(4) Sections 7(1) and 11(7) are operative in mutually exclusive fields inasmuch as the former applies at the declaratory stage and the latter at the executory stage in order to de-link permanently the landowner with his surplus area; and

(5) The Letters Patent Bench's decision in *Jagar Singh's case* (supra) is held not to be good law and hereby overruled.

(33) I have no difference to the result of the petition and the same deserve acceptance, which is hereby done, but with no order as to costs.

N. K. S.

FULL BENCH

Before S. S. Sandhawalia, C.J., K. S. Tiwana and Harbans Lal, JJ.

EMPLOYEES' STATE INSURANCE CORPORATION,—*Appellant.*

versus

OSWAL WOOLLEN MILLS LTD.,—*Respondent.*

First Appeal from Order No. 451 *of* 1978.

July 16, 1980.

Employees' State Insurance Act (*XXXIV of* 1948)—*Sections* 2(9), 38, 39 *and* 42—*Casual employment of a person in a factory—Person so employed—Whether an employee within the meaning of section* 2(9).

Held, that a bare look at the provisions of section 2(9) of the Employees' State Insurance Act, 1948 would make manifest the anxiety of the Legislature to couch the definition in such wide ranging terms so as to bring within its ambit all persons employed in the factory or establishment, both with regard to the nature of the work as also the mode or manner in which the employment has been brought about. What first deserves to be highlighted is that an 'employee' is not confined merely to a person engaged for the work of the factory or establishment alone. Clause (i) designedly extends this to work which may be merely incidental or preliminary and even merely connected therewith. The wide amplitude of the language is significant as this would at once negative and set at rest

any argument that the employment must necessarily be related directly to the actual work of the factory or establishment as such. Again, whilst clause (i) deliberately extends the scope and nature of the work, clauses (ii) and (iii) give an equally wider amplitude to the mode and manner of the engagement of such an employee. Whilst clause (i) covers the case of a direct employee by the employer, clause (ii) goes further to say that such a person may equally be employed through a variety of middlemen. Even the persons so engaged would be within the ambit of the term 'employee'. Perhaps to remove all doubts clause (iii) goes further to bring within its wing persons lent for employment or hired out to the principal employer, though actually they may be the employees of another. Not only this, the lending or letting on hire of services may even be entirely temporary. However, section 2(9) of the Act does not stand in isolation and other provisions of the Act such as sections 38, 39(4) & 42(3) equally are a pointer to the same direction.

Again in construing the relevant provisions one cannot lose sight of the fact that the employees' State Insurance Act is a beneficient piece of legislation directly intended to further the interest and welfare of the employees of factories and establishments. Indeed, it would come within the class of legislation which has been conveniently termed as 'social engineering'. The object plainly is to provide cover for the risk and hazards of employment to all persons who may come within its ambit. A casual employee may be equally and perhaps more exposed to the hazards of employment in a particular factory or establishment. The provisions of such like beneficient legislation have, indeed, to be construed liberally and in favour of the workers and employees. It is thus evident that even a person casually employed in a factory or establishment is within the ambit of the definition spelled out in section 2(9) of the Act.

(Paras 4 to 8 and 17).

Employees' State Insurance Corporation vs. *Gnanambikai Mills Ltd.* 1974(2) L.L.J. 530.

Employees State Insurance Corporation vs. *Sri Sakthi Textiles (P.) Ltd. Pollachi,* 1974(46) F.J.R. 118.

E.S.I.C. vs. *Ramchandran and others,* 1977(2) Labour Law Journal 214.

Dissented From.

Employees' State Insurance Corporation vs. *Onkar Nath Gupta,* 1975 P.L.R. 79.

OVERRULED.

First Appeal from the Order of the Court of Shri Pawan Kumar Garg, Employee's State Insurance Court, Ludhiana, dated 26th August, 1978, accepting the application only to the extent that the respondent

Corporation shall not demand the contribution on the sum of Rs. 11,200 and the interest thereon, but upholding their demand on contribution of Rs. 5,720 with interest at the rate of 6 per cent thereon and leaving the parties to bear their own costs.

K. L. Kapur, Advocate with V. K. Suri, Advocate.

Bhagirath Dass, Advocate with S. K. Heeraji, Advocate.

