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GLAXO LABORATORIES

v.

THE PRESIDING OFFICER, LABOUR COURT MEERUT & ORS.

B

October 6, 1983

[D. A. DESAI, O. CHINNAPPA REDDY AND A. VARADARAJAN, JJ.]

C

Industrial Employment (Standing Orders) Act, 1946—Construction of Standing Orders—Standing orders providing for imposition of penalty on proof of 'misconduct' should be construed strictly like penal statutes.

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The appellant-company chargesheeted the second respondent and some of his striking co-workmen for violation of cls. 10, 16 and 30 of Standing Order 22 on the allegation that they had boarded a bus carrying 'loyal workmen' and manhandled them at different places during the journey. Clause 10 of S.O. 22 provided that "drunkenness, fighting, indecent or disorderly behaviour use of abusive language, wrongfully interfering with the work of other employees or conduct likely to cause a breach of the peace or conduct endangering the life or safety of any other person, assault or threat of assault, any act subversive of discipline and efficiency and any act involving moral turpitude, committed within the premises of the establishment, or in the vicinity thereof", would be treated as misconduct. Standing order 23 prescribed punishment for misconduct. The second respondent approached the Labour Court under s.11-C of the U. P. Industrial Disputes Act, 1947 for a correct interpretation of the Standing Order. The Labour Court held that the acts of misconduct were not covered by the provisions of the Standing Order as they were alleged to have been committed outside the premises of the establishment and not in its vicinity. The High Court upheld the construction put by the Labour Court and dismissed the writ petition filed by the appellant.

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Counsel for appellant contended that if the motivation for committing an act of misconduct any-where is to have an adverse effect on the peaceful working of the establishment, then, irrespective of the fact where the misconduct is committed, it should be deemed to have been committed within the premises of the establishment or in its vicinity; and, further, that since the expression 'misconduct' under S.O.23 is not qualified as the one set out in S.O.22, any other act of omission or commission which would *per se* be misconduct would be punishable under S.O. 23 irrespective of the fact whether it finds its enumeration in S.O. 22 or not.

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Dismissing the appeal,

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HELD : The Industrial Employment (Standing Orders) Act, 1946 confers the power to prescribe conditions of service of workmen on the employer to enable him to peacefully carry on his industrial activity and he has jurisdiction to regulate the behaviour of workmen within the premises of his establishment or in its vicinity. This being the larger objective behind issue of certified Standing Orders, the only construction one can put on cl.10 is that the various acts of misconduct set out therein would be misconduct for the purpose of S.O.22 and punishable under S.O.23, if committed within the premises of the establishment or in the vicinity thereof. What constitutes establishment or its vicinity would depend upon the facts and circumstances of each case.

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[240 D-E; H; 241 A-B]

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(b) Standing Order 22 is a penal statute in the sense that it provides for imposition of penalty on proof of misconduct. For a penalty to be imposed it must be quite clear that the case falls within both the letter and the spirit of the statute. It is a general rule that penal enactments are to be construed strictly and not extended beyond their clear meaning. If the expression 'committed within the premises of the establishment or in the vicinity thereof' contained in cl.10 is given a wide construction so as to make the clause itself meaningless and redundant, the penal statute would become so vague and would be far beyond the requirement of the situation as to make it a weapon of torture. If miscoudut, committed anywhere, irrespective of the time-place content where and when it is committed, is to be comprehended in cl.10 merely because it has some remote impact on the peaceful atmosphere in the establishment, there would be no justification for using the words 'committed within the premises of the establishment or in the vicinity thereof' in cl.10. These are words of limitation and they must cut down the operation of the clause. Clauses 16 and 30 of S.O.22 form an integral part of a Code and the setting and purpose underlying these two clauses must receive the same construction which cl.10 received. [242 F-H; 243 A-C]

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Halsbury's Laws of England, 4th Ed., Vol. 44, paras 909, 910 at p. 560; referred to :

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Mulchandani Electrical and Radio Industries Ltd. v. Workmen A. I. R. 1975 SC 2125; *Central India Coalfields v. Ram Bilas Shobnath*, A. I. R. 1961 S. C. 1189; *Lalla Ram v. Management of D. C. M. Chemical Works*, [1978] 3 S. C. R. 82; *British India Corporation v. Bhakshi Sher Singh & Ors.* [1962-63] 23 Indian Factories Journal, 484; explained and distinguished.

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Bharat Iron Works v. Bhagubhai Patel, [1976] 2 S. C. R. 280; *Saurashtra Salt Manufacturing Co. v. Bai Valu Raja & Ors*, A. I. R. 1958 S. C. 881 and *General Manager, B. E. S. T. Undertaking v. Mrs. Agnes*, [1964] 3 S. C. R. 930; not relevant.

