THE HON'BLE THE ACTING CHIEF JUSTICE SRI DILIP B.BHOSALE
AND
THE HON'BLE SRI JUSTICE S.V.BHATT

W.A.Nos.1012, 1013, 1019, 1020, 1021, 1023, 1032, 1033, 1034, 1035, 1040, 1099, 1131, 1137, 1174, 1199, 1216, 1262, 1448, 1464, 1470, 1485 OF 2013, 1383, 1447, 1638, 1640 and WA (SR) Nos.165064, 16940, 16948, 16954, 16958, 16967, 16968, 16971, 16980, 16981, 17002, 17003, 29440 of 2014, W.A.Nos.58, 59, 60, 61, 62, 71, 78, 94, 123, 124, 125, 135, 150, 188, 190, 256, 282, 294, 445, 469 and WA (SR) Nos.10221, 12180 14663 of 2015

AND

W.P.Nos.28885 of 2009, 1596, 2901, 3959 and 9328 of 2010, 7349 and 7550 of 2013, 27460, 27935 and 29465 of 2014 and 13318 and 13460 of 2015.

COMMON JUDGMENT: (per Hon'ble The Acting Chief Justice Dilip B.Bhosale)

These writ appeals, under Clause 15 of the Letter Patent, are directed against the order dated 28.11.2013 disposing of a batch of writ petitions whereby the question "whether the works executed by the petitioners in the 3rd respondent-factory (in W.P.No.9111 of 2010) are the works incidental to and/or connected with the works of the 3rd respondent-factory and thus exempted from the provisions of The Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 (27 of 1996) (for short "**Act No.27**")" has been answered in the affirmative.

2. All writ appeals are preferred either by the Commissioner of Labour or Joint Commissioner of Labour, who were respondent No.1 or 2 in the writ petitions (for short "**the Commissioner**"). The writ petitions were filed by Infrastructural Development Companies/Contractors (for short "**the contractors**") who were given contracts for erection or raising structures/constructions such as blast furnace within the campus of respondents-companies/corporations (for short "**the Companies**").

3. The writ petitions were filed by the contractors basically challenging orders of the Commissioner, charging 1% (as cess) of the value of the contracts, executed between them and companies for designing, manufacturing, supplying, erecting, testing and commissioning of blast furnace, under The Building and Other Construction Workers' Welfare Cess Act, 1996, (28 of 1996) (for short "**Act No.28**").

3. Since the questions raised are common, W.P.Nos.28885 of 2009, 1596, 2901, 3959 and 9328 of

4. Mr.C.R.Sridharan, the learned Senior Counsel appearing for the contractors in this batch of writ appeals/petitions, at the outset, submitted that though question "whether the structures raised or constructions made by the contractors, such as blast furnace, within the premises of factories of the companies are covered by the definition of 'building or other construction work'?", was raised, was not addressed by learned single Judge while disposing of the batch of writ petitions, perhaps, in view of the fact the principal question was answered in favour of the contractors. He submitted that this question also needs to be considered and decided in these appeals. The learned Advocate General appearing for the Commissioner did not oppose the submission of Mr.C.R.Sridharan. We, therefore, propose to consider and address both the questions in these appeals. Insofar as the first question is concerned, we reformulate the same as follows: Whether the Factories Act, 1948 (63 of 1948) would apply to the buildings, such as blast furnace within the premises of factories, constructed/erected by contractors? and if yes whether they are liable to pay 1% cess, being 'employers' under the provisions of Act No.28? In other words whether structures, such as blast furnace within the factory premises, are exempted from the provisions of Act No.27, that being the works incidental to and/or connected with the works of factory?

5. The factual matrix and questions raised in these appeals are similar. It is not in dispute that the contractors were not only required to design, manufacture, supply, erect, test and commission blast furnace, but they were also suppose to raise civil and structural works for its erection and commission. In this backdrop, we would like to refer to the facts, to the extent they are relevant, in the first writ petition (W.P.No.9111 of 2010) to understand the controversy better.

5.1 In this writ petition the company (Rashtriya Ispat Nigam Limited) had its factory registered under the Factories Act, 1948 (63 of 1948), (for short "**Act of 1948**"). In order to expand its operations and increase production capacity, the company after obtaining permission to establish one more blast furnace entered into an agreement with the contractor (M/s.Larsen & Toubro Ltd., Mumbai) for designing, manufacturing, supplying, erecting, testing and commissioning of blast furnace-3 including 'civil and structural works'. The contractor, accordingly, executed the works in accordance with the terms and conditions of the agreement. The Commissioner having noticed that contribution contemplated by Act Nos.27 and 28 was not made by the contractors, determined the amount payable as 'cess' and demanded the amount and issued incidental directions. The direction issued to the company (i.e. principal employer) was to deduct 1% of the amount payable to the contractors and remit the same to the Government towards 'cess' payable under Act No.28. In view thereof, the company deducted 1% of amount payable to the contractors. These orders of the Commissioner were under challenge in the batch of writ petitions. At the cost of repetition, it is once again made clear that factual matrix of all the cases is similar.

6. The case of contractors, in short, is that the company is a factory established under Act of 1948 and is, therefore, expressly excluded from the application of the provisions of Act No.27. According to contractors, under any circumstances, factories of the companies are covered by the provisions of Act of 1948, and are, therefore, not liable to pay 1% cess under the provisions of Act No.28. The provisions contained in Act No.27, in particular, the definition of "building or other construction work" would not cover the structures such as blast furnace and, therefore, they are not liable to either deduct 1% cess or remit any such amount to the Government under the provisions of the said Act.

7. Mr.C.R.Sridharan, learned senior counsel for the contractors, advanced leading arguments on behalf of the contractors. He submitted that Act of 1948 regulates labour in factories and takes care of the welfare measures contemplated therein. This Act is a comprehensive piece of legislation covering all aspects regarding factories. That being so, while defining the expression "building or other construction work", despite it being very exhaustive, does not include any building or other construction works to which the provisions of Act of 1948 apply. Our attention was also invited to the words "means" and "does not include" to contend that the word "means" in the definition of "building or other construction work" shows that the definition is a hard-and-fast definition and no other meaning can be assigned to the expression than it is reflected therein.

7.1 Mr.C.R.Sridharan submitted that since language of the provisions of Section 2(d) of Act No.27 is clear, unambiguous and intelligible and does not admit of two meanings, this Court will have to construe it in its ordinary sense. He submitted, it is well settled that the language used speaks the mind and reveals the intention of framers of law and it is only when a section is capable of two constructions, that construction should be preferred which fulfils the policy of the Act and is more beneficial to the persons in whose interest the Act has been passed and not when the language is plain and unambiguous. Insofar as the provisions that fall for our consideration are concerned, Mr.C.R.Sridharan submitted that its language is clear and, therefore, intention of the legislature should be gathered from its plain language and not by taking recourse to any other way of interpretation of the said provision. From a plain reading of the provision, it is clear that

it does not apply to any building to which the provisions of Act of 1948 apply.

7.2 Our attention was drawn to the categories of works in the definition of 'building or other construction work' to further contend that erection of structures such as blast furnace under any circumstances cannot be called a 'building' since it does not include construction of walls, floors, roofs, balconies etc. In short, it was submitted that the word 'building' used/employed in this definition means a building having roof, walls, flooring etc. and under any circumstances a blast furnace would not fall in the category of 'building' or 'other construction work'. Having regard to the language employed while defining this expression, Mr.C.R.Sridharan further submitted that the 'other construction work' also means the constructions, alterations, repairs, maintenance or demolition, of or, in relation to, buildings and categories of works included therein. The other categories of works incorporated in this definition also would not cover blast furnace. He submitted that learned Judge while dealing with the writ petitions did not advert to the question "whether construction of blast furnace is covered by the definition of building or other construction work?".