JUDGMENT

S. S. Sandhawalia, C. J.

(1) Whether a person employed casually in a factory or an establishment is within the ambit of the definition of an 'employee' as laid in section 2 of sub-section (9) of the Employees' State Insurance Act?—is the somewhat meaningful question which has necessitated its consideration by the Full Bench.

(2) Learned counsel for the parties are agreed that in essence the answer to the aforesaid question would govern all these four appeals which will be disposed of by this single judgment .

(3) To provide the necessary matrix of facts for the legal issue, it suffices to advert briefly to those in *Employees' State Insurance Corporation, Chandigarh* v. *Oswal Woollen Mills Ltd., Ludhiana,* F. A. O. No. 451 of 1978. The respondent-Mill had moved an application before the Employees State Insurance Court challenging a notice by the Employees' State Insurance Corporation (hereinafter called 'the Corporation' requiring them to deposit certain sums of money as contribution both of the employer and the employee. The material item pertains to persons who, according to the respondent-Mill were casual labourers employed only for the construction and maintenance of the premises of its factory. Payments to these casual employees had been made under the head "Building repairs and factory construction". The stand of the respondent-Mill was that the amounts so paid to casual labourers were not wages paid to employees and therefore, they were not liable to pay any contribution with regard thereto. The firm stand of the appellant-Corporation, on the other hand, was that these casual labourers were als oemployees within the meaning of the Act, and therefore, the respondent-Mill was liable, both for the employees' share and the employers' share therefor. The Court below, after noticing some conflict of authority chose to follow the Division Bench judgment

in *Employees' State Insurance Corporation, Chandigarh* v. *Onkar Nath Gupta* (1), and held that these casual workers were not covered by the statutory provisions. The Corporation has come up by way of appeal and at the motion stage the case was admitted to a hearing by the Full Bench in view of an apparent conflict of authority within this Court itself.

(4) As would be evident from the formulation of the legal question, at the very out-set, one must inevitably first turn to the relevant provision of the statute and for facility of reference, section 2(9) of the Employees' State Insurance Act, 1948 (hereinafter called 'the Act'), may be read:—

> "'employee' means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and—
>
> (i) who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or
>
> (ii) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or
>
> (iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service;
>
> (and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or

(1) 1975 P.L.R. 79.

the distribution or sale of the products of, the factory or establishment; but does not include),

* * * *

* * * *

Now a bare look at the aforesaid provisions would make manifest the anxiety of the Legislature to couch the definition in such wide ranging terms so as to bring within its ambit all persons employed in the factory or establishment, both with regard to the nature of the work as also the mode or manner in which the employment has been brought about. What first deserves to be highlighted is that an 'employee' is not confined merely to a person engaged for the work of the factory or establishment alone, clause (i) designedly extends this to work which may be merely incidental or preliminary and even merely connected therewith. The wide amplitude of the language is significant. This would at once negative and set at rest any argument that the employment must necessarily be related directly to the actual work of the factory or establishment as such.

(5) Again while clause (i) deliberately extends the scope and nature of the work, clauses (ii) and (iii) give an equally wider amplitude to the mode and manner of the engagement of such an employee. It calls for notice that whilst clause (i) covers the case of a direct employee by the employer, clause (ii) goes further to say that such a person may equally be employed through a variety of middlemen. Even the persons so engaged would be within the ambit of the term 'employee'. Perhaps to remove all doubts clause (iii) goes further to bring within its wing persons lent for employment or hired out to the principal employer, though actually they may be the employees of another. Not only this, it calls for pointed mention that this lending or letting on hire of services may even be entirely temporary.

(6) Even though the intent of the legislature in originally framing the aforesaid definition is perhaps itself evident enough, yet a sharper edge has been given thereto by the following insertion made in clause (iii) by Act No. 44 of 1966:—

"— and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or

with the purchase of raw materials for, or the distribution or sale of the products of, the factory or establishment ... ;"

Though it is not always possible to fathom the motivation of the legislature, it would call for pointed notice that the Division Bench of the Bombay High Court in *Employees' State Insurance Corporation, Bombay* v. *Raman (Chittur Harihar Iyer,* (2) took a restricted view of the original definition while holding that a person working as a general assistant and doing clerical and typing work in the administrative office of the management, even though located in the same compound of the factory, was not covered by the definition of an 'employee'. To take away the effect of this judgment or similar views and to leave no manner of doubt as to the intention of the legislature to brook any limitations on the definition, Act No. 44 of 1966 was enacted whereby now it has been specifically provided that all persons employed on any work connected with the administration of the factory or establishment or any part, department, or branch thereof, or with the purchase of raw material or distribution or sale of its products, which would include marketing elsewhere and far beyond the factory premises, would also be within the ambit of the definition of an 'employee'.