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(c) The Industrial Employment (Standing Orders) Act, 1946 was enacted, as its long title shows, to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and

to make the said conditions known to workmen employed by them. Since the scheme of the Act shows that certified Standing Orders have more or less a statutory flavour, ordinary cannons of construction of statutes have to be applied for their interpretation. The purpose of interpretation is to give effect to the intention underlying the statute and therefore unless the grammatical construction leads to an absurdity, it is safe to give words their natural meaning because the framer is presumed to use the language which conveys the intention. However, if two constructions are possible, the construction which advances the intention of the legislation namely, to afford protection to the unequal partner in the industry, and remedies the mischief to thwart which it is enacted, should be accepted. [239 C; 238 F-H]

(d) Even where the Standing Order is couched in a language which seeks to extend its operation beyond the establishment, it would none-the-less be necessary to establish causal connection between the misconduct and the employment. The causal connection, in order to provide linkage between the alleged act of misconduct and employment, must be real and substantial, immediate and proximate and not remote or tenuous.

Tata Oil Mills v. *Workmen*, [1964] 7 S.C.R. 555; explained and distinguished.

(e) Under the Act, the employer is under an obligation to specify with precision those acts of omission and commission which would constitute misconduct. Penalty is imposed for misconduct. The workmen must know in advance which act or omission would constitute misconduct so as to be visited with penalty. Upon a harmonious construction, the expression 'misconduct' in S.O.23 must refer to those acts of omission and commission which constitute misconduct as enumerated in S.O.22 and none else. It is therefore difficult to entertain the submission that some other act or omission which may be misconduct though not provided for in the Standing Order would be punishable under S.O.23. [247 D-F]

Salem Erode Electricity Distribution Co. v. Salem Erode Electricity Distribution Employees Union, [1966] 2 S.C.R. 498; *Western India Match Co. v. Workmen*, [1974] 1 S.C.R. 434; *Lakheri Cement Works v. Associated Cement Companies*, [1970] 20 Indian Factories and Labour Reports 243; referred to.

Mahendra Singh Dhantwal v. Hindustan Motors, [1976] Supp. S.C.R. 635; explained and distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2911 of 1981.

Appeal by special leave from the Judgment and Order dated the 7th May, 1981 of the Allahabad High Court in Civil. Misc. Writ Petition No. 5437 of 1979.

Shanti Bhushan, SS Shroff, S.A. Shroff, VV Joshi and *P.S. Shroff* for the Appellant. A

M.K. Ramamurthi, and *J. Ramamurthi* for the Respondent.

The Judgment of the Court was delivered by

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DESAI, J. Appellant, a multinational company, has set up a factory at Aligarh in the State of Uttar Pradesh in the year 1958. Appellant had declared a lockout with effect from 12 noon on May 6, 1977. It was notified that as negotiations for settlement of pending disputes between the appellant and the workmen employed by it were afoot, the lockout was to be lifted and was actually lifted from 8.00 a.m. on May 13, 1977. It is alleged that on the very day during the second shift, some of the workmen again resorted to an illegal strike, gathered together near the gate of the factory and intimidated and obstructed other workmen desiring to report for duty. Appellant approached the Civil Court and obtained an ex-parte injunction restraining the workmen from indulging into unfair and illegal activities. On May 27, 1977 around 5.35 p.m., some of the workmen who had not joined the strike and who have been referred to in the discussion as 'loyal workmen' boarded bus No. UPB-6209 chartered by the appellant company exclusively for the use of the 'loyal workmen' commuting between the city and the factory. It is alleged that some of the striking workmen including the second respondent boarded the bus and during the journey in the bus at different places manhandled the 'loyal workmen'. According to the appellant company, this action of the second respondent and his striking colleagues 9 in number whose names have been set out in the chargesheet constitutes misconduct specified in clauses 10, 16 and 30 of Standing Order 22 applicable to the workmen employed by the appellant company. Accordingly, a charge-sheet dated June, 6, 1977 was served upon the second respondent who in turn approached the Labour Court under sec. 11-C of the U.P. Industrial Disputes Act, 1947 inviting the Labour Court to hold that on a correct interpretation of the relevant standing order, the alleged acts of misconduct would not be covered by clauses 10, 16 and 30 of S.O. 22.

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The Labour Court framed as many as 8 issues out of which Issue Nos. 4, 5 and 8 engaged the attention of the High Court held that the construction put by the Labour Court on the relevant clauses of the standing order is a reasonable one and accordingly dismissed the writ petition. Hence this appeal by special leave.

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A At the outset, it is necessary to administer a caution that in this appeal the only question that falls for consideration is: whether the misconduct as alleged in the chargesheet drawn-up against the second respondent and others, taking them for the present purpose to be true would squarely fall within clauses 10, 16 and 30 of S.O. 22. This caution has become necessary as upon a reading of the B decision of the Labour Court and the judgment of the High Court, an impression was formed that the controversy was sought to be expanded far beyond its legitimate sphere by advancing hypothetical illustrations and then inviting the Labour Court and High Court and then this Court to consider whether the construction put on the C various clauses of standing order 22 by the Labour Court and the High Court is reasonable or is self-defeating. It is not necessary at all to examine the ambit and the scope of clauses 10, 16 and 30 of S.O. 22 with reference to hypothetical cases but a limited question which this Court is called upon to examine is whether the charges imputing misconduct as framed by the appellant company would be D covered by clauses 10, 16 and 30 of S.O. 22.? While parties. They read as under:

> "4. Can the opposite party take disciplinary action against the applicant for acts of misconduct, said to E have been committed at the places, referred to in the chargesheet issued to him ?
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> 5. Whether the Point, where the bus in question is said to have started is part of the premises of the opposite party or is situated in the vicinity of the aforesaid F premises ?
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> 6. Is the place, where the bus is said to have started, situated on the public road ?"

