternative*—*Writ jurisdiction under Article* 226—*Whether barred by section* 19-*A of the Act.*

Held, (per majority of D. S. Tewatia and S. P. Goyal, JJ, A. S. Bains, J. *contra*) that remuneration received by the employees for working during additional hours partakes the character of 'overtime allowance' by virtue of the expression 'any other similar allowance payable to the employee in respect of his employment or of work done in such employment' occurring in sub-clause (ii) of clause (b) of section 2 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, and, therefore, such wages cannot form part of the basic wages as defined in the Act for the purpose of reckoning the employer's contribution to the provident fund in terms of section 6 of the Act.

(Paras 9 and 15)

Held, (per majority of D. S. Tewatia and S. P. Goyal, JJ. and A. S. Bains, J. *contra*) that both the Punjab Shops and Commercial Establishment Act, 1958 and the Factories Act, 1948, fix the maximum working hours for any one day or for a week which means

that normal working hours for a factory or establishment would not exceed such statutory hours and not that statutory hours would be the normal working hours of a given factory or establishment. Normal working hours would depend upon various factors including the nature and type of the work, environment, etc., which may differ from factory to factory and establishment to establishment. Thus, the normal working hours of a given establishment or factory can be substantially less than the statutory maximum hours as envisaged in the aforesaid Act.

(Paras 9 and 10).

Held, (per majority of D. S. Tewatia, A. S. Bains and S. P. Goyal, JJ) that section 19-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, does not provide for any enquiry by the Central Government. The parties affected are not required to be heard nor any decision rendered. On a plain reading of the section it is clear that the order or direction contemplated there is only an administrative or a ministerial order and not a judicial or quasi-judicial order. Such power is to be exercised for the purpose of removal of any defect in the working of the scheme framed thereunder or for the removal of the doubts in regard to the five matters mentioned in the section. The Central Government is not required by the terms of the section to act judicially. Therefore, the remedy envisaged in section 19-A of the Act cannot be a remedy for the purpose of barring a writ petition.

(Paras 19-A and 23).

The Division Bench consisting of Hon'ble Mr. Justice D. S. Tewatia and Hon'ble Mr. Justice A. S. Bains dissented themselves ordered separately judgments on January 8, 1979. *In a joint order, dated 8th January,* 1979, *their Lordships referred the case to a third Judge or to a Larger Bench in terms of clause* 26 *of the Letters Patent and section* 98 *of the Civil Procedure Code in view of their difference of opinion. The third Judge Hon'ble Mr. Justice S. P. Goyal finally disposed of the case on December* 12, 1986.

Petition under Article 226 *of the Constitution of India praying that this Hon'ble Court be pleased to* :

(a) *issue a writ of* certiorari *or any other appropriate writ, direction or order calling for the records of the case in which the Respondent No.* 1 *has passed impugned Order No. PN/2841/Enf-11/4966, dated 24th May,* 1976 *(Annexure 'P-2' hereto) and after going through the legality and validity thereof to quash the impugned order of 24th May,* 1976;

(b) *issue a writ of prohibition or any other appropriate writ, direction or order prohibiting Respondents* 1 *and* 2 *from taking any steps against the petitioner for recovery of contributions on the additional hours payment made by the petitioner to the workmen from time to time, as forming part of "basic wages" as defined in section* 2(b) *of the Act;*

(c) *issue any other appropriate writ, direction or order on the facts and circumstances of the case;*

(d) *grant costs to the petitioner; and*

(e) *pass such other and further orders as may be deemed just and proper;*

(f) *stay the operation of impugned order Annexure* (P-2).

B. C. Mathur, Advocate, with K. D. Singh, Advocate, *for the Petitioner.*

C. D. Dewan. Sr. Advocate, with S. K. Sharma, Advocate, *for Respondent No.* 1.

Ravi Nanda and S. S. Mahajan, Advocates, *for Respondent* No. 3.

JUDGMENT

D. S. Tewatia, J.

(1) These are two writ petitions Nos. 7983 of 1976 and 412 of 1977 filed by the same petitioner against the respondents, who are common to both the petitions, seeking thereby to have the order dated 24th May, 1976, as also the order dated 29th October, 1976, annexed to civil writ petition No. 412 of 1977 as annexures P.2 and P.1 respectively, quashed both being passed by the same authority i.e. respondent No. 1 under section 7-A of the Employees Provident Funds and Miscellaneous Provision Act, 1952, hereinafter referred to as the Act. The order, Annexure P.2, was *inter alia*, challenged on the ground that the same had been passed *ex parte* without affording any opportunity to the petitioner, besides being non-speaking. This order was challenged by the petitioner in Civil Writ No. 7893 of 1976. During the pendency of the said writ petition, the order,

annexure P.1, dated 29th October, 1976, was passed. The petitioner amended that writ petition and incorporated in the petition a challenge to this later order also. However, by way of abundant caution, the petitioner filed a fresh petition being Civil Writ No. 412 of 1977 challenging therein the later order, annexure P.1. The purpose of both the writ petitions being the same and the parties also being the same, they are sought to be disposed of by a common judgment. However, wherever necessary, the assertions made in the petition, as also the pleas in the reply, and the documents supplied by the two sides, as found mentioned in Civil Writ No. 412 of 1977, shall be referred to.

(2) Since the first order of respondent No. 1 dated 24th May, 1976, annexure P.2, had been superseded by respondent No. 1 by his later order dated 29th October, 1976, so primarily it is the validity of this later order that falls for determination. The petitioner has laid a challenge to the validity of this later order on the ground that it is not a speaking order and it has been passed without considering the material made available by the petitioner,—*vide* its letter, annexure P.3, dated 24th July, 1976, and the annexures annexed thereto.

(3) Though the petitions are bulky, yet the point of controversy between the parties lies in a very narrow compass. Stated briefly, it is : whether at the relevant time the wages paid by the petitioner establishment to its employees for additional working hours form part of the basic wages as defined by clause (b) of section 2 of the Act or not? Relevant portion of section 2(b) of the Act is in the following terms:

> "2. (b) 'basic wages' means all emoluments which are earned by an employee while on duty or on leave with wages in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include—
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> (i) the cash value of any food concession;
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> (ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus, commission or

any other similar allowance payable to the employee in respect of his employment or of work done in such employment;

(iii) any presents made by the employer."

(4) The Regional Provident Funds Commissioner, respondent No. 1, in the impugned order, had treated the remuneration received by the employees for the work done during the 'additional hours' as part of the 'basic wages' and sought to demand contribution in terms of section 6 of the Act on that basis, while the petitioner had contended before him that remuneration for 'additional hours' of work paid to the employees fell in the category of 'overtime allowance' by virtue of the expression 'any other similar allowance payable to the employee in respect of his employment or of work done in such employment' occurring in sub-clause (ii) of clause (b) of section 2 of the Act.