7.3 Mr.C.R.Sridharan also took us through the relevant provisions of Act of 1948, in particular the definition of 'worker', which covers the persons engaged by the contractor for erection of blast furnace and, therefore, they are expressly excluded from the purview of Act No.27. In short, it was submitted that Act Nos.27 and 28 have no application to the contractors and, therefore, the impugned orders directing them to pay 1% cess or directing the companies to deduct 1% contractual amount from the amounts payable to the contractors is, *ex facie,* illegal and without jurisdiction. Mr.C.R.Sridharan, in support of his contentions, placed reliance upon several judgments of the Supreme Court to which we will make reference at an appropriate stage.

7.4 Mr.C.R.Sridharan, in response to our pointed question, submitted that workers of the contractors are not covered by Act of 1948, in view of the agreement/contract executed between contractors and principal employers-Companies under which the contractors had taken all responsibility of their workers to extend them all benefits thereunder.

7.5 Mr.C.R.Sridharan, after inviting our attention to the expression "building or other construction work" submitted that such heading cannot be relied upon or do not control the main section, which is absolutely unambiguous and clear. He submitted that the expression "building or other construction work" is nothing but a heading/prefix to the section or is a marginal note, which does not control language of the section. He submitted that heading of a section is always inserted by a draftsman and strictly speaking is not a law. It is only a guide to the contents of the part and sections which follow. It may be construed as preamble to the section. It cannot control the plain word of a section and that it cannot be referred to, for the purpose of construing the provision, when the words used in the provision are clear and unambiguous. In view thereof, he submitted that the word 'building' used in the expression "building or other construction work" cannot be read in isolation to contend that the building and other construction work are different. In support of this contention Mr.Sridharan placed reliance upon the following judgments: ***Quebec Railway, Light, Head and Power Company Limited v. Vandry***[1]***, CIT v. Ahmedbhai Umarbhai & Co.***[2]***, Bhinka and others v. Charan Singh***[3]***, M/s.H.M.Kamaluddin Ansari and Co. v. Union of India and others***[4]***, Durgadas Tulsiram Sood, Accused v. State***[5] and ***Y.L. eServices Pvt. Ltd. v. Silverline Business and Tech Park Pvt. Ltd. and Ors.***[6]***.***

8. Mr.S.Rajan, learned counsel for the contractors in W.A.Nos.60, 62, 71 and 94 of 2015,

WASR No.165064 of 2014 and WA(SR) No.14663 of 2015, submitted that in W.A.Nos.62, 71 and 94 of 2015,

9. On the other hand, Mr.P.Venugopal, the learned Advocate-General for the State of Andhra Pradesh, appearing for the Commissioner, invited our attention to the definitions of 'worker' and 'manufacturing process' in the Act of 1948 and contended that under any circumstances, workers of the contractors in this batch of writ appeals cannot be stated to be the workers within the meaning of the word 'worker' defined under Section 2(l). He submitted that workers of the contractors cannot be stated to be the 'workers' engaged in 'manufacturing process'. He then invited our attention to the definition of "building or other construction work" to contend that erection of a structure like blast furnace is squarely covered by the definition of "building or other construction work". He submitted that it is true, the provisions of Act No.27 do not apply to buildings to which the provisions of Act of 1948 apply, but, in the present case, the learned Judge while deciding the writ petitions did not address the question "whether provisions of Act of 1948 would apply to the building i.e. blast furnace within the premises of factory of the company?".

9.1 He submitted that Act No.27 was introduced to regulate the employment and conditions of service of building and other construction workers and to provide for safety, health and welfare measures of the workers. It was introduced with the object of protecting 8.5 million workers in the country who are engaged in building and other construction works. All building and other construction workers are one of the most vulnerable segments of the unorganized labour in India. The building and other construction works are characterized by their inherent risk to the life and limb of the workers. The construction work is also characterized by its casual nature, temporary relationship between employer and employee, uncertain working hours, lack of basic amenities and inadequacy of welfare facilities. In view thereof, Act No.27 was enacted to extend the protection to this class of workers and if workers of the contractors, in this batch of appeals, are excluded from the purview of Act Nos.27 and 28, the very object of the Acts will be frustrated.

9.2 He submitted that the intention of the Parliament will have to be gathered not only by reading the expression "does not include" in section 2 (d) of Act No.27 in isolation but it will have to be read in the backdrop of the scheme of Act and also facts of the present case. In the course of arguments, learned Advocate-General invited our attention to the submission of Mr.C.R.Sridharan that the workers of the contractors, as per the agreements executed between them and the companies, are not covered by
Act of 1948, and submitted that if the order of learned single Judge is upheld that will create an anomaly whereby the workers will not get benefits either under Act Nos.27 and 28 or Act of 1948. He submitted, that was not the intention of the Parliament in introducing the Act Nos.27 and 28. He submitted that merely because there is a contract between the contractor and the company whereby the contractor claims to have taken all responsibilities of their workers would not mean the workers stood excluded from the benefits contemplated by Act Nos.27 and 28. In other words, he submitted that contracting out of the beneficial provisions of Act Nos.27 and 28, in the manner in which it has been done in these appeals, is against the public policy and, therefore, such contracts/agreements should not be looked into while interpreting the provisions of welfare/beneficial legislation.

10. Relevant provisions of Act No.27 are the definitions of expressions/words "building or other construction work", "contractor", "employer" and "establishment". The arguments advanced by the learned counsel for the parties were, however, centered around the definition of "building or other construction work", which, in our opinion, needs to be reproduced for better appreciation and for answering the questions raised in this batch of writ appeals. The definition of "building or other construction work" in Section 2(d)

and 2 (i), to the extent it is relevant for our purpose, of Act No.27 read thus:-

> "2(d) "**building or other construction work**" **means** the construction, alteration, repairs, maintenance or demolition, of or, in relation to, buildings, streets, roads, railways, tramways, airfields, irrigation, drainage, embankment and navigation works, flood control works (including storm water drainage works), generation, transmission and distribution of power, water works (including channels for distribution of water), oil and gas installations, electric lines, wireless, radio, television, telephone, telegraph and overseas communications, dams, canals, reservoirs, watercourses, tunnels, bridges, viaducts, aquaducts, pipelines, towers, cooling towers, transmission towers and such other work as may be specified in this behalf by the appropriate Government, by notification **but does not include any building or other construction work to which the provisions of the Factories Act, 1948 (63 of 1948), or the Mines Act, 1952 (35 of 1952), apply**;
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> 2(i)(iii) in relation to a building or other construction work carried on by or though a contractor, or by the employment of building workers supplied by a contractor, the contractor;"
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> (emphasis supplied)

11. If we hold that 'blast furnace' is covered by the definition of "building or other construction work" and that the provisions of Act of 1948 do not apply to such structure, perhaps, we would not have to make any reference to the provisions contained in Act No.28. Be that as it may, the relevant provisions to which perhaps we may have to make reference in Act No.28 are Sub-sections (2) and (3) of Section 3 of Act No.28, which deal with Levy and collection of cess. Next we are concerned with the provisions of Sections 2(k), (l), (m), 6(1)(a)(b)(c)(d) and Section 6(3) of the Act of 1948. Though we may have to make reference to these all provisions, at this stage, we deem it appropriate to reproduce the provisions contained in Section 2(k) and (l) of Act of 1948 only, which read thus:-