G All these three issues were considered together by the Labour Court. The Labour Court held that upon a true construction of clauses 10, 16 and 30 of S.O. 22, the appellant company is not entitled to charge-sheet the second respondent and his co-workers for alleged acts of misconduct said to have been committed by them outside ihe premises of the establishment and not in the vicinity H thereof. It further held that it was open to the appellant company to held an enquiry into the alleged act of misconduct of the second respondent and his co-workers in respect of charges 2 (a) and 2 (b) of the charge-sheet drawn-up by the appellant. There are other

finding of the Labour Court with which we are not concerned in this appeal.

The appellant moved the Allahabad High Court under Arts. 226 and 227 of the Constitution in Civil Misc. Writ Petition No. 5437 of 1979. A Division Bench of the ascertaining whether the construction put on these three clauses both by the Labour Court and the High Court is fair, reasonable and serves the purpose for which these clauses were framed, none the less we would strictly confine ourselves to find out whether the misconduct as alleged in the charge-sheet as on demur is such as would squarely fall within the aforementioned three clauses, and every hypothetical case would be excluded from further consideration.

The appellant company has in all framed 8 independent charges divided into clauses 2 (a) to 2 (h) of the charge-sheet dated June 6 1977. The Labour Court has permitted the appellant company to hold an enquiry in respect of charges under heads 2 (a) and 2 (b). Therefore, they need no consideration at our hands. Under the head 2 (c), the misconduct attributed to the second respondent and his co-workmen was that when the bus reached Anupshahr-Aligarh road, all of them shouted in a violent manner, abused in filthy language and beat M/s U.S Misra, R.S. Kaushik, Prahlad, C.B. Agarwal, M.K. Wadhwa, V.K. Sharma, A.C Saxena, Nilmony Bhakta and Chaitanya Kumar and other loyal workmen with shoes, chappals and sticks. Under head 2 (d), the same misconduct is attributed when the bus reached the approach road to Central Dairy Farm, further adding that the clothes of loyal workmen were torn. Under head 2(e), it is alleged that at the same place, Mr. A.K. Patro and Mr. G.S. Haldia who were ahead of the bus travelling in a car and who on seeing the incident alighted from the car, but they were surrounded and forced to drive away from the scene. Under heads 2(f) and 2(g), the misconduct alleged is that some property was snatched from the workmen travelling in the bus and they were threatened with dire consequences if they returned to work during the period of strike. Under head 2(h), the misconduct attributed is that loyal workmen were forced to give promise that they will not go to work during the period of strike and repeatedly holding out threats of murdering them and their families.

The question is : even if uncontroverted the allegations of misconduct set out in the chargesheet extracted above would be

covered by clauses 10, 16 and 30 of S.O. 22. In other words, upon their construction what is the scope and ambit so far as time-place aspect is concerned of the clauses 10, 16 and 30 of S.O. 22.

Clauses 10, 16 and 30 of the S.O. 22 read as under:

"22. The following acts or omissions will be treated as misconducts:-

(10) Drunkenness, fighting, indecent or disorderly behaviour, use of abusive language, wrongfully interfering with the work of other employees or conduct likely to cause a breach of the peace or conduct endangering the life or safety of any other person, assault or threat of assault any act subversive of discipline and efficiency and any act involving moral turpitude, committed within the premises of the establishment, or in the vicinity thereof;

(16) Conduct of a workmen singly or in combination with others endangering the lives of the safety of other workmen or endangering the safety of the company's premises, machinery or equipment;

(30) Being rude towards officers, employees, customers of and visitors to the company."

The submission which found favour with the High Court is that all these various acts of misconduct collocated in clause 10 in order to be a misconduct punishable under S.O. 23 must be committed within the premises of the establishment or in the vicinity thereof, and that the situs of misconduct as set out in the chargesheet will show that alleged acts of misconduct occurred far away from the establishment of the appellant company and therefore, clause 10 of S. O. 22 would not be attracted. Undoubtedly, looking to the language of clause 10 of S.O. 22 of the certified Standing Orders applicable to the company framed in English, the High Court found some difficulty in holding that the expression 'committed within the premises of the establishment, or in the vicinity thereof' would only qualify the expression 'any act subversive of discipline and efficiency and any act involving moral turpitude' but not the earlier portion of

clause 10 which sets out various acts of misconduct such as drunkenness, fighting, indecent or disorderly behaviour etc. Says the High Court :

> "We agree that in sub-clause 10 of clause 22 the word 'committed' must be held to govern only to 'an act subversive of discipline and efficiency' and 'any act involving moral turpitude' and does not apply to conduct of the character mentioned in the earlier part of sub-clause."

But the High Court got over the difficulty by referring to the Hindi version of clause 10 of S.O. 22, which starts with the recital :

> "Within the premises of the establishment. or in the vicinity thereof, such acts as drunkenness, fighting....."