7. However, section 2(9) of the Act does not stand in isolation and other provisions of the Act equally are a pointer to the same direction. Section 38 lays a mandate that all employees of the factories or establishments to which the Act applies shall be insured in the manner provided by this Act. The succeeding section 39 of the Act, with regard to the contributions then meaningfully has the following sub-section (4):—

> "The contributions payable in respect of each week shall ordinarily fall due on the last day of the week, *and where an employee is employed for part of the week, or is employed under two or more employers during the same week, the contributions shall fall due on such days as may be specified in the regulations*".

This again would indicate that contributions are enjoined for an employee who is employed even for a part of a week or is employed

(2) 1957 L.L.J. 267.

under two or more employers during the same week. If employment for a part of a week is envisaged, it is obvious that this may well be even for a day and that inevitably would mean casual employment. Turning now to section 42, sub-section (3) of the Explanation thereto, again makes reference of the payment of wages to an employee for a portion of the week and visualises the employers' and the employees' contribution with regard thereto. This appears to be yet another indication of even minuscule employment being within the ambit of the statute.

8. Again in construing the relevant provisions, one cannot lose sight of the fact that the Employees' State Insurance Act is a beneficient piece of legislation directly intended to further the interest and welfare of the employees of factories and establishments. Indeed it would come within the class of legislation which has been conveniently termed as 'social engineering'. The object plainly is to provide cover for the risk and hazards of employment to all persons who may come within its ambit. It may be highlighted that even a casual employee may be equally and perhaps more exposed to the hazards of employment in a particular factory or establishment. Today it needs no great erudition to hold that the provisions of such like beneficient legislation have to be construed liberally and in favour of the workers and employees. Not only is this clear as a canon of construction, but on the specific provisions of this very Act, the final Court has taken an identical view in the following terms in *Royal Talkies, Hyderabad and others* v. *Employees' State Insurance Corporation through its Regional Director, Hill Fort Road, Hyderabad,* (3)—

> "... The benefits belong to the employees and are intended in embrace as extensive a circle as is feasible. In short, the social orientation, protective purpose and human coverage of the Act are important considerations in the statutory construction, more weighty than mere logomachy or grammatical nicety."

9. It would thus appear from the above "that irrespective of principle or precedent, the language of section 2(9) of the Act after amendment itself is of such wide ranging amplitude that the intention of the legislature to bring in employees of all kinds—whether

(3) 1978 S.C. 1481.

regular, temporary or casual—within its scope seems to be manifest. This is further buttressed by the afore-referred provisions of sections 38, 39(4) and sub-section (3) of the Explanation to section 42 of the Act.

10. Mr. Bhagirath Dass, the learned counsel for the respondents in F.A.O. No. 451 of 1979 had chosen to build his argument primarily on the fine nuances or the thin line of distinction between a person employed in the *work of the factory* as against merely the *work for the factory.* Reliance in this context was placed on *Dharangadhra Chemical Works Ltd.* v. *State of Saurashtra and others,* (4).

11. It is plain that the aforesaid argument draws its inspiration from some passing observations made by their Lordships in *Dharangadhra Chemical Works Ltd. case* (supra). Now apart from the fact that the alleged line of distinction between the *work of the factory and the work for the factory* is so hair-thin, was to be undecipherable at certain points, it must be pointedly noticed that these considerations arose only with regard to the specific definition of a workman under the Industrial Disputes Act, 1947. Therein section 2(s) is in the following terms:—

> "workman" means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward whether the terms of employment be expressed or implied, and for the purposes of any proceedings under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute or whose dismissal, discharge, or retrenchment has led to that dispute, but does not include any such person—
>
> (i) who is subject to the Army Act, 1950 (46 of 1950), or the Air Force Act, 1950 (45 of 1950) or the Navy (Discipline) Act, 1934 (34 of 1934); or
>
> (ii) who is employed in the police service or as an officer or other employee of a prison; or

(4) A.I.R. 1957 S.C. 264.

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the officer or by reason of the powers vested in him, functions mainly of a managerial nature."