(5) The petitioner's case in the petition is that the conditions of work and service of the employees in its establishment at all relevant times were governed by settlements arrived at between the petitioner (the employer) and its employees under section 2(P) read with section 12(3), and section 18(3) of the Industrial Disputes Act, 1947, during the course of conciliation proceedings. The first settlement is dated 28th March, 1966; the second settlement is dated 17th July, 1971; and the third settlement is dated 6th February, 1976, and it is the last settlement that is said to be holding the field at present.

The said settlements *envisage* three types of working hours i.e. normal notified hours, additional hours and overtime hours. Clause 13(a) of the Standing Order annexed to the settlement as Annexure IV defines additional hours in the following terms:—

"Any hour worked by an employee in addition to normal hours of work; but not in excess of the hours laid down by the Punjab Shops and Commercial Establishment Act, 1958, for commercial establishments shall be referred to as "Additional Hours".

Clause 13(b) of the aforesaid Standing Order besides providing for the payment for the additional hours of work also expressly provided that no employee should work in excess of his normal hours of work without obtaining previous permission from the Office Assistant or his deputy.

Clauses (b)(i) and (ii) of Annexure VIII of 1977 settlement indicated the basis of payment for additional hours and overtime hours work which are as under:—

"(i) *Additional Hours* : Where a worker works additional hours i.e. beyond his normal working hours not constituting overtime, he will be paid an additional 50 per cent of the hourly basic wage for each such hour worked, i.e. time-and-a-half.

(ii) *Overtime Hours* : Where a worker works overtime as defined in the Punjab Shops and Commercial Establishments Act, 1958, he will be paid an additional 100 per cent of the hourly basic wage and of the hourly Dearness Allowance i.e. 'double time'."

The settlements in question stipulated that the remunerations would be the basic wage which was expressly mentioned therein (*see* Annexure II of settlement dated 17th July, 1971). Further part 1 of Annexure III to the settlement makes it abundantly clear that *inter alia* additional hours wages and overtime wages both did not form part of the basic wage as would be clear from the following extract of sub-clause (g) of clause 4 of Annexure III.

"4(a) .....

(b) .....

(c) .....

(d) .....

(e) .....

(f) .....

(g) Any other remuneration including basic wage components of the encashment value of unavailed casual leave or of earnings for extra work performed such as additional hours, overtime, festival holidays work and Sunday work."

(6) These facts are not only not in dispute, but the respondents, *inter alia,* have in fact sought support for their own stand from such clauses of the said settlements, as define 'overtime' and provided special payment therefor at the rate of "and additional 100 per cent of the hourly basic wage and of the hourly Dearness Allowance wage i.e. 'double time'....." When they contended that by implication the said clauses of the settlements, envisaged the statutory hours mentioned in section 7 of the Punjab Shops and Commercial Establishments Act, 1958, the normal working hours for the establishment which hours for the purpose of varying payments to the employees, were further sub-divided into two periods—'notified hours' and 'additional hours'—the workers being entitled to higher payment per hour for working during the 'additional hours' as compared to per hour payment for 'notified hours' which remuneration was categorised as the 'basic wage' of the employees in the settlements.

(7) It was further contended that the device of the kind whereby statutory hours were bifurcated into two periods, would not help the employer in having the remuneration paid to the employees for 'aditional hours' treated as 'overtime allowance'. Reliance was placed in support of the aforesaid contention on *Jay Engineering Works Limited and others* v. *Union of India and others* (1).

(8) It has been argued on behalf of the petitioner that the employer and the employees had, in a binding contract evidenced by the three settlements, agreed as to what would be the 'normal working hours, of the establishment and payment to the employees for working beyond those hours would be a payment which would partake the character of an allowance similar to the 'overtime allowance' which is exempted by sub-clause (ii) of clause (b) of section 2 of the Act from being included in the 'basic wage' of the employees for the purposes of section 6 of the Act. It was argued that the ratio of *the case of Jay Engineering Works Limited and others* (supra) is not applicable to the present case in that unlike the settlement in that case the three settlements in the present case do not envisage that the employees were bound to work during the 'additional hours'. In this connection, reference is made to the following clause (iv)(c)(ii) of Annexure VIII annexed to 1956 settlement:—

> "(ii) No additional overtime hours shall be worked without the prior permission of a Member of Management."

(1) A.I.R. 1963 S.C. 1480.

(9) After giving the matter my careful consideration I am of the view that remuneration received by the employees for working during the 'additional hours' does partake the character of 'overtime allowance by virtue of the expression any other similar allowance payable to the employee in respect of his employment or of work done in such employment' occurring in sub-clause (ii) of clause (b) of section 2 of the Act. The expression 'overtime' as such has not been defined anywhere. Both in the Punjab Shops and Commercial Establishments Act, 1958 (section 7), and the Factories Act, 1948, (section 51), maximum working hours for any one day and for a week have been fixed and it is provided that for work beyond those hours, the employees would be entitled to such rate of remuneration as provided by clause (b) of sub-section (2) of section 7 of the Punjab Shops and Commercial Establishments Act, 1958, and section 59 of the Factories Act, 1948.

(10) What the relevant provisions of the aforesaid two Acts fix is the maximum hours, for which an employee can broadly be required to work in any factory or establishment. Which means that normal working hours of a factory or establishment would not exceed such statutory hours, and not that statutory hours would be the 'normal working hours' of a given factory or establishment. 'Normal working hours' of a given factory or establishment depend on various factors including the nature and type of the work, environment etc. etc., which may differ from factory to factory and establishment to establishment. Thus the 'normal working hours' of a given factory or establishment can be substantially less than the maximum statutory hours envisaged in the Punjab Shops and Commercial Establishments Act, 1958, and the Factories Act, 1948, and it has been so held authoritatively by the Supreme Court in *Indian Oxygen Limited v. Their Workmen* (2). In that case, certain disputes arose between the management and the employees. The Government of Bihar made a reference under section 10(2) of the Industrial Disputes Act, 1947. One of the disputes related to the workers' demand to the effect that the payment of 'overtime' to office staff should be 1½ times the ordinary rate beyond their normal duty hours. It was contended on behalf of the management that the company could not be asked to pay more than at the ordinary rate of wages payable to workmen if they were asked to work beyond 39 hours but not exceeding 48 hours, for the company was well within its right to have

(2) A.I.R. 1969 S.C. 306.