After reading the Hindi version, the High Court proceeded to hold that Sec. 9 of the Industrial Employment (Standing Orders) Act, 1946 ('Act' for short) requires the posting of standing orders in English and in the language understood by the majority of the workmen on special boards to be maintained for the purpose at or near the entrance through which the majority of the workmen enter the industrial establishment and in all departments thereof where the workmen are employed, and therefore, the Hindi version of the standing order which the workmen must have read and understood must on the principle of *contemporanee expositio* deserves acceptance. In reaching this conclusion, the High Court relied upon the decision of this Court in *D.B. Gupta & Co. & Ors.* v. *Delhi Stock Exchange Association Ltd.*(1) While questioning the correctness of the decision of the High Court, that clause 10 would comprehend misconduct therein mentioned committed within the premises of the establishment or in the vicinity thereof, it was not only not disputed but in fact conceded that in view of the provision contained in sec. 9 of the Act the High Court was perfectly justified in looking at the Hindi version of the certified Standing Orders.

Therefore, the primary question that needs consideration is whether the various acts of misconduct collocated in clause 10 would constitute misconduct punishable under S.O. 23, if committed

(1) [1979] 3 S.C.R. 373.

within the premises of the establishment or in the vicinity thereof or irrespective of the time-place content, they are per se such acts of misconduct that they would be punishable notwithstanding where and when they were committed.

Every industrial establishment to which the Act applies is under a statutory obligation to draw up and submit to the Certifying Officer five copies of the draft standing orders for adoption in the industrial establishment (Sec. 3). Sec. 5 requires the Certifying Officer to forward the copy of the draft standing order to the trade union, if any, of the workmen, or where there is no such trade union, to the workmen in such manner as may be prescribed, together with a notice in the prescribed form requiring them to submit their objections, if any. Sub-sec. (2) of sec. 5 requires the Certifying Officer to decide after hearing the representatives of the emloyer and the trade union or the workmen : whether or not any modification of or addition to the draft submitted by the employer is necessary. Such certified standing orders shall be filed by the Certifying Officer in a register in the prescribed form maintained for the purpose and the Certifying Officer shall furnish a copy thereof to any person applying therefor on payment of the prescribed fee. Sec. 12 excludes oral evidence having the effect of adding to or otherwise varying or contradicting standing orders as finally certified under the Act. Sec. 13C. which is in part *pari materia* with Sec. 11A of the U.P. Industrial Disputes Act, 1947 confers jurisdiction on the Labour Court constituted undr the Industrial Disputes Act, 1947 to entertain an application for interpretation of a standing order certified under the Act. The scheme of the Act would show that the certified standing orders have more or less a statutory flavour. If that be so, ordinary canons of construction of a statute would be attracted where a dispute arises about the construction or interpretation of a certified standing order.

No canon of construction of a statute is more firmly established than this that the purpose of interpretation is to give effect to the intention underlying the statute and therefore unless the grammatical construction leads to an absurdity, it is safe to give words their natural meaning because the framer is presumed to use the language which conveys the intention. If two constructions are possible, it is equally well-established that the construction which advances the intention of the legislation, remedies the mischief to thwart which it is enacted should be accepted.

In the days of *laissez-faire* when industrial relation was governed by the harsh weighted law of hire and fire the management was the supreme master, the relationship being referable to contract between unequals and the action of the management treated almost sacrosanct. The developing notions of social justice and the expanding horizon of socio-economic justice necessitated statutory protection to the unequal partner in the industry namely, those who invest blood and flesh against those who bring in capital. Moving from the days when whim of the employer was *suprema lex*, the Act took a modest step to compel by statute the employer to prescribe minimum conditions of service subject to which employment is given. The Act was enacted as its long title shows to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them. The movement was from status to contract, the contract being not left to be negotiated by two unequal persons but statutorily imposed. If this socially beneficial act was enacted for ameliorating the conditions of the weaker partner, conditions of service prescribed thereunder must receive such interpretation as to advance the intendment underlying the Act and defeat the mischief.

After reading clause 10, Mr. Shanti Bhushan contended that the expression 'committed within the premises of the establishment or in the vicinity thereof' can qualify only the expression 'any act subversive of discipline and efficiency and any act involving moral turpitude' but not the earlier portion of the clause. Numerous acts of misconduct have been collected in clause 10 such as drunkenness, fighting, indecent or disorderly behaviour, use of abusive language, wrongfully interfering with the work of other employees etc. Says Mr. Shanti Bhushan that these acts of misconduct are per se misconduct that each one of them cannot have any correlation to the time or place where it is committed and each one of it is an act of misconduct irrespective of the time and plaee where it is committed. Expanding the submission, it was urged that drunkenness is such a socially reprehensible action that if it is committed within the premises of the establishment or in the vicinity thereof or anywhere else at any point of time it would none the less be an act of misconduct comprehended in clause 10 and punishable under standing order 23. If this construction were even to be accepted the employer will have more power than the almighty State because State chooses to punish drunkenness in public place. But on the construction canvassed for if a man consumes liquor in