12. Now, the great and significant difference between the language of the afore-quoted definition and that of an employee under the Act which we are called upon to construe is too patent to call for any long disertation. It suffices to mention that whereas under the Act, any work, even incidental or preliminary or connected with the work of the factory or establishment is within the ambit of the definition, such wide ranging language is conspicuous by its absence in the definition of the 'workman' under the Industrial Disputes Act, 1947. The difference in the language of section 2(9) of the Act and that of section 2(s) of the Industrial Disputes Act, is so significant that any further elaboration would be wasteful. The language of the two definitions being far from *pari materia,* is in fact so divergent that to draw any analogy betwixt the two, both from the proivsions of the statute itself or from precedents interpreting the definition of the Industrial Disputes Act, 1947, would be merely inviting pit-falls. It is a hallowed rule of construction that in construing a statute, the definitions from an altogether different enactment are not helpful and indeed dangerous to advert to and the more so, where their language is plainly and significantly different. It has been so held on the high authority of *Laurence Arthur Adamaon and Ors.* v. *Malbourna and Metropolitan Board of Works,* (5), which has been unreservedly followed in *Jainaryan Ramkisan* v. *Motiram Gandaram* (6).

(13) Now what has been said in the context of the Industrial Disputes Act, 1947 applies with the same, if not with the greater degree of force, to the definitions in other industrial laws. Therefore, it suffices to notice that the definition of a 'worker' under section 2(1) of the Factories Act, 1948 and of an 'employee' under section 2(f) of the Employees' Provident Fund and Miscellaneous

(5) A.I.R. 1929 Privy Council 181.

(6) A.I.R. 1949 Nagpur 34.

Provisions Act, 1952 can again not be termed as in *pari materia* with the definition of 'employee' under section 2(9) of the Act, which we are called upon to construe. Indeed in *The Nagpur Electric Light and Power Co., Ltd. etc.* v. *The Regional Director, Employees' State Insurance Corporation, etc.*, (7), their Lordships had an occasion to compare the definition of the 'employee' under the Act and that of the 'worker' under the Factories Act, 1948 and it was observed as folows:—

> "It is to be seen that the definition of an employee in the Employees' State Insurance Act is wider than that of a worker in the Factories Act. The object of the Factories Act is to secure the health, safety, welfare, proper working hours, leave and other benefits for workers employed in factories. The benefit of this Act does not extend to field workers working outside the factory, see the *State of Uttar Pradesh* v. *M. P. Singh*, (8). The object of the Employees' State Insurance Act is to secure sickness, maternity, disablement and medical benefits to employees of factories and establishments and dependents' benefits to their dependants. The benefits of this Act extends *inter alia* to the employees mentioned in section 2(9) (i) whether working inside the factory or establishment or elsewhere".

Therefore, it appears to me as totally wasteful to advert to authorities with regard to the definition of a 'worker' or 'workman' or 'employee' under the innumerable other statutes. For this basic reason, it is unnecessary to even advert to or distinguish judgments construing the definitions couched in different language in various other statutes to which counsel had made reference by way of analogy.

12. The afore-mentioned contention of Mr. Bhagirath Dass also deserves to be refuted from another angle. The learned counsel had very fairly conceded that even a casual employee employed for the work of the factory is within the ambit of the definition of 'employee' under section 2(9) of the Act. With great candour he

(7) A.I.R. 1967 S.C. 1364.
(8) 1960—2 S.C.R. 605 (A.I.R. 1960 S.C. 569).

also conceded that regular employees of the factory or establishment, who are employed merely for the work for the factory, would also come within the ambit of an 'employee' under the Act. The sole distinction which he wished to draw was that a casual employee who is employed not for the work of the factory or the establishment, but merely the work for the factory or establishment is not within the ambit of the definition of the 'employee' under the Act. It was in this context that the learned counsel had attempted to highlight, what according to him was the difference betwixt the work of the factory or establishment as against the work for the factory or establishment. For example, in a textile factory a person employed in the actual weaving of the cloth would be one employed in the work of the factory whilst regular employees for the security or the maintenance of the factory compound would be doing work for the factory.