the employees worked 48 hours a week in view of the Bihar Shops and Establishment Act, the provisions whereof stood extended to the company's establishment. In that case, it was found as a fact that, according to the conditions of the company, the company had been following 39 hours' a week as the scheduled duty or normal working hours. Their Lordships of the Supreme Court held that the normal daily or weekly working hours in an establishment could be less than the statutory hours fixed by the provisions of the Shops and Commercial Establishments Act and where an employee was required to work beyond such lesser normal hours of the establishment, then he would be entitled to special remuneration, although the total normal working hours, including this, did not go beyond 48 working hours a week. The following observations of their Lordships of the Supreme Court are instructive in this regard:

> "Under the conditions of service of the company, the total hours of work per week are 39 hours. Any workman asked to work beyond these hours would obviously be working overtime and the company in fairness would be expected to pay him compensation for such overtime work. The Bihar Shops and Establishments Act has no relevance to this question as that Act fixes the maximum number of hours of work allowable thereunder, i.e. 48 hours a week, and provides for double the rate of ordinary wages for work done over and above 48 hours. It is not, therefore, as if the provisions of that Act govern overtime payment payable by an employer where maximum hours of work are governed by the conditions of service prevailing in his establishment. Therefore, no reliance can be placed on the provisions of that Act for the company's contention that it cannot be called upon to pay for overtime work anything more than its ordinary rate of wages if the workmen do work beyond 39 hours but not exceeding 48 hours a week. It is obvious that if the company were asked to pay at the rate equivalent to the ordinary rate of wages for work done beyond 39 hours but not exceeding 48 hours work a week, it would be paying no extra compensation at all for the work done beyond the agreed hours of work. The company would in that case be indirectly increasing the hours of work and consequently altering its conditions of service."

The ratio of this decision was approved by their Lordships in *the Workmen of the Calcutta Electric Supply Corporation Limited* v. *Calcutta Electric Supply Corporation Limited* (3).

(11) However, while so holding one has to guard against the kind of device resorted to in *the case of Jay Engineering Works Limited and others* (supra). There has to be a genuine distinction between the 'normal working hours' and the 'additional hours'. The remuneration payable to the employee for 'normal working hours' has to be so adequate that he can conveniently do without working for 'additional hours'; otherwise if the 'basic wage' for the 'normal working hours' is fixed so low that an employee has perforce to work for 'additional hours' in order to earn such amount as may bring his pay-packet, including the components of the so-called 'basic wage' for the 'normal working hours', to the level of truly basic wage, then the remuneration received for work during the so-called 'additional hours' cannot be held to partake the character of an allowance similar to the 'overtime allowance'.

(12) In the present case, neither in the returns nor otherwise, it has been contended on behalf of the respondents that the basic wage fixed for 'normal working hours' in the establishment of the petitioner-employer was not adequate.

(13) In *the case of Jay Engineering Works Limited and others* (supra), on which reliance was placed on behalf of the respondents, the question that fell for determination was as to whether a certain payment partook the character of production 'bonus' and thus to be excluded from the term 'basic wages' for the purpose of the employer's contribution towards the provident fund in terms of section 6 of the Act. In that case, the employer and the employees had agreed upon a scheme which provided that a certain proportion of the production was to correspond to the minimum basic wages and dearness allowance fixed by a certain 'award' which was termed as 'quota'. The production upto the 'quota' was paid for at piece-rate basis, but there was 'norm' also fixed which was much higher than the 'quota' and every workman was expected to produce the 'norm' as the minimum production. If a workman did not produce the 'norm', he was guilty of misconduct and liable to dismissal, as the agreement provided that any deliberate deviation from production 'norm' would amount to go-slow tactics. The 'standing order', of course, provided

(3) A.I.R. 1973 S.C. 2143.

that go-slow tactics would amount to misconduct and might lead to dismissal of the employee concerned. It was contended on behalf of the workers that a scheme of the kind prevalent in the company, production bonus, as understood in industry, only started after the 'norm' and that payment for production between the 'quota' and the 'norm' was nothing more than the 'basic wage' as defined in the Act. Agreeing with that contention it was held that in a typical production bonus scheme the worker was not bound to produce more than the base or standard, though he might do so in order that his earnings might go up. In the scheme in force in the employer company, however, the worker could not stop at the quota; he must produce up to the norm on pain of being charged with misconduct in the shape of go-slow and being liable to be dismissed. Therefore, the real base or standard which was the core of a typical production bonus scheme was, in the case of the said company, the 'norm' and any payment for production above the 'norm' would be real production bonus under the scheme. The production upto the 'norm' being the standard which was expected of a workman in the company, payment upto that production must be basic wages as defined in the Act.

14. As already observed, in the present case, the device of having 'normal working hours' and 'additional hours' does not partake of the character of the device adopted in the *Jay Engineering Works Ltd. and others' case* (supra) for two reasons (a) that it is nobody's case that for the 'normal working hours' the employees were not paid remuneration which, as understood in the industry, would amount to basic wage; and (b) that the employees were not duty-bound to work during the 'additional hours'———— they were to work only if they wanted to and, again, if permitted by the employer.

15. For the reasons stated, I have no hesitation in holding that the remuneration received by the employees of the petitioner for working during 'additional hours' fell in the category of allowance similar to the 'overtime allowance' and, therefore, could not form part of the basic wage as defined in the Act for the purposes of reckoning the employer's contribution to the provident fund in terms of section 6 of the Act. The impugned order annexure P. 1, passed by respondent No. 1 under section 7-A of the Act is almost bereft of any reason in support of the conclusion that he arrived at.

According to respondent No. 1, since clause 10 of the 1966. Settlement stipulated that an employee shall be paid for the work done during the 'additional hours' at rates calculated at 1.25 times the real basic wage rate, so that left no room for doubt that what the worker would be getting for the 'additional hours' work would not be the 'overtime allowance', but they would be getting the wages which would be 1.25 times the real basic wage and thus there would be no escape from the conclusion that the 'additional hours' payments were, in fact, part of basic wages, as defined in section 2(b) of the Act. The aforesaid reason given by respondent No. 1 in support of his conclusion is totally irrelevant. Merely because clause 10 of the Settlement in question made a reference to the basic wage for fixing an indicia for the working out of the remuneration for the work done during the 'additional hours', that would not show that the remuneration received for working during the 'additional hours' became part of the basic wage. The impugned order, in my view, therefore, suffers from error of law apparent on the face of the record and is hereby quashed.

16. Before parting with the judgment, a preliminary contention raised on behalf of the respondents to the maintainability of the writ petition based on the interdict contained in clause (3) of article 226 of the Constitution of India may now be noticed and dealt with. It has been contended by the respondents that an alternative remedy provided by section 19-A of the Act was available to the petitioner against the impugned order of respondent No. 1 and since admittedly the petitioner had not availed of the same, so in view of the provisions of clause (3) of article 226 of the Constitution of India the present petition is clearly barred.