his own house with the doors closed and gets drunk, the employer can still fire him. If a man uses abusive language towards his close relation in his own house whith closed door, the employer would be entitled to fire him, and this approach overlooks the purpose of prescribing conditions of service by a statnte. To enable an employer to peaccfully carry on his industrial activity, the Act confers powers on him to prescribe conditions of service including enumerating acts of misconduct when committed within the premises of the establishment. The employer has hardly any extra territorial jurisdiction. He is not the custodian of general law and order situation nor the Guru or mentor of his workmen for their well regulated cultural advancement. If the power to regulate the behaviour of the workmen outside the duty hours and at any place wherever they may be was conferred upon the employer, contract of service may be reduced to contract of slavery. The employer is entitled to prescribe conditions of service more or less specifying the acts of misconduct to be enforced within the premises where the workmen gather together for rendering service. The employer has both power and jurisdiction to regulate the behaviour of workmen within the premises of the establishment, or for peacefully carrying the industrial activity in the vicinity of the establishment. When the broad purpose for conferring power on the employer to prescribe acts of misconduct that may be committed by his workmen is kept in view, it is not difficult to ascertain whether the expression 'committed' within the premises of the establishment or in the vicinity thereof' would qualify each and every act of misconduct collocated in clause 10 or the last two only, namely, 'any act subversive of discipline and officiency and any act involving moral turpitude'. To buttress this conclusion, one illustration would suffice. Drunkenness even from the point of view of prohibitionist can at best be said to be an act involving moral turpitude. If the misconduct alleging drunkenness as an act involving moral turpitude is charged, it would have to be shown that it was committed within the premises of the establishment or vicinity thereof but if the misconduct charged would be drunkenness the limitation of its being committed within the premises of the establishement can be disregarded. This makes no sense. And it may be remembered that the power to prescribe conditions of service is not unilateral but the workmen have right to object and to be heard and a statutory authority namely, Certifying Officer has to certify the same.

Therefore, keeping in view the larger objective sought to be achieved hy prescribing conditions of employement in certified

standing orders, the only construction one can put on clause 10 is that the various acts of misconduct therein set out would be misconduct for the purpose of S.O. 22 punishable S.O. 23, if committed within the premises of the establishment or in the vicinity thereof.

What constitutes establishment or its vicinity would depend upon the facts and circumstances of each case.

Mr. Shanti Bhushan, however, urged that the trend of decisions indicates that the expression 'committed in the premises of the establishment or in the vicinity thereof' indicates not the situs of the place where the misconduct is committed but where the consequence of such misconduct manifests or ensues. It was submitted that if the motivation for committing an act of misconduct anywhere was to have an adverse effect on the peaceful working in the industrial establishment, then irrespective of the fact where the misconduct was committed, it would be deemed to have been committed within the premises of the establishment or in the vicinity thereof. Reliance was placed on *Mulchandani Electrical and Radio Industries Ltd.* v. *The Workmen*,(1) wherein the language in which the relevant standing order was couched read as under :

> "(1) Commission of any act subversive of discipline or good behaviour whithin the premises or precincts of the establishment."

The misconduct alleged was that the delinquent workmen while travelling in a train between Thana and Mulund assaulted another workman who was on his way home after day's work. And this led to a complaint by some of the colleagues of the victim submitting a memorandum to the management of protest against the assault on the colleague. Repelling the contention on behalf of the workmen, this Court held as under :

> "In our opinion, on a plain reading of the clause, the words "within the premises or precincts of the establishment" refer not to the place where the act which is subversive of discipline or good behaviour is committed but where the consequence of such an act manifests itself. In orther words, an act wherever committed, if it has the one effect of subverting discipline or good behaviour

(1) A.I.R. 1975 S.C. 2125.

within the premises or precincts of the establishment, will amount to misconduct under Standing Order 24 (1). We are unable to agree that Standing Order 24 (1) leaves out of its scope an act committed outside though it may result in subversion of discipline or good behaviour within the premises or precincts of the establishment in question. Such a construction in our view would be quite unreasonable."

The decision proceeds on the language of the standing order which came for interpreation before this Court. There is a marked difference between the language of clause 10 of S.O. 22 under which action is proposed to be taken by the appellant in this case and S.O. 24 (1) that came for interpretation in that case. Clause (1) of S.O. 24 which was before the Court in that case did not refer to such specific acts of misconduct as drunkenness, fighting, indecent or disorderly behaviour, use of abusive language etc. If a workman is involved in a riot or indulge in fighting somewhere far away from the premises of the estadlishment, it has no causal connection with his performance of duty in the industrial establishment in which he is employed. Further in that case, the Court put a wide construction on a penal measure but did not choose to set out its reasons for departing from the well-established principle that penal statutes generally receive a strict construction. 'A statute is regarded as penal for the purpose of construction if it imposes fine, penalty or forfeiture other than penalty in the nature of liquidation of damages or other penalties which are in the nature of civil remedies. It is a general rule that penal enactments are to be construed strictly and not extended beyond their clear meaning.'(1) It cannot be seriously questioned that S.O. 22 is a penal statute in the sense that it provides that on proof of misconduct penalty can be imposed. It cannot be disputed that it is a penal statute. It must therefore, receive strict construction, because for a penalty to be enforced, it must be quite clear that the case is within both the letter and the spirit of the statute. If the expression 'committed within the premises of the establishment or in the vicinity thereof' is given a wide construction so as to make the clause itself meaningless and redundant, the penal statute would become so vague and would be far beyond the requirement of the situation as to make it a weapon of torture. A clause with a statutory flavour 'like iegislation must at all costs