13. The fallacy of the aforesaid argument appears to be obvious. Once it is held and even has been fairly conceded that a regular employee when doing work for the factory is within the ambit of the definition, it does not stand to reason that a casual employee doing identical work would fall outside thereof. One can visualize at the same time two employees jointly doing the same job one of them being a regular employee of the factory or the establishment and the other a casual employee, the nature of the work being for the factory and not of the factory. Supposing an accident takes place resulting in injuries to both the employees during the course of employment, it would plainly be illogical to hold that the beneficient provisions of the Act should be available to the regular employee, but the casual employee would be disentitled thereto. Merely the temporary or the permanent nature of the employment in my view can not make any difference about the applicability of the Act to persons employed for identical work. The beneficient provisions are plainly envisaged to protect both the regular and casual employees in such a situation. Indeed when frontally faced with this situation, Mr. Bhagirath Dass with his usual illimitable candour stated that any answer to this situation was beyond him, but that according to him, was the state of the existing law. I am unable to agree to an interpretation, which, when tested tends to violate the basic canons of logic.

14. Whilst the matter thus seems to be reasonably clear, both on the language of the statute as also on principle, it equally has the weight of authority behind it. Turning inevitably first to the

judgment of this court, it was held by the Division Bench in Em-ployees' *State Insurance Corporation* v. *A. L. Puri and another,* (9), that the consideration whether the worker is either permanent or temporary or casual may not be of any relevance in the context whether such an employee would come under the definition of this very Act. A well reasoned judgment of the Andhra Pradesh High Court in *S. Ramaswamy* and *Union of India and others,* (10), has again taken the same view. A Division Bench judgment of the Karnataka High Court in *Regional Director, E.S.I.C. Bangalore and Davangore Cotton Mills,* (11), categorically held that persons casually employed came within the ambit of the definition under stction 2(9) of the Act. This view was sought to be challenged and on a reconsidera-tion of the whole matter, the Full Bench of the Karnataka High Court in *The Regional Director, Employees' State Insurance Cor-poration, Bangalore-1* v. *M/s. Sarvarna Saw Mills,* (12) has re-affirmed its earlier stand. It is thus evident that the weight of authority is clearly in support of the view that casual employees are as much within the scope of the Act as regular ones.

15. In fairness to the learned counsel for the respondents, their reliance on the judgments of the Madras High Court must be noticed. It was first in *Employees' State Insurance Corporation re-persented by Regional Director, Madras,* vs. *Gnanambikai Mills Limited* (13), that it was observed that the Act was not intended to apply to casual employees. Reference to the judgment therein would indicate that the matter was not adequately canvassed before the Bench either on principle or precedent. Indeed not a single judgment has been referred to. The same view has been later taken in the said Court in *Employees' State Insurance Corporation* v. *Sri Sakthi Textiles (P) Ltd., Pollachi,* (14), and *E.S.I.C.* and *K. Ramachandran and others,* (15). It is unnecessary to analyse and distinguish these authorities individually because it has been ade-quately so done in the judgments of the Andhra Pradesh and

(9) 1971 P.L.R. 178.
(10) 1977 (1) L.L.J. 54.
(11) 1977 (2) L.L.J. 404.
(12) 1979 Labour and Industrial cases 1335.
(13) 1974 (2) L.L.J. 510.
(14) 1974 (46) F.J.R. 118.
(15) 1977 (2) Labour Law Journal 214.

Karnataka High Courts which have been earlier referred to. For the reasons recorded therein, I am inclined to adopt the same view and would respectfully dissent from the Madras stand in the same vein.

16. Coming, however, to the Division Bench judgment of this Court in *Employees State Insurance Corporation, Chandigarh* v. *Onkar Nath Gupta* (supra), the reconsideration of which had particularly necessitated the consideration by a larger Bench. It may be noticed at the out set that the matter does not seem to have been adequately debated before their Lordships. A reference to the judgment would indicate that the major part of it was devoted to amounts paid as stipends to learners, rewards to employees, and those paid to various persons for loading and unloading of goods. Generally on facts the view of the learned Single Judge was upheld by the Letters Patent Bench. However, in a single paragraph (Para No. 5 of the report) the meaningful issue now before us) was summarily disposed of. It is evident that neither any authority was apparently cited or considered nor was the issue examined on principle. Even the earlier Division Bench judgment of this Court in *Employees State Insurance Corporation* v. *A. L. Puri and another,* (16) was neither cited nor considered by the Bench. Far from adverting to the wide ranging language of Section 2(9) of the Act even a reference thereto has not been made in the whole of the judgment. Apart from the consideration of the peculiar facts, the basic reason which seems to have weighed with the Bench was as former. .....".