17. The question that arises for consideration is as to whether section 19-A of the Act does or does not provide an alternative remedy against the impugned order. Section 19-A of the Act is in the following terms :

> "19-A. If any difficulty arises in giving effect to the provisions of this Act, and in particular if any doubt arises as to—
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> (i) whether an establishment which is a factory, is engaged in any industry specified in Schedule I;
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> (ii) Whether any particular establishment is an establishment falling within the class of establishments to which this Act applies by virtue of a notification under clause (b) or sub-section (3) of section 1 ; or

(iii) the number of persons employed in an establishment; or

(iv) the number of years which have elapsed from the date on which an establishment has been set up ; or

(v) whether the total quantum of benefit to which an employee is entitled has been reduced by the employer.

The Central Government may, by orders, make such provision or give such direction, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for the removal of the doubt or difficulty; and the order of the Central Government, in such cases, shall be final."

18. Different High Courts have taken varying positions in regard to (i) whether the said provision could be invoked by the authorities under the Act alone or also by the management of the establishment, and (2) whether the said provision invested the Central Government only with the administrative or ministerial powers or with the quasi-judicial powers as well.

19. Such of the High Courts, as had held that section 19-A of the Act invested the Central Government with the quasi-judicial powers, also held that the management could agitate before the Central Government under this provision against the order passed by the Regional Provident Funds Commissioner under section 7-A of the Act.

19-A. Such of the High Courts as held that the provisions of section 19-A of the Act invested the Central Government merely with the administrative and ministerial powers and not with the quasi-judicial powers pointed out in support of their conclusion such basic omissions from the provisions of section 19-A of the Act as holding of an enquiry and providing of opportunities of being heard to the affected parties and discretion to pass or not to pass any order or direction. In this regard, the following observations of Hegde, J. (as he then was) from a Division Bench decision of the Mysore High Court in *Wadi Stone Marketing Company (Private)*

Ltd: v. *Regional Provident Fund Commissioner and another* (4) are instructive—

> "We think it will be convenient first to take up the contention whether whenever there is a dispute, whether an establishment is liable to contribute to the fund, it is obligatory on the part of the authorities enforcing the provisions of the Act to refer the same to the Central Government for its decision under section 19-A of the Act ..... Section 19-A provides for 'removal of difficulties'. The marginal note to that section reads 'Power to remove difficulties'. According to that note, the said section only deals with ways and means of removing difficulties that may arise while giving effect to the provisions of the Act. That is in fact what the section says. It reads :
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> * * * * *
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> It must be borne in mind that the power given under section 19-A is a power to be exercised for the purpose of removing difficulties in giving effect to the provisions of the Act. The person or persons who can give effect to the provisions of the Act are those who are charged with the duty of enforcing the provisions of the Act. The section does not say that recourse could be had to the provisions therein by persons who are affected by the provisions of the Act. In other words, the machinery provided under section 19-A is one for the benefit of those who have to 'give effect to the provisions of the Act.' Therefore, when the section speaks, 'if any doubt arises', it refers to the doubts of those who are 'giving effect to the provisions of the Act'. In our judgment this provision does not require the Central Government to decide any dispute that may arise between the authorities enforcing the provisions of the Act and the persons against whom those provisions are enforced. This conclusion is made further clear by the fact that as per the

(4) 1965(2) L.L.J. 32.

terms of that section the Central Government is not bound to give any direction. The section merely says:

> 'the Central Government may, by order, make such provision or give such direction not inconsistent with the provisions of this Act.'

It is true that sometimes the word 'may' is interpreted as meaning 'shall'. That construction would have commended itself to us in the instant case, had we come to the conclusion that the provisions contained in section 19-A were enacted for the benefit of those against whom the provisions of the Act are sought to be enforced. Further it may be noticed that the section does not provide for any enquiry by the Central Government. The parties affected are not required to be heard, not any decision rendered. On a plain reading of that section it is clear that the order or the direction contemplated thereunder is only an administrative or a ministerial order and not a judicial or quasi-judicial order. The Central Government is not required by the terms of the section to act judicially. Before closing this aspect of the case, it is necessary to mention that in the Act there is no provision barring civil suits. If any party is aggrieved by the stand taken by the authorities or by the order or the direction of the Central Government, it is open to it to challenge the legality or the correctness of the view taken or the order made in a properly instituted suit. The finality contemplated by section 19-A is, in our opinion, a finality as regards the departmental view. That view is not made binding on the opposite party. The order or direction given by the Central Government does not, and in fact, it cannot, bind the persons who are not parties before the Central Government. Our view in this regard finds support by the decisions of the Patna High Court, Bombay High Court, Allahabad High Court and Madras High Court."

20. Such of the High Courts as held that section 19-A of the Act invested the Central Government with the quasi-judicial powers further assumed that by implication holding of proper enquiry, hearing of the affected parties and giving of direction or passing of an order must necessarily be the dormant component of

the said provision. Deshpande, J. (as he then was) in *Wire Netting Stores* v. *Regional Provident Funds Commissioner and others* (5) while considering the constitutional vires of section 7-A and 19-A of the Act, after consideration of the decisions of different High Courts, clearly sought to do what is observed above and his following observations are in point :

> "Quasi-judicial powers may be exercised by two kinds of administrative authorities or tribunals, namely, (1) by those whose jurisdiction depends on facts and pre-conditions, the existence of which is to be decided by the civil Courts, and (2) those who are given the power to decide even the jurisdictional facts on the proof of which their jurisdiction depends. The possibility of arbitrary exercise of powers can exist with the latter but not with the former. The Commissioner acting under section 7-A of the Employees' Provident Funds Act belongs to the former category. The question whether a particular factory or establishment is covered by the Act and the scheme is not to be decided finally by the Commissioner but is open to decision by the civil Courts as well as by the High Courts and the Supreme Court. Sub-section (4) of section 7-A gives finality only to the determination of the amount due from the employer made by the Commissioner but not to the preliminary assessment of the coverage by the Commissioner. The hearing to be given to the employer before such preliminary assessment is implied. The fact that the requirement of such a hearing is not expressed in the statute does not, therefore, in any way mean that the Commissioner is not to give a hearing to the employer before making such a preliminary assessment. Exhaustive guidelines are laid down in Schedule 1 of the Act to be followed by the Commissioner in determining whether a particular industry is covered by the Act or not. The Commissioner is not authorised to act arbitrarily in deciding whether an industry was covered by the Act and the scheme or not. Further the decision of the Commissioner is liable to be reviewed by the Central Government under section 19-A and also by the civil Courts. The Act and the scheme completely confine the power of the Commissioner....."