> "**Section 2(k)** "manufacturing process" means any process for-
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> (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or
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> [(ii) pumping oil, water, sewage or any other substance, or]
>
> [(iii) generating, transforming or transmitting power; or
>
> [(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding;] [or]
>
> (v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; [or]
>
> [(vi) preserving or storing any article in cold storage;]
>
> **Section 2(l)** "Worker" means a person [employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not], in any manufacturing process or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process [but does not include any member of the armed forces of the Union];"

12. It would be advantageous to make reference to the judgments relied upon by Sri C.R.Sridharan for interpreting the relevant provisions. He invited our attention to the judgment of the Supreme Court in ***Punjab Land Development and Reclamation Corporation Ltd., Chandigarh v. Presiding Officer, Labour Court, Chandigarh and others***[7]. In this case, the Supreme Court while interpreting the word 'means' observed that if the definition has used the word 'means', it shall include certain things or acts and the definition is a hard-and-fast definition and no other meaning can be assigned to the expression than is put down in definition. The Supreme Court further observed that if the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the law. Then the Supreme Court after making reference to its judgment in ***B.N.Mutto v. T.K.Nandi***[8] observed that "the Court has to determine the intention as expressed by the words used. If the words of a statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense". It was further observed that "the cardinal rule of construction of statute is to read statutes literally, that is, by giving to the words their ordinary, natural and grammatical meaning".

12.1 In ***Shri Hariprasad Shivshanker Shukla and another v. Shri A.D.Divelkar and others***[9] the Supreme Court observed that "there is no doubt that when the Act itself provides a dictionary for the words

used, we must look into that dictionary first for an interpretation of the words used in the statute. We are not concerned with any presumed intention of the legislature; our task is to get at the intention as expressed in the statute".

12.2 In ***C.E.S.C. Limited and Ors. v. Subhash Chandra Bose and Ors***[10] the Supreme Court held that Court cannot travel beyond the scheme of the statute and extend the scope of it on the pretext of extending statutory benefits to those not covered by the scheme of the statute.

12.3 In ***M.P. Mineral Industry Association v. Regional Labour Commr. (Central)***[11], the Supreme Court while dealing with the provisions of the Minimum Wages Act, 1948, observed that this Act is intended to achieve the object of doing social justice to workmen employed the scheduled employments by prescribing minimum rates of wages for them, and so in construing the said provisions the court should adopt what is sometimes described as a beneficent rule of construction.

12.4 In ***Regional Director, Employees' State Insurance Corporation, Trichur v. Ramanuja Match Industries***[12] the Supreme Court observed that "there is no doubt that beneficial legislations should have liberal construction with a view to implementing the legislative intent but where such beneficial legislation has a scheme of its own there is no warrant for the Court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered by the scheme".

12.5 In ***Dadi Jagannadham v. Jammulu Ramulu and others***[13] the Supreme Court while interpreting the provisions that fell for consideration observed in paragraph 13 thus:-

> "13. …….. The settled principles of interpretation are that the court must proceed on the assumption that the legislature did not make a mistake and that it did what it intended to do. The court must, as far as possible, adopt a construction which will carry out the obvious intention of the legislature. Undoubtedly if there is a defect or an omission in the words used by the legislature, the court would not go to its aid to correct or make up the deficiency. The court could not add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. The court cannot aid the legislature's defective phrasing of an Act, or add and mend, and, by construction, make up deficiencies which are there."

12.6 In ***Shyam Sunder and others v. Ram Kumar and another***[14]**,** the supreme Court made the following observations as to how to interpret the provisions of an enactment:-

> "……. When the words used in a statute are capable of only one meaning. In such a situation, the courts have been hesitant to apply the rule of benevolent construction. But if it is found that the words used in the statute give rise to more than one meaning, in such circumstances, the courts are not precluded from applying such rule of construction. The third situation is when there is no ambiguity in a provision of a statute so construed. If the provision of a statute is plain, unambiguous and does not give rise to any doubt, in such circumstances the rule of benevolent construction has no application."

12.7 Similarly in ***Grasim Industries Ltd. v. Collector of Customs, Bombay***[15], the Constitution Bench of the Supreme Court in paragraph 10 observed as under:-

> "10. No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sentential legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so, what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided. As stated by the Privy Council in Crawford v. Spooner2 "we cannot aid the legislature's defective phrasing of an Act, we cannot add or mend and, by construction make up deficiencies which are left there". In case of an ordinary word there should be no attempt to substitute or paraphrase of general application. Attention should be confined to what is necessary for deciding the particular case. This principle is too well settled and reference to a few decisions of this Court would suffice. (See : *Gwalior Rayons Silk Mfg.(Wvg.) Co. Ltd. v. Custodian of Vested Forests*[3], *Union of India v. Deoki Nandan Aggarwal*[4], *Institute of Chartered Accountants of India v. Price Waterhouse*[5] *and Harbhajan*

Singh v. Press Council of India[6].) [See also ***Nathi Devi v. Radha Devi Gupta*** [(2005) 2 SCC 271]

12.8 In ***Deepal Girishbhai Soni and others v. United India Insurance Co. Ltd., Baroda***[16] while interpreting the provisions that fell for consideration in paragraph 53, the Supreme Court observed as under:-

> "53. Although the Act is a beneficial one and, thus, deserves liberal construction with a view to implementing the legislative intent but it is trite that where such beneficial legislation has a scheme of its own and there is no vagueness or doubt therein, the court would not travel beyond the same and extend the scope of the statute on the pretext of extending the statutory benefit to those who were not covered thereby. (See *Regional Director, ESI Corpn. V. Ramanuja Match Industries*[4].)

12.9 The Supreme Court in ***Ombalika Das v. Hulisa Shaw***[17] explained the rule of literal interpretation in the following terms:-

> "Resort can be had to the legislative intent for the purpose of interpreting a provision of law, when the language employed by the legislature is doubtful or susceptible of meanings more than one. However, when the language is plain and explicit and does not admit of any doubtful interpretation, the Supreme Court cannot, by reference to an assumed legislative intent, expand the meaning of an expression employed by the legislature and therein include such category of persons as the legislature has not chosen to do."

12.10 On the basis of the judgments referred to in the foregoing paragraphs, in short, it was submitted by Mr.C.R.Sridharan that the language of Section 2 (d) of Act No.27 is clear, unambiguous and intelligible and does not admit of two meanings, and, therefore, needs to be construed in its ordinary sense, in view of the well settled position of Law that the language used speaks the mind and reveals the intention of its framers. He submitted that if language of the Statute is clear, unambiguous and if two interpretations are not reasonably possible, it would be wrong to discard the plain meaning of the words used in order to meet a possible injustice. He then submitted, even while construing a social welfare legislation, the Court should adopt a beneficent rule of construction; if a section is capable of two constructions. He, however, submitted that the language of Section 2(d) being plain and unambi-guous, we must give effect to it whatever may be the consequences. Apart from the judgments referred to above, in support, he also placed reliance upon the following judgments: ***Col.D.D.Joshi and others v. Union of India and others***[18], ***Lalappa Lingappa and others v. Laxmi Vishnu Textile Mills Ltd.,***[19], ***Kanai Lal Sur v. Paramnidhi Sadhukhan***[20], ***Utkal Contractors and Joinery Pvt. Ltd., and others v. State of Orissa and others***[21], ***Dr.Ajay Pradhan v. State of Madhya Pradesh and others***[22] and ***Institute of Chartered Accountants of India v. Price Waterhouse and another***[23].

13. We would like to make a detailed reference to the judgment of the Supreme Court in ***Employees' State Insurance Corporation v. K.Ramachandran and others***[24]. This judgment was strongly relied upon by not only Mr.C.R.Shridharan, learned senior counsel, but even learned single Judge in support of the view taken in the impugned judgment.