(1) See Halsbury's Laws of England, 4th editlon Vol. 44 paragraphs 909. 910 at page 560.

be interpreted in such a manner that it could not operate as a rogue's charter.'(1) If any misconduct committed anywhere irrespective of the time-place content where and when it is committed is to be comprehended in clause 10 merely because it has some remote impact on the peaceful atmosphere in the establishment, there was no justification for using the words of limitation such as 'committed within premises of the establishment or in the vicinity thereof'. These are words of limitation and they must cut down the operation of the clause. Therefore, these words of limitation must receive their due share in the interpretation of clause 10 and clause 10 cannot receive such a construction as to make the words of limitation wholly redundant.

Reference was also made to *Central India Coalfields Ltd. Calcutta v. Ram Bilas Shobnath*(1) in which scope and ambit of S.O. 29(5) came up for consideration before this Court. The Industrial Tribunal had held that the alleged misconduct had taken place outside the working hours as well as outside the pit where the respondent had to discharge his duties and accordingly he could not be punished under S.O. 37. This Court while allowing the appeal of the employer observed that 'normally this standing order would apply to the behaviour on the premises where the workmen discharge their duties and during the hours of their work." It was further observed that 'it may also be conceded that if a quarrel takes place between workmen outside working hours and away from the coal premises that would be a private matter which may not fall within Standing Order No. 29(5)." This Court then observed that in the special circumstances of this case it is clear that the incident took place in the quarters at a short distance from the coal-bearing area. If the incident occurred in the quarters occupied by the workmen who were working in a nearby coal bearing area, one can safely conclude that the incident occurred in the vicinity of the establishment and that was the governing factor which swayed the decision. And the decision was reached as specifically stated in the special circumstances of the case while leaving no trace of doubt about the normal approach in law to the construction of a standing order that it would apply to the behaviour on the premises where the workmen discharge their duties and during working hours of their work. This clearly imports time-place content in the matter of construction.

(1) *Davis and Sons* vs. *Alkin* [1977] I.C.R. 66.
(2) A.I.R. 1961 S.C. 1189.

This decision would rather clearly indicate that the misconduct prescribed in a standing order which would attract a penalty has a causal connection with the place of work as well as the time at which it is committed which would ordinarily be within the establishment and during duty hours.

Reference next was made to *Lalla Ram v. Management of D.C.M. Chemical Works Ltd. & Anr.*(1) In that case one Shyam Singh, who was Assistant Security Officer of the respondent-company in discharge of his official duty attempted to prevent an encroachment and unauthorised construction on the immovable property belonging to the company by appellant Lalla Ram, who in turn manhandled the Assistant Security Officer, hurled highly provocative invectives at him and his companions, and bade them to quit on pain of dire consequences. The facts have their own tale to tell. Assistant Security Officer while performing his duty preventing unauthorised encroachment of the property belonging to the company was manhandled. There should be no doubt in the mind of anyone that the incident occurred on the premises of the establishment or in the vicinity thereof. It may, however, be mentioned that in this decision, there is no reference to the decision of this Court in *Molchandani Electrical and Radio Industries Ltd.* case.

Reference was also made to *Tata Oil Mills Co. Ltd. v. Its Workmen.*(2) This case should not detain us for a moment because the standing order with which the court was concerned with in that case in terms provided 'that without prejudice to the general meaning of the term 'misconduct', it shall be deemed to mean and include, inter alia, drunkenness, fighting, riotous or disorderly or indecent behaviour within or without the factory.' Mr. Shanti Bhushan, however, urged that the judgment does not proceed on the construction of the expression 'without' in the relevant standing order but the ratio of the decision is that purely private and individual dispute unconnected with employment between the workmen cannot be the subject matter of enquiry under the standing order but in order that the relevant standing order may be attracted it must be shown that the disorderly or riotous behaviour had some rational connection with the employment of the assailant and the victim. Approaching the matter from this angle, it was urged that in the present case the

(1) [1978] 3 S.C.R. 82.
(2) [1964] 7 S.C.R. 555.

chargesheet under clauses 2(c) to 2(h) clearly and unmistakably alleged that the 'loyal workmen' were threatened with dire consequences with a view to frightening them away from responding to the duty and this provides the necessary link between the disorderly behaviour and the employment both of the assailant and victim. Even where a disorderly or riotous behaviour without the premises of the factory constitutes misconduct, every such behaviour unconnected with employment would not constitute misconduct within the relevant standing order. Therefore, even where the standing order is couched in a language which seeks to extend its operation far beyond the establishment, it would none the less be necessary to establish causal connection between the misconduct and the employment. And that is the ratio of the decision, and not that wherever the misconduct is committed ignoring the language of the standing order if it has some impact on the employment, it would be covered by the relevant standing order. In order to avoid any ambiguity being raised in future and a controvertial interpretation question being raised, who must make it abundantly clear and incontrovertible that the causal connection in order to provide linkage been the alleged act of misconduct and employment must be real and substantial, immediate and proximate and not remote or tenuous. An illustration would succinctly bring out the difference. One workman sevrely belaboured another for duty on the next day. Would this absence permit the employer to charge the assailant for misconduct as it had on the working in the industry. The answer is in the nagative. The employer cannot take advantage to weed out workmen for incidents that occurred far away from his establishment.