(5) 1970 Lab. I.C. 1249.

This judgment in *Wire Netting Stores' case* (supra) was approved by a later Division Bench decision of that Court reported in *K. Gopalan* v. *The Union Government of India and others,* (6) and by Gujrat High Court in *Ram Narain and Company, a Partnership Firm, and others* v. *The Union of India and anothers,* (7).

(21) With respect, I entirely concur in the view taken by Hedge, J. in *Wadi Some Marketing Company (Private) Ltd's. case* (supra) when he holds that section 19-A of the Act does not invest the Central Government with the quasi-judicial powers.

(22) Sub-section (4) of section 7-A of the Act, which is the following terms, treats the order as final—

> "7-A(4) An order made under this section shall be final and shall not be questioned in any Court of law."

The legislature, while enacting this beneficial piece of legislation, intended that the purpose behind the said legislation and the scheme formulated there under should not be made a casualty in a protracted litigation and so it truly intended the order passed under section 7-A of the Act to be final for all intends and purposes. In my opinion, the order under section 7-A of the Act is final not only in regard to the amount determined therein but also in regard to the application of the provisions of the Act and the scheme made thereunder being applicable to the establishment and to the extent that Hedge, J. held that the order under section 7-A of the Act was final only in regard to the determination of the amount, with respect I must record my respectful dissent from the said view. Of course, no order would be final so far as the High Court's jurisdiction on this side is concerned. In common parlance, finality attaches to an order only if that order is not appealable or revisable. That would be so even when the order is not declared to be final, when no appeal or revision is provided there against, but where an order, which is declared to be final and where in terms no appeal or revision is provided against that, such an order a fortionari has to be treated as truly final and the provision of section 19-A of the Act which does not in term make the decision under section 7-A of the Act appealable or revisable, cannot be held to be a controlling provision in so far as the provision

(6) 1973 Lah. IC. 287.

(7) 1971 Lab. IC. 927.

of section 7-A of the Act is concerned which clearly gives the Regional Provident Funds Commissioner a quasi-judicial jurisdiction. The provision of section 19-A of the Act, in my opinion, reposes in the Central Government only administrative and ministerial power which has to be exercised for the purpose of removal of any difficulty in the working of the Act and the scheme made thereunder or for removal of doubts in regard to the five matters mentioned therein. The orders and the directions that the Central Government can pass or give and the provisions that the Central Government can make under the said provisions have to be such that they do not fetter the judicial discretion of the authority under section 7-A of the Act, for to hold otherwise would render the Provision of section 19-A of the Act vulnerable to an attack against its constitutional vires, in view of the following observations of Gajendragadkar, C.J. who wrote the judgment for the Bench, in B. Rajagopala Naidu v. State Transport Appellate Tribunal and others, (7A)—

> "In interpreting Section 43-A, we think, it would be legitimate to assume that the legislature intended to respect the basic and elementary Postulate of the rule of law, that in exercising their authority and in discharging their quasi-judicial function, the tribunals constituted under the Act must be left absolutely free to deal with the matter according to their best judgment. It is of the essence of fair and objective administration of law that the decision of the Judge or the Tribunal must be absolutely unfettered by any extraneous guidance by the executive of administrative wing of the State. If the exercise of discretion conferred on a quasi-judicial tribunal is controlled by any such direction that forges fetters on the exercise of quasi-judicial authority and the presence of such fetters would make the exercise of such authority completely inconsistent with the well-accepted notion of judicial Process. It is true that law can regulate the exercise of judicial powers. It may indicate by specific provisions on what matters the tribunals constituted by it should adjudicate. It may by specific provisions lay down the Principles which have to be followed by the Tribunals in dealing with the said matters. The scope of the jurisdiction of the Tribunals constituted by statute can well be regulated by the statute and principles for guidance of the said tribunals may also be

(7A) 1964 S.C.R. 1.

prescribed subject of course to the inevitable requirement that these provisions do not contravene the fundamental rights guaranteed by the Constitution. But what law and the provisions of law may legitimately do cannot be permitted to be done by administrative or executive orders. This position is so well established that we are reluctant to hold that in enacting Section 43-A the Madras Legislature intended to confer power on the State Government to invade the domain of the exercise of judicial power. In fact, if such had been the intention of the Madras Legislature and had been the true effect of the provisions of Section 43-A." Section 43-A itself would amount to an unreasonable contravention of fundamental rights of citizens and may have to be struck down as unconstitutional."

(23) For the reasons aforesaid, without going into the question as to whether the remedy envisaged in clause (3) of article 226 of the Constitution of India has or has not to be an adequate remedy for standing in the way of the maintainability of the writ petitioner, I hold that section 19-A of the Act does not confer any judicial powers on the Central Government in the matter and thus there is no question of it being approached by the petitioner against the impugned quasi-judicial order passed by respondent No. 1. Hence, I allow the writ petitions and set aside the impugned order, annexure P. 1. However, I leave the parties to bear their own costs.

A. S. Bains, J.

(24) I have read the judgment rendered by learned brother Tewatia, J., I agree with the conclusions arrived at with regard to the preliminary objection raised on behalf of the workmen of the petitioner-company to the maintainability of the writ petition in view of clause (3) of Article 226 of the Constitution. The objection precisely was that since an alternative remedy was provided by section 19-A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the Act) and the petitioner had not availed of the same, so in view of the provisions of clause (3) of Article 226 of the Constitution, the present writ petition does not lie. I am in agreement with the conclusions arrived at and extensively discussed by learned brother Tewatia, J. that the remedy as envisaged in Section 19-A of the Act cannot be called as a remedy and thus the petitioner-company cannot be barred

from challenging the impugned order by way of this writ petition. But, with utmost respect to the brother Judge, I do not agree with the interpretation given to the words "basic wages" for the purpose of reckoning the employer's contribution to the provident fund in terms of Section 6 of the Act. Brother Tewatia, J. has held that the remuneration received by the employees of the petitioner-company for working during additional hours fell in the category of allowance similar to the overtime allowance and, therefore, could not form part of the 'basic wages' as defined by clause (b) of section 2 of the Act.

(25) Facts need not be given as the same are very elaborately given in the judgment of brother Tewatia, J. But to appreciate the rival contentions raised by the counsel for the parties, it is necessary to reproduce the terms 'basic wages' as defined in clause (b) of section 2 of the Act:—

> "2. (b) 'Basic Wages' means all emoluments which are earned by an employee while on duty or on leave with wages in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include—
>
> (i) the cash value of any food concession;
>
> (ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of rise in the cost of living), house rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;
>
> (iii) any presents made by the employer."