13.1 The incidental question that fell for consideration of the Supreme Court was "whether the construction of factory buildings for expansion of the existing factories is incidental or preliminary to or connected with the work of the factory or not?". The principal question that the Supreme Court considered in this case was "whether the workers employed for construction of additional buildings for expansion of the factories in question are employees within the meaning of Section 2(9) of the Employees' State Insurance Act, 1948?" (for short "**the ESI Act**").

13.2 In this case, the respondent-company, which was a factory within the meaning of Act of 1948, commenced the construction of another building in the compound of existing factory for its expansion and engaged workmen for construction on daily wage basis. The E.S.I. Corporation called upon the respondent-company to make contribution in respect of the workmen employed for the construction of factory building as required by the Act. This was challenged in the Madras High Court under Article 226 of the Constitution. A learned single Judge held that the persons employed in construction of a new unit of the factory were not employees within the meaning of the definition of the word 'employee' under Section 2(9) of the said Act. On an appeal, a Division Bench held that construction workers being casual employees do not come within the purview of the Act. On behalf of the appellants, heavy reliance was placed on the following observations made by the Supreme Court in Paragraph 12, which read thus:-

> "12. ..... It has been already noticed that the definition of the term 'employee' under Section 2 (9) of the Act is very wide. It includes within it any person employed on any work incidental or preliminary to or connected with the work of the factory or establishment. **It is difficult to enumerate the different types of work which may be said to be incidental or preliminary to or connected with the work of the factory or establishment. It seems that any work that is conducive to the work of the factory or establishment or that is necessary for the augmentation of the work of the factory or establishment will be incidental or preliminary to or connected with the work of the factory or establishment**. In the instant cases, the additional buildings have been constructed for the expansion of the factories in question. It is because of these additional buildings that the existing factories will be expanded and, consequently, there will be increase in the production, that is to say, increase in the work of the factories concerned. **So the work of construction of these additional buildings has a link with the work of the factories. It cannot be said that the construction work has no connection with the work or the purpose of the factories. So it is difficult to hold that the work of construction of these additional factory buildings is not work incidental or preliminary to or connected with the work of the factories**."
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> (emphasis supplied)

13.3 The Employees' State Insurance Act, 1948, is a piece of social security legislation enacted to provide for certain benefits to employees in case of sickness, maternity and employment injury. To hold that the workers employed for the work of construction of buildings for expansion of the factory are not employees within the meaning of Section 2(9) of the Act on the ground that such construction is not incidental or preliminary to or connected with the work of the factory will be against the object of the Act. In an enactment of this nature, the endeavour of the Court should be to interpret the provisions liberally in favour of the persons for whose benefit the enactment has been made. Paragraph 14 of this judgment is also relevant, which reads thus:-

> "14. In this connection, we may refer to a decision of this Court in *Royal Talkies v. E.S.I. Corpn.*[5]. The question that came up for consideration by this Court was whether the workers employed to run the canteen and the cycle stand situate within the compound of a 'cinema theatre' were employees within the meaning of Section 2 (9) of the Act. **It was held that the workers employed to run the canteen and the cycle stand were employees within the meaning of Section 2 (9) of the Act**. Krishna Iyer, J. speaking for the court, observes: (SCC p.211, para 14)
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> The expression "in connection with the work of an establishment" ropes in a wide variety of workmen who may not be employed in the establishment but may be engaged only in connection with the work of the establishment. Some nexus must exist between the establishment and the work of the employee but it may be a loose connection. '**In connection with the work of an establishment' only postulates some connection between what the employee does and the work of the establishment. He may not do anything directly for the establishment; he may not do anything statutorily obligatory in the establishment; he may not even do anything which is primary or necessary for the survival or smooth running of the establishment or integral to the adventure. It is enough if the employee doe some work which is ancillary, incidental or has relevance to or link with the object of the establishment** ..... Taking the present case, an establishment like a cinema theatre is not bound to run a canteen or keep a cycle stand (in Andhra Pradesh) but no one will deny that a canteen service, a toilet service, a car park or cycle stand, a booth for sale of catchy film literature on actors, song hits and the like, surely have connection with the cinema theatre and even further the venture."
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> (emphasis supplied)

13.4 Having regard to the questions that fell for consideration in the facts of the case, it is clear that the Supreme Court in order to extend benefits under the

ESI Act, brought the employees/workers engaged on daily wages for construction of additional factory building within the definition of employee, observing that the endeavor of the Court should be to interpret the provisions liberally

in favour of the persons for whose benefit the enactment has been made. In the present case, reliance is placed on the observations made in paragraphs 12 and 14 of the judgment to exactly contend other way round. In other words, on the basis of the observations made in these paragraphs, it was contended that the contractor is not liable to pay 1% cess for the benefit of the workers engaged for the construction work

incidental or preliminary to or connected with the work of factory or establishment. In *stricto sensu*, in our opinion, this judgment would not help the contractors to contend that the building-blast furnace, within the factory premises of Company, is covered by Act of 1948 and that the provisions of Act Nos.27 and 28 would not bind them to pay/contribute 1% cess, on the basis of the contract executed between them and companies. Even if construction/erection of blast furnace is taken as incidental or ancillary to the factory, what is necessary to examine is whether workers/employees engaged for its erection/construction are covered by Act of 1948? and if answer to this question is in the negative, that would only mean that the contractors are obliged to contribute/pay 1% cess under Act No.28. We would deal with this aspect of the matter little later.

14. That takes us to consider the provisions contained in Section 2(d) of Act No.27 and address the questions raised, in the light of the submissions made by learned counsel for the parties and judgments relied upon in support of the interpretation given by them in the course of arguments. At the outset, we would like to consider the question 'whether construction of blast furnace or cranes would amount to construction of a building as defined under Section 2 (d) of Act No.27?'.

14.1 The definition of 'building or other construction work' states what does that exactly mean. It means the construction, alteration, repairs, maintenance or demolition, of or, in relation to buildings and several other structures/constructions such as streets, roads, tramways etc., but does not include any building or other construction work to which the provisions of Act of 1948 apply. It is true that the provision itself provides a dictionary for the type of other construction works, and, therefore, the question is whether blast furnace can be treated as 'building or other construction work'. Insofar as the word 'building' in this expression is concerned, it was argued on behalf of the contractors that it means a structure having walls, ceiling, flooring, windows etc. and in view thereof by no stretch of imagination blast furnace or cranes could be treated as building or called a building. Insofar as the 'other construction works' as stipulated in the definition are concerned, it was submitted that the definition does not include 'blast furnace' or 'cranes' nor the appropriate Government, by notification, has included it in the definition. We would, therefore, like to consider "whether blast furnace or cranes are covered by the definition of 'building or other construction works' in particular by the word 'building' therein?

15. Insofar as cranes are concerned, in three Writ Appeals (W.A.Nos.62, 71 and 94 of 2015) two separate agreements were executed between the contractors and companies-principal employer. Out of which, three agreements each were for construction and three agreements were for supplying of all plant machinery and equipment. Thus, both the agreements together were for supply, construction and commissioning plant i.e. Cranes for Wire Rod Mill. Technically, learned counsel appearing for the contractors in these appeals, may be right in submitting that the contracts for supply of plant machinery cannot be taken into account for directing the appellants or the companies to pay/deduct 1% cess under the provisions of Act No.28. We, therefore, with the assistance of learned counsel for the contractors tried to understand the exact nature of these agreements and the work undertaken by them thereunder. Though two separate agreements were executed, the work that was undertaken by the contractors cannot be separated. It was like a composite contract for construction/erection and commissioning of the plant. If the argument, such as advanced by learned counsel for the appellants in these appeals, is accepted that will defeat the very object of Act Nos.27 and 28. In every construction work/activity, the contractors and/or the principal employer would execute two agreements, one for supply of materials and the other for construction/erection of buildings such as blast furnace and cranes. The expression 'the cost of construction' as employed in Section 3(1) of Act No.28, in our opinion, would mean the entire cost incurred for construction of a building, such as crane or blast furnace, since its construction and erection cannot be separated. It was a composite

contract for construction/erection of crane with material. Therefore, the submission of the learned counsel for the appellants in these three appeals must be rejected.

