The Delhi Shops and Establishments Act, 1954

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THE DELHI SHOPS AND ESTABLISHMENTS ACT, 1954

(7 of 1954)

[*19th June, 1954*]

PREAMBLE

An Act to amend and consolidate the law relating to the regulation of hours of work, payment of wages, leave, holidays, terms of service and other conditions of work of persons employed in shops, commercial establishments, establishments for public entertainment or amusement and other establishments and to provide for certain matters connected therewith.

It is hereby enacted as follows:—

1. Short title, extent, commencement and application.—(1) This Act may be called the Delhi Shops and Establishments Act, 1954.

(2) It extends to the whole of Union Territory of Delhi.

(3) It shall come into force on such date1 as Government may, by notification in the Official

(4) It shall apply in the first instance only to the Municipal Areas, Notified Areas and Cantonment limits of Delhi, New Delhi, Shahadra, Civil Lines, Mehrauli, Red Fort and Delhi Cantonment but Government may, by notification in the Official Gazette, direct that it shall come into force in any other local area or areas or shall apply to such shops or establishments or class of shops and establishments in such other areas as may be specified in the notification.

COMMENTS

The Act, which received the assent of the President on 19th June, 1954, came into force with effect from the 1st of February, 1955, *vide* Notification No. F.5/51-1 & L, dated 17th January, 1955. The Act will apply only in Delhi and not outside Delhi. The provisions of the Act will apply to the shops and establishments located in Delhi and not to any establishment working outside Delhi. Thus, the office which the petitioner had in Iraq by itself cannot be termed as an establishment to be covered under the Act. Also it has been held by the Delhi High Court that the mere fact that the business of the petitioner is being carried on from that office so the petitioner's officer in Delhi could not be treated as an establishment to be covered under the Act; *Bhandari Builders Pvt. Ltd.* v. *M.K. Seth,* 1988 (15) DRJ 77 (SN).

The Supreme Court has observed that the preamble is a key to the enactment and it may legitimately be construed to solve any ambiguity or to fix the meaning of words which may have more than one, or to keep the effect of the statute within its real scope, whenever the enacting part is in any of these respects open to doubt. The scope of the Act is a progressive piece of legislation and design to settle the disputes on a new pattern hitherto intention to judicial machinery set in the country. The object of all labour legislation is to ensure fair wages and to prevent disputes so that production might not be adversely affected.

2. Definitions.—In this Act, unless the context otherwise requires,—

(1) "adult" means a person who has completed his eighteenth year of age;

(1A) "apprentice" means a person, who is employed, whether on payment of wages or not, for the purpose of being trained in any trade, craft or employment in any establishment;

(2) “child” means a person who has not completed his twelfth year of age;

(3) “close day” means the day of the week on which a shop or establishment remains closed;

(4) “closing hour” means the hour at which the shop or commercial establishment closes;

(5) “commercial establishment” means any premises wherein any trade, business or profession or any work in connection with, or incidental or ancillary thereto is carried on and includes a society registered under the Societies Registration Act, 1860 (21 of 1860), and charitable or other trust, whether registered or not, which carries on any business, trade or profession or work in connection with, or incidental or ancillary thereto, journalistic and printing establishments, contractors and auditors establishments, quarries and mines not governed by the Mines Act, 1952 (35 of 1952), educational or other institutions run for private gain, and premises in which business of banking, insurance, stocks and shares, brokerage or produce exchange is carried on, but does not include a shop or a factory registered under the Factories Act, 1948 (43 of 1948), or theatres, cinemas, restaurants, eating houses, residential hotels, clubs or other places of public amusements or entertainment;

(6) “day” means a period of twenty-four hours beginning at mid-night:

Provided that in the case of an employee whose hours of work extended beyond mid-night, day means the period of twenty-four hours beginning when such employment commences irrespective of mid-night;

(7) “employee” means a person wholly or principally employed, whether directly or otherwise, and whether for wages (payable on permanent, periodical, contract, piece-rate or commission basis) or other consideration, about the business of an establishment and includes an apprentice and any person employed in a factory but not governed by the Factories Act, 1948 (43 of 1948), and for the purpose of any matter regulated by this Act, also includes a person discharged or dismissed whose claims have not been settled in accordance with this Act;

(8) “employer” means the owner of any establishment about the business of which persons are employed, and where the business of such establishment is not directly managed by the owner, means the manager, agent or representative of such owner in the said business;

(9) “establishment” means a shop, a commercial establishment, residential hotel, restaurant, eating-house, theatre or other places of public amusement or entertainment to which this Act applies and includes such other establishment as Government may, by notification in the Official Gazette, declare to be an establishment for the purpose of this Act;

(10) “factory” means a factory as declared or registered under the Factories Act, 1948 (43 of 1948);

(11) “family” means the husband, wife, son, daughter, father, mother, brother, sister or grandson of an employee, living with and wholly dependent on such employee;

(12) “Government” means the *Chief Commissioner, Delhi;

(13) “holiday” means a day on which an establishment shall remain closed or on which an employee be given a holiday under the provisions of the Act;

(14) “hours of work” or “working hours” means the time during which the persons employed are at the disposal of the employer exclusive of any interval allowed for rest and meals and “hours worked” has corresponding meaning;

(15) “inspector” means an Inspector appointed under section 36 of the Act;

(16) “leave” means leave as provided for under this Act;

(17) “occupier” means a person owning or having charge or control of establishment and includes the manager, agent or representative of such occupier;

(18) “opening hour” means the hour at which a shop or commercial establishment opens for the service of a customer;