From the reading of this provision it is plain that the basic wages shall include all emoluments which are earned by an employee while on duty or on leave with wages in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but shall not include any cash value of any food concession, any dearness allowance, house rent allowance, overtime allowance, bonus, commission or any other similar allowance or any presents made by the employer. The Regional Provident Fund Commissioner, respondent No. 1, has treated the remuneration

received by the employee for the work done during the 'additional hours' as part of the 'basic wages' and has demanded contribution in terms of section 6 of the Act on that basis. The petitioner's case is that the conditions of work and service of the employees in its establishment at all relevant times were governed by settlements arrived at between the petitioner (the employer) and its employees. There were three settlements with the employees. The first settlement is datd 28th March, 1966; the second settlement is dated 17th July, 1971 and the third settlement is dated 6th February, 1976. At present it is the last settlement that is said to be in operation. According to these settlements, three types of working hours are envisaged, i.e., (i) normal notified hours, (ii) additional hours, and (iii) overtime hours. Clauses (b) (i) and (ii) of Annexure VIII of 1976 Settlement indicates the basis of payment for additional hours and overtime hours work, which are as under:—

> "(i) *Additional Hours* : Where a worker works additional hours, i.e., beyond his normal working hours not constituting overtime, he will be paid an additional 50 per cent of the hourly basic wage for each such hour worked, i.e., time-and-a half.
>
> (ii) *Overtime Hours* : Where a worker works overtime as defined in the Punjab Shops and Commercial Establishments Act, 1958, he will be paid an additional 100 per cent of the hourly basic wage and of the hourly D.A. wage, i.e., 'double time'."

Thus, it is clear that additional hours do not constitute overtime even according to the Settlement of 1976 and the rate of payment is different for additional hours and overtime hours.

(26) The main argument advanced on behalf of the petitioner is that the employees had themselves agreed to these settlements and they cannot now take a stand that the additional hours will form part of the 'basic wages'. It is further contended that the petitioner-company is within its right to fix the normal working hours, which can be less than the statutory working hours and that it is the sweet-will of the company to allow additional working hours to any of its employees; the employees cannot as of right work for additional hours. Since they had agreed for the minimum working hours and also as of right they cannot demand additional working hours, the remuneration for additional working hours will not form

part of the basic wages, but will form part of the overtime allowance. The argument on behalf of the employees is that whatever remuneration is paid upto the statutory working hours, which are 48 hours a week and 9 hours a day, will form part of the basic wages, and if any worker is made to work beyond the statutory working hours, then such remuneration as is received by an employee will not form part of the basic wages for the purposes of this Act.

(27) It cannot be lost sight of that in the present case interpretation of a social and labour legislation is involved. The social and labour legislations were enacted in order to safeguard the rights and interests of the working class and these are the result of a prolonged struggle of the working class. It is a matter of common knowledge that at the advent of the industrialisation in the country, there were no such social legislations as the Minimum Wages Act, Industrial Disputes Act, the payment of Wages Act and the Workmen Compensation Act etc. Then no working hours were fixed, no minimum wages were fixed; there were no safeguards against the retrenchment of the workmen, their wrongful dismissals, termination of service, wrongful reduction in rank etc. It was only after the workers organised themselves into trade unions that these enactments were made by the Legislature. Before these enactments, the workers were totally at the mercy of the employer. They used to work long hours right from morning till evening and even during night sometime and no basic or minimum wages were fixed. In order to end this type of exploitation, these social legislations were made and even the benefits of these social legislations are sometimes denied by the employers and in these days of high prices the workers are not able to make their both ends meet. In a civilized society, every person is entitled to the basic needs of life such as lodging, boarding and clothing to keep his body and soul together. It is in this background that the expression 'basic wages' is to be interpreted as defined in the Act. The last settlement itself shows that two types of remuneration are fixed for work being done during the additional hours and overtime hours. While remuneration for additional hours, i.e. beyond the normal hours, is fixed at one and a half times, the remuneration for overtime, i.e. beyond the statutory hours is fixed at double the normal hour rate. It clearly shows that remuneration for additional hours is not considered as an overtime allowance and two rates of payment are fixed, one for the additional hours which come within the normal statutory working hours and the other for the overtime hours which are beyond the normal statutory working hours.

(28) It is canvassed on behalf of the petitioner company that the employer and the employees had, in a binding contract, agreed as to what would be the normal working hours of the establishment and payment to the employees for working beyond those hours would be a payment which would partake the character of an allowance similar to the 'overtime allowance', which is 'exempted by sub-clause (ii) of clause (b) of section 2 of the Act from being included in the basic wages of the employees for the purposes of section 6 of the Act. In this connection, reliance has been placed on clause (iv) (c) (ii) of Annexure VIII annexed to the 1966 Settlement, which is in the following terms:—

> "No additional overtime hours shall be worked without the prior permission of a Member of Management."

I do not find any merit in this contention, firstly, because the 1966 Settlement is not in force now. Even if it be in force it makes no difference. It is a matter of common knowledge that the workmen cannot work in any establishment beyond the normal hours as of right. It is only with the permission of the management that they can work during the additional hours. Therefore, it will not come within the mischief of 'additional hours' or 'overtime hours' by virtue of the expression "any other similar allowance payable to the employee in respect of his employment or of work done in such employment" occurring in sub-clause (ii) of clause (b) of section 2 of the Act. Under section 7 of the Punjab Shops and Commercial Establishments Act, 1958 and section 51 of the Factories Act, 1948, maximum working hours for any one day and for a week have been fixed and it is provided that for work beyond these hours, the employees would be entitled to such rate of remuneration as provided by clause (b) of sub-section (2) of section 7 of the Punjab Shops and Commercial Establishments Act, 1958 and section 59 of the Factories Act 1948. The maximum hours fixed are 48 per week and 9 per day, which means that the normal working hours of a factory or establishment would not exceed such statutory hours and the statutory hours would normally be the working hours of that establishment. Section 33 of the Punjab Shops and Commercial Establishments Act impliedly prohibits the contracting out of the Act and section 26 thereof provides penalty for the contravention of any provision of that Act. However, it is true that the normal working hours of a given factory or establishment may vary in each establishment with