16. The word 'building' is defined in Concise Oxford English Dictionary 11th Edition by Catherine Soanes and Angus Stevenson to mean a structure with a roof and walls and the process or trade of building houses and other structures. In The Chambers Dictionary (New Edition), the word 'building' is defined to mean the art, occupation or process of erecting houses etc.; a substantial structure for giving shelter; for example: a house, office-block; used as a collective noun for a gathering of roofs. Oxford Advanced Learner's Dictionary defined the word 'building' to mean a structure such as a house or school that has a roof and walls. Similarly, the Webster's Encyclopaedic Unabridged Dictionary of the English Language–New Revised Edition descried the word 'building' to mean relatively permanent, essentially boxlike construction having a roof and often windows and enclosing within its walls space, usually on more than one level, for any of a wide variety of activities, as living, entertaining, manufacturing etc. These dictionaries give a plain meaning of the word 'building'.

16.1 In common parlance the word 'building', is understood to mean any construction/structure raised for whatsoever purpose and of whatsoever material and every part thereof, whether or not used as human habitation. Halsbury's Laws of England, Fourth Edition 2002, Volume 4(2) described the word 'building' as follows:

> "305. Meaning of 'building'. For the purposes of Part I of the Building Act 1984[1] and any other enactment[2], whether or not contained in that Act, that relates to building regulations[3], or that mentions 'buildings' or 'a building' in a context from which it appears that those expressions are there intended to have the same meaning as in Part I of the Building Act 1984, **means any permanent or temporary building, and, unless the context otherwise requires, it includes any other structure or erection[4] of whatever kind or nature, whether permanent or temporary**[5]. For these purposes, unless the context otherwise requires: (1) a reference to a building includes a reference to part of a building[6]; and (2) a reference to the provision of services, fittings and equipment in or in connection with buildings, or to services, fittings and equipment so provided, includes a reference to the affixing of things to buildings or, as the case may be, to things so affixed[7]."
>
> (emphasis supplied)

16.2 The Supreme Court in ***Ghanshiam Das v. Debi Prasad***([25]) considered the word 'building' defined in the Websters New International Dictionary, which reads thus:-

> "That which is built specify (a) **as now generally used as fabric or edifice, framed or constructed, designed to stand more or less permanently and covering a space of land for use as a dwelling, store house, factory, shelter forbeasta or some other useful purpose**. Building in this sense does not include a mere wall, fence monument, hoarding or similar structure though designed for permanent use where it stands, nor a steamboat ship or other vessel or navigation. "**From this definition it does not appear that the existence of a roof is always necessary for a structure to be regarded as a building**. **Residential buildings ordinarily have roofs but there can be a non-residential building for which a roof is not necessary**. A large stadium or an open-air swimming pool constructed at a considerable expenses would be a building as it is permanent structure and designed for a useful purpose."
>
> (emphasis supplied)

16.3 In ***Hukamchand Mills Ltd. V. C.I.T.***([26]) and in ***Panyam Cements & Mineral Industries Ltd., v. Addl. C.I.T.***([27]) the word 'building' occurring in the I.T. Act, 1961, was considered by the High Courts and it was observed that the word 'building' has to be understood from the commonsense point of view and its use in the Act has to be appreciated in the context in which provision for depreciation on building had been made treating the same as a capital asset of an assessee. There is nothing either in principle or in the use of the word 'building' in the I.T. Act, to exclude roads, which assessee had laid in the proximity of the factory and for the purpose of providing access to the factory and the other building within the compound. In ***C.I.T. v. Gwalior Rayon Silk Manufacturing Co. Ltd.***([28]) the Supreme Court considered the word 'building' and observed that everything that is necessary to perfect a manufacturing establishment and fit for use, designed as a part of it, is a building.

16.4 The Supreme Court in ***State of Punjab v. British India Corporation Ltd.***,([29]) considered the question 'whether certain buildings belonging to the respondent, the British India Corporation Ltd., are liable to taxation under the Punjab Urban Immovable Property Tax Act, 1940?'. The Supreme Court also considered whether the High Court in that case was right in its view that the buildings of the respondent come within the Clause, which has been prescribed for exemption by Rule 18 of the Punjab Urban Immovable Property Tax Rules, 1941? While dealing with the question, the Supreme Court observed that it is obvious that in order that a factory may function in accordance with law buildings or parts of buildings have to be provided by the owner for the use of the workmen for the purposes mentioned in several sections in the Act. Such use of buildings must therefore be held to be used for the purpose of a factory.

16.5 It is true that the word 'building' has not been defined separately in Act No.27 and must, therefore, be construed in the context in which it has been used/employed in different Sections of this Act. It is equally true that when the word is not defined, it needs to be construed in its ordinary grammatical sense or its dictionary meaning, but where the word requires to be read in the context or object of the Statute to understand that it is used in a special sense different from its ordinary grammatical sense or its dictionary meaning, it should be read to mean that. There are instances where the Supreme Court has treated even swimming pool or roads as 'building' as those being permanent structures and designed for useful purpose.

16.6 The word 'building' used in the definition of 'building or other construction work' in Act No.27 will have to be understood not only by its bare reading but in the light of the scheme of the Act and intent of the Parliament in defining the said expression. The first part of the definition states that it means 'construction, alteration, repairs, maintenance or demolition, of or, in relation to buildings'. This part of the definition covers any construction of or in relation to any 'building'. Having regard to the scheme of the Act and the intent of the Parliament to regulate the employment and conditions of service of building and other construction works and to provide for their safety, health and welfare measures and for other matters connected therewith or incidental thereto, the word 'building', in our firm opinion, would mean any permanent or temporary structure/construction of whatever kind or nature covering a space of land for use not only as a dwelling but even a factory including the structures like blast furnace and cranes.

16.7 Whether particular structure amounts to a building depends upon the circumstances of each case and the scheme of Act. Similarly, what is building? is generally a question of degree and circumstances, though its ordinary meaning is block of brick and stone work, may or may not be covered by a roof. It may be true that usually the structure is covered with a roof, such as a house, a Church, a shop, etc. but that does not mean that the structure which does not have roof is not a building. Thus, as stated in the Law Lexicon by Justice C.K.Thakker what is a building must always be a question of degree and circumstances and depends upon facts and circumstances of each case.

17. Mr.C.R.Sridharan also submitted that a heading prefixing to the Section or a marginal note of any Section does not control the language of the Section. He submitted that merely the heading of Section 2(d) of Act No.27 uses the word 'building' does not mean any building, including blast furnace, which is otherwise not included in the definition originally or by issuing notification contemplated under this provision. In support of this contention, he placed reliance upon several judgments referred to supra. However, in our opinion, none of those judgments would help Mr.C.R.Sridharan in support of his arguments and so also to contend on the basis thereof that blast furnace cannot be called or treated as a "building".

17.1 A mere look at clause (d) of Section 2 of Act No.27 would show that "building or other construction work" is neither a heading of Section nor can that be treated as a marginal note. It is an expression which is defined by Section 2(d). Therefore, the judgments relied upon are of no avail to the contractors. In our opinion, the blast furnace and the cranes, in the present case, would have to be treated as buildings as defined by section 2(d) of Act No.27. In other words, erection/construction of the blast furnace and the cranes means construction of 'building'.