Reference was next made to *Bharat Iron Works* v. *Bhagubhai Balubhai Patel & Ors.*(1) The allegation was of vicitimisation which found favour with the Tribunal and the High Court. This Court while allowing the appeal of the employer held that the Tribunal committed a manifest error of law in reaching the conclusion that the management was guilty of victimisation. We fail to see how this decision has any relevance to the point under discussion in this case.

In *British India Corporation Ltd* v. *Bhakshi Sher Singh and Ors.*(2), the respondent-workmen entered the club set up by the appellant and misbehaved with all and sundry present there. He was

(1) A.I.R. 1958 S.C. 881.
(2) [1964] 3 S.C.R. 930.

persuaded to leave and when he went out, he kept on abusing the official of the club. He was charge-sheeted. An enquiry followed and he was dismissed. The order of dismissal was set aside by the Tribunal but was restored by this Court in appeal by the Company. There was no suggestion that the club premises did not form part of the establishment of the Company. The decision appears to be on the facts of the case only without the slightest referenee to the question whether the place where misconduct was committed had any relevance.

Mr. Shanti Bhushan also relied upon *Saurashtra Salt Manufacturing Co.* v. *Bai Valu Raja and Ors.*(1) and *General Manager, B.E.S.T. Undertaking, Bombay* v. *Mrs. Agnes*(2), both of which are cases concerned with Sec. 3 of the Workmen's Compensation Act, 1923 and are of no assistance for the present purpose.

Having examined the matter both on principle and precedent, it would clearly emerge that clause 10 of S. O. 22 which collects various heads of misconduct must be strictly construed being a penal provision in the sense that on the proof a misconduct therein enumerated, penalty upto and inclusive of dismissal from service can be imposed. We see no reason for departing from the well-established canon of construction that penal provisions must receive strict construction, and not extended beyond their normal requirement. The framer's intention in using the expression 'committed within the premises of the estsblishment or in the vicinity thereof' are the words of limitation and they must receive due attention at the hands of the interpreter and the clause should not receive such broad construction as to render the last clause redundant.

It was next contended that while misconduct is enumerated in S.O. 22, the punishment is prescribed in S.O. 23, and the expression 'misconduct' in S.O. 23 would comprehend any misconduct irrespective of the fact whether it is enumerated in S.O. 22 or not. The preamble of S.O. 23 reads as under :

"23 (a) Any workman who is adjudged by the manager on examtnation of the workman, if present, and

(1) A.I.R. 1958 S.C. 881.
(2) [1964] 3 S.C.R, 930.

of the facts to be guilty of misconduct is liable to be....."

The submission is that the expression 'misconduct' under S.O. 23 is not qualified as the one set out in S.O. 22 and therefore, any other act of omission or commission which would per se be misconduct would be punishable under S.O. 23 irrespective of the fact whether it finds its enumeration in S.O. 22. The Act makes it obligatory to frame standing orders and get them certified. Sec. 3 (2) requires the employers in an industrial establishment while preparing draft standing orders to make provision in such draft for every matter set out in the Schedule which may be applicable to the industrial establishment, and where model standing orders have been prescribed, shall be, so far as is practicable, in conformity with such model. Item 9 of the Schedule provides 'suspension or dismissal for misconduct, and acts or omissions which constitute misconduct'. It is therefore, obligatory upon the employer to draw up with precision those acts of omission and commission which in his industrial establishment would constitute misconduct. Penalty is imposed for misconduct. The workmen must therefore, know in advance which act or omission would constitute misconduct as to be visited with penalty. The statutory obligation is to prescribe with precision in the standing order all those acts of omission or commission which would constitute misconduct. In the fact of the statutory provision it would be difficult to enteration the submission that some other act or omission which may be misconduct though not provided for in the standing order would be punishable under standing order 23. Upon a harmonious construction, the expression 'misconduct' in S.O. 23 must refer to those acts of omission or commission which constitute miscouduct as enumerated in standing order 22 and none else. However, in this connection, Mr. Shanti Bhushan drew our attention to *Mahendra Singh Dhantwal* v. *Hindustan Motors Ltd. & Ors.*(1) . In that case in a second round of litigation between the parties the Industrial Tribunal set aside the order of dismissal of the workmen and ordered reinstatement with full back wages. In a writ petition filed by the Company under Art. 226 of the Constitution, a learned Single Judge of the High Court declined to interfere with the award holding that 'the reason might have been the old reason of dismissal' and that the "circumstances relied on by the Tribunal cannot be characterised as unreasonable." The Company carried the matter to the Division Bench of the

(1) [1976] Suppl. S.C.R. 635.