regard to the nature and type of the work, environment etc., it can be less than the statutory hours, but cannot be more than the statutory hours. Reliance has been placed by the petitioner-company on the observations of their Lordships of the Supreme Court in *Indian Oxygen Limited* v. *Their Workmen* (8). In that case, one of the disputes related to the workers' demand to the effect that the payment of 'overtime allowance' to the office staff should be 1½ times the ordinary rate beyond their normal duty hours. It was urged on behalf of the management that the company could not be asked to pay more than at the ordinary rate of wages payable to workmen if they were asked to work beyond 39 hours but not exceeding 48 hours, for the company was well within its right to have the employees work 48 hours a week in view of the Bihar Shops and Establishment Act. In that case, the company had been following 39 hours a week as the scheduled duty or normal working hours. Since the workers were demanding overtime allowance, their Lordships of the Supreme Court, in that situation, held that the normal daily or weekly working hours in an establishment can be less than the statutory hours fixed by the provisions of the Shops and Commercial Establishments Act and where an employee is required to work beyond such lesser normal hours of the establishment, then he would be entitled to special remuneration, although the total normal working hours do not go beyond 48 working hours a week. Since the workers in that case were demanding higher rate for the additional working hours than the working hours fixed by the company, their Lordships of the Supreme Court, held that they were entitled to a special remuneration beyond the normal working hours. The facts of this authority are clearly distinguishable from those of the present case. In the reported case, the question of determining the overtime allowance beyond the normal duty hours was before their lordships of the Supreme Court. While in the instant case we are called upon to interpret the term 'basic wages' as defined in the Act. The principle of law as laid down in *Jay Engineering Works Limited and others* v. *Union of India and others* (supra) is applicable to the present case. The question for determination in that case was : whether a certain payment partook the character of production bonus and thus was to be excluded from the term 'basic wages' for the purpose of employer's contribution towards the provident fund in terms of section 6 of the Act. In that case, the employer and the

(8) A.I.R. 1969 S.C. 306.

employees had agreed upon a scheme, which provided that a certain proportion of the production was to correspond to the minimum basic wages and dearness allowance fixed by a certain award, which was termed as 'quota'. The production up to the 'quota' was paid for at piece-rate basis, but there was 'norm' also fixed which was much higher than the 'quota' and every workman was expected to produce the 'norm' as the minimum production. If a workman did not produce the 'norm', he was guilty of misconduct and would be liable to dismissal as the agreement provided that any deliberate deviation from production 'norm' would amount to go-slow tactics. The 'standing order', of course, provided that go-slow tactics would amount to misconduct and might lead to dismissal of the employee concerned. On behalf of the workers it was canvassed that a scheme of the kind prevalent in the company, production bonus, as understood in industry, only started after the 'norm' and that payment for production between the 'quota' and the 'norm' was nothing more than the 'basic wages' as defined in the Act. Their Lordships of the Supreme Court agreed with that contention and held that in a typical production bonus scheme the worker was not bound to produce more than the base or standard, though he might do so in order that his earnings might go up. In the scheme in force in the employer company, however, the worker could not stop at the quota; he must produce up to the 'norm' on pain of being charged with misconduct in the shape of go-slow and being liable to be dismissed. It was further held by their Lordships of the Supreme Court as under:—

> "In a typical production bonus scheme the worker is not bound to produce more than the base or standard, though he may do so in order that his earnings may go up. In the scheme in force in the employer company, however, the worker could not stop at the quota; he must produce up to the norm on pain of being charged with misconduct in the shape of go-slow and being liable to be dismissed. Therefore, the real base or standard which is the core of a typical production bonus scheme was, in the case of the Company, the norm and any payment for production above the norm would be real production bonus under the scheme. The production up to the norm being the standard which was expected of a workman in the company,

payment up to that production must be basic wages as defined in the Act.

(2) That the mere fact that part of the basic wage as defined in the Act was paid in one form as a time wage and part in another form as a piece-rate wage would make no difference to the whole being basic wage within the meaning of the Act.

(3) That this payment for work done between the quota and the norm could not be treated as any 'other similar allowance' within section 2(b) (ii) as the allowances mentioned in the clause were dearness allowance, house-rent allowance, overtime allowance, bonus and commission and any 'other similar allowance' must be of same kind.

(4) That the portion of the payment which was made by the company for production above the 'norm' would be production bonus and would be excluded from the term 'basic wages' as defined in section 2(b)."

Thus, from the above observations it is plain that the portion of the payment which is made by the management for production up to the quota as well as production between the quota and the norm would come within the term "basic wages" as defined in the Act and the portion of the payment which is made by the management above the norm would be 'production bonus' and not the 'basic wages'. Similar observations are made in *M/s. Bridge and Roofs Company Limited* v. *Union of India and others* (9). There can be such establishments where the managements may resort to a device by fixing normal working hours very low and thus deprive the workers of the provident fund to which they are entitled for working additional hours within the statutory hours.

(29) Hence, it cannot be held in the instant case that the additional hours, which are within the statutory hours, will amount to overtime or a similar allowance so as to exclude it from the 'basic wages'.

(30) For the reasons recorded above, I hold that the remuneration received by the employes of the petitioner-company for working

(9) A.I.R. 1963 S.C. 1474.

during statutory hours does not fall in the category of allowance similar to the overtime allowance but would form part of the 'basic wages' as defined in the Act.

(31) Consequently, these writ petitions fail and are dismissed with costs.

Difference of opinion

(32) Before the Bench two points were raised, one a preliminary objection, raised by the respondents, to the maintainability of the petition, and the other, canvassed by the petitioner, was to the effect that the remuneration paid for working during the 'additional hours' in the establishment of the petitioner Company, being of the nature of remuneration for 'over-time' work, was not to be considered a part of the 'basic wage' for the purpose of reckoning the employer's contribution towards the provident fund scheme in terms of section 6 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

(33) While we have agreed,—*vide* opinion rendered above, with regard to the point pertaining to the preliminary objection holding that section 19-A of the said Act does not provide an alternative remedy and thus clause (3) of article 226 of the Constitution does not bar the maintainability of the petition, we have differed regarding the second point. In view of the aforesaid difference of opinion, we direct that the papers of this case be placed before Hon'ble the Chief Justice for refering the matter to a third Judge or to a larger Bench in terms of clause 26 of the Letters Patent and section 98 of the Civil Procedure Code.

D. S. Tewatia, J.
A. S. Bains, J.

S. P. Goyal, J.

(34) The question which needs determination in these cases is as to whether the wages paid by the petitioner-Company to its employees for additional working hours form part of the basic wages. The basic wages are defined in clause (b) of Section 2 of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act') which reads as under:—

"2.(b) 'basic wages' means all emoluments which are earned by an employee while on duty or on leave with wages

in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include—

(i) the cash value of any food concession;

(ii) any dearness allowance (that is to say, all cash payments by whatever name called, paid to an employee on account of a rise in the cost of living), "house-rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;

(iii) any presents made by the employer."