18. Next, having regard to the principles of interpretation as reflected in the judgments of the Supreme Court, we would like to consider the question 'whether structures, such as blast furnace/cranes within the premises of factory are exempted from the provisions of Act No.27, that being the works incidental to and/or connected with the factory?' Answer to this question, in our considered opinion, is in the affirmative. We now proceed to record reasons for taking such view.

19. Before we look into the provisions of all three Acts, it would be advantageous to make a brief reference to the Statement of Object and the Preamble of all three Acts, to know and understand the intent of Parliament. Act of 1948, as the preamble recites, is an Act to consolidate and amend the law regulating labour in factories. It was enacted primarily with the object of protecting workers employed in factories against industrial and occupational hazards. For that purpose it seeks to impose upon the owners or occupiers certain obligations to protect workers unwary as well as negligent and to secure for them employment in conditions conducive to their health and safety. This Act also requires that the workers should work in healthy and sanitary conditions and for that purpose it provides that precautions should be taken for the safety of workers and prevention of accidents. Incidental provisions in Act of 1948 are made for securing information necessary to ensure that the objects are carried out and the State Governments are empowered to appoint Inspectors, to call for reports and to inspect the prescribed registers with a view to maintain effective supervision. The duty of the employer under this Act is to secure the health and safety of workers and extends to providing adequate plant, machinery and appliances, supervision over workers, healthy and safe premises, proper system of working and extends to giving reasonable restrictions. Detailed provisions are, therefore, made in diverse chapters of the Act imposing obligations upon the owners of the factories to maintain inspecting staff and for maintenance of health, cleanliness, prevention of overcrowding and provision for amenities such as lighting, drinking water, etc. Provisions are also made for safety of workers and their welfare, such as restrictions on working hours and on the employment of young persons and females, and grant of annual leave with wages. Employment in a manufacturing process was at one time regarded as a matter of contract between the employer and the employee and the State was not concerned to impose any duties upon the employer. It is however with the introduction of Act, 1948, recognized that the State has a vital concern in preventing exploitation of labour and in insisting upon the proper safeguards for the health and safety of the workers. The Factories Act imposes numerous restrictions upon the employers to secure to the workers adequate safeguards for their health and physical well-being. [*See* ***Bhikusa Yamasa Kshatriya (P) Ltd. and Another v. Union of India*** (**AIR 1963 SC 1591**)]

20. Similarly, we find the background in which Act No.27 was enacted as set out in the Statement of Objects & Reasons. It would be relevant to extract the following portion of the Statement of Objects & Reasons to better appreciate the Legislative intent:

> "**(1)** It is estimated that about 8.5 million workers in the country are engaged in building and other construction works. Building and other construction workers are one of the most numerous and vulnerable segments of the unorganised labour in India. The building and other construction works are characterised by their inherent risk to the life and limb of the workers. The work is also characterised by its casual nature, temporary relationship between employer and employee, uncertain working hours, lack of basic amenities and inadequacy of welfare facilities. In the absence of adequate statutory provisions, the requisite information regarding the number and nature of accidents is also not forthcoming. In the absence of such information,

it is difficult to fix responsibility or to take any corrective action.

(2) Although the provisions of certain Central Acts are applicable to the building and other construction workers yet a need has been felt for a comprehensive Central Legislation for regulating their safety, health, welfare and other conditions of service."

20.1 The Supreme Court in ***Dewan Chand Builders and Contractors v. Union of India and Others***[30] considered the scheme of Act No.27 and the Rules framed thereunder and in paragraphs 10, 11 and 17 observed thus:

"**10.** It is thus clear from the scheme of the BOCW Act that **its sole aim is the welfare of building and construction workers, directly relatable to their constitutionally recognised right to live with basic human dignity, enshrined in Article 21 of the Constitution of India**. It envisages a network of authorities at the Central and State levels to ensure that the benefit of the legislation is made available to every building and construction worker, by constituting Welfare Boards and clothing them with sufficient powers to ensure enforcement of the primary purpose of the BOCW Act. The means of generating revenues for making effective the welfare provisions of the BOCW Act is through the Cess Act, which is questioned in these appeals as unconstitutional.

11. The Statement of Objects and Reasons to the BOCW Act explained that it had been considered

"**necessary to levy a cess on the cost of construction incurred by the employers on the building and other construction works for ensuring sufficient funds for the Welfare Boards to undertake the social security schemes and welfare measures**".

Simultaneously with the enactment of the BOCW Act, Parliament enacted the Cess Act. The Statement of Objects and Reasons to the Cess Act noted that the intention was to

"**provide for the levy and collection of a cess on the cost of construction incurred by the employers for augmenting the resources of the Building and Other Construction Workers' Welfare Boards constituted by the State Governments under the Building and Other Construction Workers'** (Regulation of Employment and Conditions of Service) Ordinance, 1995".

17. It is manifest from the overarching schemes of the BOCW Act, the Cess Act and the Rules made thereunder that their **sole object is to regulate the employment and conditions of service of building and other construction workers, traditionally exploited sections in the society and to provide for their safety, health and other welfare measures**. The BOCW Act and the Cess Act break new ground in that, the liability to pay cess falls not only on the owner of a building or establishment, but under Section 2(1)(*i*)(*iii*) of the BOCW Act

"in relation to a building or other construction work carried on by or through a contractor, or by the employment of building workers supplied by a contractor, the contractor";

The extension of the liability on to the contractor is with a view to ensure that, if for any reason it is not possible to collect cess from the owner of the building at a stage subsequent to the completion of the construction, it can be recovered from the contractor. The Cess Act and the Cess Rules ensure that the cess is collected at source from the bills of the contractors to whom payments are made by the owner. In short, the burden of cess is passed on from the owner to the contractor.

(emphasis supplied)

The BOCW Act, referred to in the judgment, is the Act No.27 and the "Cess Act" is the Act No.28.

21. Act No.28, as preamble recites, provides for levy and collection of a cess on the cost of construction incurred by "employers" with a view to augmenting the resources of the building and other construction workers. It was introduced with a view to provide for levy and collection of a cess on the cost of construction incurred by the employers for augmenting the resources of the building and other construction workers welfare Boards constituted under Act No.27. Section 3 of Act No.28 provides for levy and collection of a cess for the purpose of Act No.27 from every "employer". The words and expressions used in Act No.28, which are not defined therein and defined in Act No.27 shall have the same meaning respectively assigned to them in that Act. The word 'employer' is defined in Act No.27 in relation to an establishment, which means the owner thereof and for our purpose includes, in relation to a building or other construction work carried on by or through a contractor or by the employment of building workers supplied by a contractor. Act No.28 casts burden to pay a cess not exceeding 2% but not less than 1% of the cost of the construction incurred by an employer as contemplated by Section 3 of this Act. Contractors, in the present case, thus are employers as defined by clause (iii) of sub-section (i)(i) of Section 2 of Act No.27 and, therefore, if they are held to be liable to pay the cess, they would have to pay the same.

22. Act No.27 defines the expression "building or other construction work" so as to extend benefits to the workers engaged in building and other construction work. The word 'worker' as defined in clause(l) of Section 2 of Act of 1948 undoubtedly include the persons employed directly or by or through any agency including a contractor with or without the knowledge of the principal employer. Therefore, from a plain reading of the definition it is clear that if "workers" are engaged in 'building or other construction work' in the factory premises, they stand covered by the provisions of Act of 1948, whether engaged by principal employer or through any agency including a contractor in any kind of work incidental to, or connected with, the manufacturing process, and, as stated in Section 2 (d) of Act No.27, would stand excluded from the

purview of Act No.27. But the question is, if building workers engaged in construction of a building within the factory premises are excluded by the principal employer and the contractor from being covered by Act of 1948, by entering into a contract to that effect, whether such workers would stand excluded from the benefits of Act No.27.