A High Court which accepted the appeal observing that unless contravention of Sec. 33 of the Industrial Disputes Act is established, the Industrial Tribunal would have no jurisdiction to entertain an application under Sec. 33A. In terms it was held that unless it is established that there has been discharge for misconduct, the Industrial Tribunal had no jurisdiction to set aside the order B of termination in an application under Sec. 33A. In the appeal by certificate granted by the High Court, the workman contended that Sec. 33 may be contravened in varieties of ways and the only question that needs to be examined is whether there was a contravention by the employer in that it did not make any application to the Tribunal for the approval of the order of termination of service C of the workman. It is in this context that while allowing the appeal of the workman this Court observed as under :

> "Standing orders of a company only describe certain cases of misconduct and the same cannot be exhaustive of all the species of misconduct which a workman may D commit. Even though a given conduct may not come within the specific terms of misconduct described in the standing orders, it may still be a misconduct, in the special facts of a case, which it may not be possible to condone and for which the employer may take appro- E priate action. Ordinarily, the standing orders may limit the concept but not invariably so."

Relying on these observations, Mr. Shanti Bhushan urged that this Court has in terms held that there can be some other misconduct not enumerated in the standing order and for which the employer F may take appropriate action This observation cannot be viewed divorced from the facts of the case. What stared in the face of the court in that case was that the employer had raised a technical objection ignoring the past history of litigation between the parties that application under Sec. 33A was not maintainable. It is in this G context that this Court observed that the previous action might have been the outcome of some misconduct not enumerated in the standing order. But the extracted observation cannot be elevated to a proposition of law that some misconduct neither defined nor enumerated and which may be believed by the employer to be H misconduct *ex post facto* would expose the workman to a penalty. The law will have to move two centuries backward to accept such a construction. But it is not necessary to go so far because in

Salem Erode Electricity Distribution Co. Ltd. v. *Salem Erode Electricity Distribution Co. Ltd. Employees Union*(1) this Court in terms held that the object underlying the Act was to introduce uniformity of terms and conditions of employment in respect of workmen belonging to the same category and discharging the same or similar work under an industrial establishment, and that these terms and conditions of industrial employment should be well-established and should be known to employees before they accept the employment. If such is the object, no vague undefined notion about any act, may be innocuous, which from the employer's point of view may be misconduct but not provided for in the standing oider for which a penalty can be imposed, cannot be incorporated in the standing orders. From certainty of conditions of employment, we would have to return to the days of hire and fire which reverse movement is hardly justified. In this connection, we may also refer to *Western India Match Company Ltd.* v. *Workmen*(2) in which this Court held that any condition of service if inconsistent with certified standing orders, the same would not prevail and the certified standing orders would have precedence over all such agreements. There is really one interesting observation in this which deserves noticing. Says the Court :

> "In the sunny days of the market economy theory people sincerely believed that the economic law of demand and supply in the labour market would settle a mutually beneficial dargain between the employer and the workman. Such a bargain, they took it for granted, would secure fair terms and conditions of employment to the workman. This law they venerated as natural law. They had an abiding faith in the verity of this law. But the experience of the working of this law over a long period has belied their faith."

Lastly we may refer to Workmen of *Lakheri Cement Works Ltd.* v. *Associated Cement Companies Ltd.* (3) This Court repelled the contention that the Act must prescribe the minimum which has to be prescribed in an industrial establishment, but it does not exclude the extension otherwise. Relying upon the earlier decision of this Court in *Rohtak Hissar District Electricity Supply Co. Ltd.* v. *State of Uttar Pradesh & Ors.* the Court held that

(1) [1966] 2 S.C.R. 498.
(2) [1974] 1 S.C.R. 434.
(3) [1970] 20 Indian Factories & Labour Reports 243.

everything which is required to be prescribed with precision and no argument can be entertained that something not prescribed can yet be taken into account as varying what is prescribed. In short it cannot be left to the vagaries of management to say *ex post facto* that some acts of omission or commission nowhere found to be enumerated in the relevant standing order is nonethe less a miconduct not strictly falling within the enumerated misconduct in the relevant standing order but yet a misconduct for the purpose of imposing a penalty. Accordingly, the contention of Mr. Shanti Bushan that some other act of misconduct which would per se be an act of misconduct though not enumerated in S.O. 22 can be punished under S.O. 23 must be rejected.

That leaves for our consideration clauses 16 and 30. They from an integral part of a code and the setting and purpose underlying these two clauses 16 and 30 must receive the same construction which clauses 10 received. Therefore, for the reasons herein indicated, the heads of charges 2(c) to 2(h) would not be comprehended in clause 10, 16 and 30 of the S.O. 22 applicable to the appellant-Company. We broadly agree except for one aspect specifically mentioned with the conclusion of the High Court. Accordingly, no case is made out for interfering with the interpretation put by the Labour Court and confirmed by the High Court on relevant standing order. The appeal therefore, fails and is dismissed with costs quantified at Rs. 5,000.

H.L.C. *Appeal dismissed.*