> "It is a matter of common knowledge that house-owners engage persons who carry out annual repairs and white-washing etc., without becoming the employees of the former".

With great respect the fallacy herein is obvious. A mere house-holder cannot be equated with a factory or establishment to which alone provisions of the Act apply. The contractual or *quasi* contractual relationship of the Master or, the house-owner with a house help has no analogy or relevance to the precise statutory definition of the 'employee' under the Act with regard to either factories or

(16) 1971 P.L.R. 178.

establishments to which the provisions of the Act may be extended with the larger purpose of ensuring him against the hazards of such employment. With great respect, therefore, I hold that the passing observations in the said judgment can no longer hold water in face of the provisions of the statute, on principle, and on the weight of precedent which has been referred to in detail in the earlier part of the judgment. I hold that on this specific point the judgment does not lay down the law correctly and has to be unhesitatingly overruled.

17. To conclude it must be held that even a person casually employed in a factory or establishment is within the ambit of the definition spelled out in Section 2(9) of the Act. The answer to the question posed at the out set is hereby returned in the affirmative.

18. Adverting now to the facts of the individual cases, it may be pointedly noticed that once the considerations of casual or regular employment are out of the way, then persons engaged for making building repairs to the factory etc., would plainly enough be performing a work which is incidental to or in connection with the work of the factory and, therefore, would come squarely within the ambit of the definition of an 'employee'. What is said in their context would apply equally and perhaps with greater force to persons employed as carpenters and those for white washing the factory. In fact, as was noticed in the very beginning, once the legal issue is settled the facts of all the four cases bring the employees within the wide net cast by the statute. Learned counsel for the respondents indeed did not make any serious issue of this fact. Reference in this connection may be made to the Division Bench judgment in *K. Thiagaranjan Chattiar* v. *Employees' State Insurance Corporation, Madurai through its Manager,* (17). Therein it was held that even gardeners, building workers, office attenders, watchmen etc. of a textile mill were employees within the meaning of the Act so as to oblige the employer to contribute towards the Provident Fund. Even more far reaching are the observations in the judgment of the final Court in *Royal Talkies', Hyderabad's case* (supra). Therein even with regard to persons employed for the purposes of running a car park, a cycle stand or a canteen entirely incidental or collateral to the running of a Cinema, were held to be

(17) A.I.R. 1963 Madras 361.

'employees' within the meaning of the Act and the Cinema-owner was held liable as the principal employer for their contributions. Consequently it follows that the Appellant-Corporation here is on wholly firm ground and all the four appeals therefore, must succeed and are hereby allowed. In view of some conflict of precedent on the point, we leave the parties to bear their own costs.

Kulwant Singh Tiwana, J.—I agree.

Harbans Lal, J.—I agree.

N. K. S.

FULL BENCH

Before S. S. Sandhawalia, C.J., K. S. Tiwana and S. P. Goyal, JJ.

STATE OF PUNJAB,—*Appellant.*

versus

BHAGWAN DASS JAIN,—*Respondent.*

Criminal Appeal No. 565 *of* 1978.

August 27, 1980.

Prevention of Food Adulteration Act (XXXVII *of* 1954)—*Sections* 7 *and* 16(1)(*a*)(*i*)—*Prevention of Food Adulteration Rules* 1955—*Rules* 7, 17 *and* 18—*Sample of foodstuff and memorandum in Form VII Appendix A packed in one parcel while specimen of the Form and seal in a separate parcel—Both packets sent through one person at the same time—Requirement of Rule* 18—*Whether violated—Word 'separately' as used in Rule* 18—*Meaning of.*

Held, that the object of the rule making authority in providing for the sending of the copy of the memorandum and the facsimile of the seal 'separately, in rule 18 of the Prevention of Food Adulteration Rules, 1955 is that it wanted to ensure that the correct sample which had been collected by the Food Inspector from the accused reached the public analyst and that it was not substituted or tampered with in transit after its seizure during raid. In this light the language of rule 18 goes to show that the container of the sample has to be sent for analysis to the Public Analyst in a sealed packet and with it is to be enclosed the memorandum in Form VII. Rule 18 provides for the sending of the copy of the said memorandum and the facsimile of the seal used to seal the sample and the packets in rule 17 to the Public Analyst 'separately'. The word