23. In view of the scheme of Act No.27 and Act No.28, in the present case, the Commissioner had issued directions to the principal employer i.e., Companies to deduct 1% of amount payable to the contractors and remit the same to the Government towards cess payable under Act No.28.

24. In the present case, admittedly the workers, employed/engaged by the contractors for construction of blast furnace/cranes, are not covered by Act of 1948. Mr.C.R.Sridharan, learned Senior Counsel, in response to our specific query, submitted that the workers/employees engaged for erection/construction of blast furnace/cranes, within the factory premises of companies, are not covered by the provisions of Act of 1948, in view of the contracts/agreements executed between the companies and the contractors. He submitted that the contractors had taken all responsibilities such as extending benefits to its workers/employees including the benefits contemplated under Act of 1948. In view thereof, in our firm opinion, it cannot be stated that the provisions of Act of 1948 would apply to blast furnace/cranes constructed by the contractors within the factory premises. The expression "*but does not include any building or other construction work to which the provisions of the Factories Act, 1948 (63 of 1948), or the Mines Act, 1952 (35 of 1952), apply*" used in the definition of "building or other construction work" would have to be read to mean the workers engaged/employed for construction of the buildings to which Act of 1948 apply. In other words, the expression "building or other construction work" would not include the workers, engaged/employed for construction of any building or other construction work, to which the provisions of Act of 1948 apply. Thus, in our opinion, from the facts of a case, if it is clear that the workers engaged/employed for construction of any building or other construction work within the premises of the factory are covered or entitled for the benefits under Act of 1948, such employees alone would stand excluded from the purview of Act No.27, and consequently Act No.28, not otherwise.

25. If, in the facts of the present case, the submission of learned Senior Counsel appearing for the contractors is accepted, the workers engaged/employed by the contractors would stand excluded from and deprived of the benefits of both the Acts namely Act of 1948 and Act No.27. To make it further clear, the case of contractors is accepted, their workers would not be entitled for the benefits of Act of 1948 in view of the contract entered into between the companies and the contractors and at the same time they would not be entitled for any benefits under the provisions of Act No.27 since they are engaged/employed for construction of building to which the provisions of Act of 1948 apply. That was not the intent of the Legislature. As a matter of fact, Act No.27 was brought into force to cover the employees/workers who are not covered by the provisions of other enactments, including Act of 1948.

26. The Supreme Court in ***Regional Director, Employees State Insurance Corporation, Mad v. South India Flour Mills (P) Ltd.,***([31]) considered the question 'whether the construction of factory buildings for expansion of the existing factories is incidental or preliminary to or connected with the work of the factory or not?. This question was considered in the light of the provisions contained in Section 2(9) of the Employees' State Insurance Act, 1948. Section 2(9) of that Act defines 'employee' and the expression 'work of the factory therein'. The following observations made by the Supreme Court are relevant:-

> "..... It has been already noticed that the definition of the term 'employee' under section 2 (9) of the Act is very wide. It includes within it any person employed on any work incidental or preliminary to or connected with the work of the factory or establishment. It is difficult to enumerate the different types of work which may be said to be incidental or preliminary to or connected with the work of the factory or establishment. It seems that any work that is conducive to the work of the factory or

establishment or that is necessary for the augmentation of the work of the factory or establishment will be incidental or preliminary to or connected with the work of the factory or establishment. In the instant cases, the additional buildings have been constructed for the expansion of the factories in question. It is because of these additional buildings that the existing factories will be expanded and, consequently, there will be increase in the production, that is to say, increase in the work of the factories concerned. So the work of construction of these additional buildings has a link with the work of the factories. I cannot be said that the construction work has no connection with the work or the purpose of the factories. So it is difficult to hold that the work of construction of these additional factory buildings is not work incidental or preliminary to or connected with the work of the factories. **The Act is a piece of social security legislation enacted to provide for certain benefits to employees in case of sickness, maternity and employment injury. To hold that the workers employed for the work of construction of buildings for the expansion of the factory are not employees within the meaning of section 2 (9) of the Act on the ground that such construction is not incidental or preliminary to or connected with the work of the factory will be against the object of the Act. In an enactment of this nature, the endeavour of the Court should be to interpret the provisions liberally in favour of the persons for whose benefit the enactment has been made.**"

(emphasis supplied)

26.1 The observations made by the Supreme Court that the Act is a piece of social security legislation enacted to provide for certain benefits to employees in case of sickness, maternity and employment injury, and to hold that the workers employed for the work of construction of building for expansion of the factory are also employees, are relevant since they would apply even to Act Nos.27 and 28. Thus, while considering the definition of "building and other construction work" and further expression "but does not include any building or other construction work to which the provisions of Act of 1948 apply" will have to be interpreted to mean that the workers employed for the work of construction of any building for expansion of the factory to which Act of 1948 applies. In this connection, it is relevant to have a glance at Section 3 of Act No.28. Section 3 clearly provides that a cess to be levied and collected by the employer for the Building and other construction workers, contemplated under the provisions of Act No.27. Levy of cess under Act No.27 is to ensure sufficient funds for the Welfare Boards to undertake social security schemes and welfare measures. If we do not read the definition of 'building and other construction work' to mean this, that will frustrate not only the object of Act Nos.27 and 28 but also Act of 1948. Thus, to read the expression 'building to which Act of 1948 apply' will have to be understood to mean the workers employed or engaged for construction of such building within the premises of a factory.

26.2 To test, it may be considered that the workers working in the premises of a factory including the workers engaged by contractor, such as in the present case, are excluded from the purview of Act Nos.27 and 28, as indicated in the definition (sec.2(9)) should get all the benefits under Act of 1948 and if those benefits are denied to them by the contractor or the principal employer in view of a contract between them, that would frustrate the very object of Act Nos.27 and 28. In other words, the workers/employees cannot be deprived/excluded of/from the benefits of both the Acts viz., Act of 1948 as well as Act Nos.27 and 28. The intent of the Parliament in carving out the category of 'buildings' to which Factories Act apply is only to see that workers/employees engaged in construction of buildings within the factory premises are covered by either of the Acts and not to deprive/eliminate them from being covered by both the Acts.

26.3 On a conjoint reading of Statement of Objects and Reasons of Act No.27 and Act of 1948 and the provisions contained therein reveal that these Acts operate in different fields and there is no overlapping. In other words, overlapping has been avoided by inserting the expression "but does not include any building or other construction work to which the provisions of Act of 1948 apply". If a building and/or employees engaged for construction of such building are not covered by Act of 1948, such workers cannot be stated to have been excluded from the application of Act No.27. In the present case, admittedly, as observed earlier, employees/workers of the contractors are not covered by the Act of 1948 in view of the contract executed between the contractors and the companies. In other words, the employees/workers of the contractors are not entitled for any benefits whatsoever from the principal employer under the provisions of Act of 1948 or from the contractor who is otherwise not obliged to extend any benefits under Act of 1948. Contractor, in terms of Act of 1948, is neither a principal employer nor an occupier of the factory and is, therefore, not liable to extend any benefits under this Act.