The Regional Provident Fund Commissioner, respondent No. 1, treated the remunerations received by the employees for the work done during the 'additional hours' as part of the 'basic wages' and demanded the contribution in terms of Section 6 of the Act on that basis. The petitioner, on the other hand, contended that the remunerations paid for 'additional hours' fell in the category of 'any other similar allowance' payable to the employees and, as such, did not form part of the 'basic wages'. The matter intially came up for hearing before the Division Bench and Tewatia, Judge answered the question in favour of the petitioner while A. S. Bains, Judge in favour of the respondents. This is how the said question has been referred to me for resolving the conflict

(35) It is admitted between the parties that the service conditions of the employees are regulated by the three setllements arrived at between them on March 23, 1966, July 17, 1971 and February 6, 1976. Three types of working hours are stipulated in the said settlements namely 'normal notified hours', 'additional hours' and 'overtime hours'. 'Additional hours' are defined in Clause 13(a) of the Standard Order annexed to the settlement which reads as under :—

"Any hour worked by an employee in addition to normal hours of work, but not in excess of the hours laid down by the Punjab Shops and Commercial Establishments Act, 1958, for commercial establishments shall be referred to as 'Additional hours'."

Clause 13(b) besides providing for the payment of the additional hours work also expressly provides that no employee would work in excess of his normal hours of work without obtaining previous permission from the Office Assistant or his deputy. Clauses (b) (i) and (ii) provide that an employee for additional hours work shall be paid an additional 50 per cent and for overtime work an additional 100 per cent of the hourly basic wage for each such hour's work. It was further stipulated in the settlements that the additional hours and overtime wages would not form part of the 'basic wage' as is evident from sub-clause (g) of clause 4 of Annexure III.

(36) The contention raised before the Division Bench by the respondents was that the above noted clauses of the settlements envisage the statutory hours mentioned in Section 7 of the Punjab Shops and Commercial Establishments Act, 1958, as the normal working hours for the establishments and that the device whereby the statutory hours were bifurcated into two periods namely the 'notified hours' and the 'additional hours' could not be made use of by the employer to treat the remunerations paid for the additional hours as 'overtime allowance' or 'other similar allowance' within the meaning of said Section 2(b)(ii). Reliance for this proposition was placed on *Jay Engineering Works Ltd. and others* v. *Union of India and others* (supra). My learned brother Tewatia, J. after analysing the judgment in *Jay Engineering Works Ltd. and others case* (supra) in detail, distinguished the same and relying on *Indian Oxygen Ltd.* v. *Their Workmen* (supra) held that Section 7 of the Punjab Shops and Commercial Establishments Act only provides the maximum normal working hours and a Company was well within its rights to fix any lesser number of working hours and that the remunerations received by the employees for working during the additional hours partake the character of 'overtime allowance' by virtue of the expression 'any other similar allowance' payable to the employee in respect of his employment or of work done in such employment occurring in sub-clause (ii) of clause (b) of Section 2 of the Act.

(37) The reasons given by Bains, J. for his view were as under :—

> "The last settlement itself shows that two types of remunerations are fixed for work being done during the additional hours and overtime hours. While remuneration for

additional hours, that is beyond the normal hours, is fixed at one and a half times, the remuneration for overtime, that is beyond the statutory hours, is fixed at double the normal hour rate. It clearly shows that remuneration for additional hours is not considered as an overtime allowance and two rates of payment are fixed, one for the additional hours which come within the normal statutory working hours and the other for the overtime hours which are beyond the normal statutory working hours.

....

Under Section 7 of the Punjab Shops and Commercial Establishments Act, 1958 and Section 51 of the Factories Act, 1948, maximum working hours for any one day and for a week have been fixed and it is provided that for work beyond those hours, the employees would be entitled to such rate of remuneration as provided by clause (b) of sub-section (2) of Section 7 of the Punjab Shops and Commercial Establishments Act, 1958 and Section 59 of the Factories Act, 1948. The maximum hours fixed are 48 per week and 9 per day, which means that the normal working hours of a factory or establishment would not exceed such statutory hours and the statutory hours would normally be the working hours of that establishment."

With due respect to my learned brother, I regret my inability to subscribe to the said reasoning which runs counter to the decision of the Supreme Court in *Indian Oxygen Ltd. case* (supra) wherein it was held that normal working hours could be fixed less than 48 hours a week. Reliance on *Jay Engineering Works Ltd. case* (supra) again was misplaced. In that case, the worker was required to reach the production level upto the norm prescribed as otherwise he was liable to be dismissed for mis-conduct and it was for this reason that the contention of the workers that in a scheme of the kind prevalent in the company, production bonus, as understood in industry, only started after the 'norm' and that payment for production between the 'quota' and the 'norm' was nothing more than the 'basic wages' as defined in the Act, was upheld. Reference was also made to the following observations of the Supreme Court in *M/s. Bridge and Roofs Co. Ltd.* v. *Union of India and others* (supra):—

There can be such establishments where the managements may resort to a device by fixing normal working hours

very low and thus deprive the workers of the provident fund to which they are entitled for working additional hours within the statutory hours."

But, as in the present case, it is nobody's case that the management has fixed the lesser number of working hours by way of a device to deprive the workers of the provident fund, or that the wages fixed for the normal working hours were not adequate or reasonable, so no help could be sought from the said observations of the Supreme Court for taking a view that the allowance paid to workers for additional hours was not 'other similar allowance' of the nature of 'overtime allowance'. I, therefore, fully endorse the view expressed by Tewatia, J. with the result that these petitions are allowed and the impugned order, Annexure P-1, quashed. In the circumstances of the case, the parties are left to bear their own costs.

R.N.R.

Before K. S. Tiwana and M. M. Punchhi, JJ.

SOM DASS and others,—*Appellants.*

versus

THE SHIROMANI GURDWARA PRABANDHAK COMMITTEE, AMRITSAR,—*Respondent.*

F.A.O. No. 449 of 1978

December 16, 1986

Sikh Gurdwaras Act (XXIV of 1925)—Sections 4, 8, 10 and 16(2)(iii)—Guru Granth Sahib worshipped publically in a Sikh Gurdwara—Whether a juristic person—Whether capable of holding property.

Held (per majority D. S. Tewatia and M. M. Punchhi, JJ. K. S. Tiwana, J. contra) that the juristic person is a fiction of law. The affairs of a juristic person are managed by a living person and therefore, law always envisages the existence of a manager of the juristic person. Hindu Law envisages a Shebait to be the Manager of the idol. The judicial precedents, therefore, came to recognise idol as the jursitic person and not the temple as the Hindu law did not envisage a manager of a temple. Sikh Gurdwara which is treated as a juristic person on the analogy of a Math is envisaged, under the Sikh Gurdwaras Act to be managed by a Managing Committee. There is no provision in Sikh Gurdwaras Act envisaging a