27. We now would like to consider the submission of Mr.C.R.Sridharan that cess is really a tax. In support, he placed reliance upon the judgment of the Supreme Court in ***Vyapar Mandal and Ors. v. The Municipal Board and Ors***[32], wherein after considering the meaning of the word 'cess' given in different dictionaries, it was held that cess is a 'tax' and not a 'fee'. In this backdrop, it was further contended that principles of interpretation that apply to Taxation Law will have to be applied while interpreting the definition of 'Building and other construction work", the Act Nos.27 and 28, being fiscal Acts. He submitted that if two interpretations of the word "Building" or "other construction work" are possible, effect is to be given to the one that favours the assessee i.e. contractors in our case. In support of this contention, Mr.C.R.Sridharan placed reliance upon the judgments of the Supreme Court in ***Shinde Brothers etc., v. Deputy Commissioner, Raichur & Others etc.***[33], ***Commissioner of Income Tax, Bombay City 1 v. Jargaon Electric Supply Co., Ltd., Bombay***[34], ***Keshavji Ravji And Co. and Others v. Commissioner of Income Tax***[35] and ***Sun Export Corporation, Bombay v. Collector of Customs, Bombay and another***[36].

27.1 Clear answer to the question raised by Mr.C.R.Sridharan, whether "cess" in Act No.28 is a tax, finds place in the judgment of the Supreme Court in ***Dewan Chand Builders and Contractors*** (supra). In this case, the Supreme Court considered the constitutional validity of Act No.27 and rules framed thereunder and so also Act No.28 and rules framed thereunder and held that they are constitutionally valid and within the competence of Parliament as the levy under Act No.28 is a "fee" referable to Schedule VII List I Entry 97 of the Constitution of India. While dealing with the challenge, the Supreme Court in paragraph 31 held thus:-

> "There is no doubt in our mind that the Statement of Objects and Reasons of the Cess Act, clearly spells out the essential purpose the enactment seeks to achieve i.e., to augment the Welfare Fund under the BOCW Act. The levy of cess on the cost of construction incurred by the employers on the building and other construction works is for ensuring sufficient funds for the Welfare Boards to undertake social security schemes and welfare measures for building and other construction works. **The fund, so collected, is directed to specific ends spelt out in the BOCW Act. Therefore, applying the principle laid down in the aforementioned decisions of this Court, it is clear that the said levy is a "fee" and not "tax". The said fund is set apart and appropriated specifically for the performance of specified purpose; it is not merged in the public revenues for the benefit of the general public and as such the nexus between the cess and the purpose for which it is levied gets established, satisfying the element of quid pro quo in the scheme. With these features of the Cess Act in view, the subject levy has to be construed as "fee" and not a "tax"**. Thus, we uphold and affirm the finding of the High Court on the issue."
>
> (emphasis supplied)

28. Even if we look at the question from another angle, in view of the admitted facts, the question will have to be answered in favour of the Commissioner. Contracting out of beneficial provisions of the Acts like Act No.27, Act No.28 and even Act of 1948 for that matter is against the public policy and is unsustainable in law and has been deprecated by the Supreme Court and High Courts from time to time. Recently, five Judge Bench of this Court in C.M.A.Nos.3092 of 1998 and 2242 of 1999 decided on 03.07.2015 considered the question 'whether the parties are entitled to contract out of beneficial provisions of ESI Act, 1948?'. While dealing with the question, after considering several judgments of the Supreme Court, in paragraph 24 observed thus:

> "…… A democratic society is founded on the rule of law and any practice which seeks to subvert or circumvent the law strikes at its very root. When the Court discountenances such practice, it only safeguards the foundation of the society [see *Rattan Chand Hira Chand* (supra)]. **Having regard to the scheme of the ESI Act, we do not have a slightest doubt that it was enacted for the benefit of industrial workers and the object of this Act is one of public policy. Therefore, the question is 'whether parties can, by their consent, contract out of the beneficial provisions of such Act?'. The answer to this question is obviously in the negative since contracting out of the beneficial provisions of this Act would infringe upon the public rights or public policies. Any agreement, which tends to be injurious to the public or against the public good, is liable to be invalidated on the ground of public policy**. In other words, no one can lawfully do that which has a tendency to be injurious to the public or against the public good. The very meaning of the public policy is in the interest of others than the parties and that the interest cannot be at the mercy of any party alone."
>
> (emphasis supplied)

29. In the instant case, the contractors state that there is an agreement/contract between them and the companies under which they claim that the Companies, who are principal employer/owner of factory are not obliged to extend any benefit to the workers/employees of the contractors, since under the agreements/contracts the contractors had taken all responsibilities of their workers to pay/extend all the benefits including the benefits under the provisions of Act of 1948. It is not in dispute that workers/employees are not party to the agreement/contract. We are not unmindful of the fact that all contractors may not be M/s.Larsen & Tourbro, who may, in practice, take care of their workers or extend all benefits that they are entitled to and that their workers/employees may not have any grievance. But while dealing with the question of law, it would not be possible and proper to see who are the parties before the Court. In the present case, we are not going into the facts. Even learned single Judge did not deal with the facts of each case. To support the view, take a case of an ordinary contractor, who may enter into an agreement with the principal employer of the similar nature, as entered in the instant case, whereby principal employer would not have any responsibility to extend any benefits under Act of 1948 and at the same time, if the contractor also does not extend any benefits to his workers/employees as contemplated under the said Act, the workers/employees working in the premises of factory for construction or raising any building structures would stand deprived of the benefits of either of the Acts. In a given case, a contractor, like the one in the present case, behind the back of a company, may outsource labour for doing only civil work and if the sub-contractor is not extending any benefits to his workers, such workers also would stand excluded from the benefits of both the Acts. Contracting out of the beneficial provisions would thereby stand encouraged depriving workmen/employees for whose benefit Act of 1948 and Act Nos.27 and 28 were enacted and brought into force. In the circumstances, on this count also, the question framed by us deserves to be answered against the contractors.

30. Thus, we hold that blast furnace and cranes are covered by the definition of 'building or other construction work' and that the workers/employees engaged/employed by the contractors for construction of the same are covered by the provisions of Act No.27. Thus, the questions framed by us stand answered against the appellant-contractors.

31. In the result, the appeals are allowed and the judgment and order passed by the learned single Judge in the batch of writ petitions is set aside. In view thereof, the writ petitions also stand disposed of in terms of this judgment. No order as to costs.

32. Miscellaneous petitions pending in these cases, if any, also stand disposed of.

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Dilip B.Bhosale, ACJ

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S.V.Bhatt, J

6th August, 2015.
TSNR

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[1] AIR 1920 PC 181
[2] AIR 1950 SC 134
[3] AIR 1959 SC 960
[4] (1983) 4 SCC 417
[5] (S) AIR 1955 Bombay 82

[6] AIR 2008 Karnataka 127
[7] (1990) 3 SCC 682
[8] (1979) 1 SCC 361
[9] 1957 SCR 121
[10] AIR 1992 Supreme Court 573
[11] AIR 1960 SC 1068
[12] (1985) 1 SCC 218
[13] (2001) 7 SCC 71
[14] (2001) 8 SCC 24
[15] (2002) 4 SCC 297
[16] (2004) 5 SCC 385
[17] (2002) 4 SCC 539
[18] (1983) 2 SCC 235
[19] (1981) 2 SCC 238
[20] AIR 1957 SC 907
[21] (1987) 3 SCC 279
[22] (1988) 4 SCC 514
[23] (1997) 6 SCC 312
[24] (1986) 3 SCC 239
[25] AIR 1966 SC 1998
[26] (1978) 114 ITR 870 (Bom)
[27] (1979) 117 ITR 770 (A.P)
[28] (1992) 3 SCC 326
[29] AIR 1963 SC 1459
[30] (2012) 1 SCC 101
[31] 1986 AIR 1686
[32] 1990 (16) ALR 120
[33] AIR 1967 SC 1512
[34] AIR 1960 SC 1182
[35] (1990) 2 SCC 231
[36] (1997) 6 SCC 564