(19) “prescribed” means prescribed by rules made under this Act;

(20) “register of establishments” means a register maintained for the registration of establishments under this Act;

(21) "registration certificate" means a certificate showing the registration of an establishment;

(22) "religious festival" means any festival which the Government may by notification in the Official Gazette declare to be a religious festival for the purposes of this Act;

(23) "residential hotel" means any premises in which business is carried on for the supply of dwelling accommodation and meals on payment of a sum of money by a traveller or any member of the public or a class of the public and includes a club;

(24) "restaurant" or "eating house" means any premises in which is carried on wholly or principally the business of the supply of meals or refreshment to the public or a class of the public for consumption on the premises;

(25) "retail trade or business" includes the business of a barber or hair-dresser, the sale of refreshment of intoxicating liquors, and retail sales by auction;

(26) "schedule" means a schedule appended to this Act;

(27) "shop" means any premises where goods are sold either by retail or wholesale or where services are rendered to customers, and includes an office, a store-room, godown, warehouse or workhouse or work place, whether in the same premises or otherwise, used in or in connection with such trade or business but does not include a factory or a commercial establishment;

(28) "spread-over" means the periods between the commencement and the termination of the work of an employee on any day;

(29) "summer" means the period covering the months of April, May, June, July, August and September;

(30) "wages" means wages as defined in section 2 of the Minimum Wages Act, 1948 (11 of 1948);

(31) "week" means the period of seven days beginning at mid-night on Saturday;

(32) "winter" means the period covering the months of October, November, December, January, February and March;

(33) "year" means the calendar year;

(34) "young person" means a person who is not a child and has not completed his eighteenth year of age.

COMMENTS

Sub-section 2(2) "Child"

Although a child has been defined a person who has not completed his twelfth year of age but it is to be read as fourteen year. It is pertinent to state that the employment of children as domestic servants in dhabas (Roadside eateries), restaurants, hotels, motels, teashops, resorts, spas or in other recreational centres has been banned from October 10, 2006 not only in Delhi but all over India. The ban, notified by the labour ministry has been imposed under the Child Labour (Prohibition & Regulation Act, 1986. The decision has been taken on the recommendation of the Technical Advisory Committee on Child Labour.

The committee had stated that the occupations mentioned were hazardous for children and had recommended their inclusion in the occupations which are prohibited for persons below 14 years under the Child Labour (Prohibition & Regulation) Act, 1986.

Sub-section (5)—"Commercial Establishment"

(i) In the first instance a place in order to fall within the definition of "commercial establishments" must be "premises". Secondly, it should be premises wherein (a) any trade, business or profession is carried on, or (b) any work in connection with or incidental or ancillary thereto is carried on. Sub-clause (b) is only ancillary to (a); *Chief Commissioner, Delhi* v. *Federation of Indian Chambers of Commerce and Industry, New Delhi,* 1974 II LLJ 21 (SC): 45 FJR 306: (1974) Lab IC 1004.

(ii) A religious body is not an establishment within the meaning of the Act and, therefore, the Act does not apply to such a body; *Sanatan Dharam Sabha* v. *Johri Mal,* 1982 RLR 512 (Del. HC).

Since the definition of commercial establishment includes the institution run for private gain, obvious private educational institutions will be covered under the Act.

Sub-section 13—"Holiday"

Holidays are off days granted by the employer to the employees either voluntarily or compulsorily under the force of law. The Dictionary meaning of a 'Holiday' is 'A day on which ordinary occupations (of an individual or a community) are suspended; a day of festivity, recreation or amusement'. (Oxford English Dictionary, Vol. V).

The introduction of paid holidays for workers, both in law, and in practice, is based on the one hand on the 'employees' right to leisure and to the opportunity of developing his personality and, on the other, on the necessity of preserving or restoring his health and strength in the interests of production and service to be rendered. Holidays with pay, if they are properly utilized, may provide a real and complete escape from the ideal means of relaxation and afford abundant opportunity of gaining material and social experience under different conditions and workers generally undertake factory work because of necessity.

Employees return to their jobs with fresh enthusiasm and renewed reserves of strength after spending their holidays under suitably restful conditions. This is confirmed by the conclusion reached in the many recent studies of the psychology or work, especially in the field of productivity. The quicker industrial rhythm and the monotony of the work caused by modern mechanization render it essential to grant regular rest periods if workers are not to succumb to
physical overstrain and to the weakening of their morale and if their health and working capacity are to be preserved. However, there are no fixed holidays and/or prescribe under the Act.

Sub-section (14)—"working hours"

The phrase "working hours" or "hours of work" as defined in this sub-section means the time during which the persons employed are at the disposal of the employer exclusive of any interval for rest and meals and "hour worked" has a corresponding meaning. The use of the expression, "at the disposal of the employer" is not without any significance. It indicates that the person so employed must be available to work and to be under the control or supervision of the employer during the working hours and it seems to be immaterial whether the person so employed has worked during the entire working hours or not or whether the employer has taken any work from him. The only obligation appears to be that he must remain at the disposal of the employer throughout the working hours fixed under the Act, excluding of course the time allowed for rest and meals.

Sub-section (16)—"Leave"

The expressions 'leave means leave of absence, that is to say, the permission obtained by an employee from his employer relieving him from the duty of attending the work with or without pay. The dictionary meaning of the word 'leave' being permission, unless such permission is given or leave sought is granted, it cannot be said that the person seeking leave can absent himself from duty in an unauthorised manner; *Industrial Tribunal* v. *Rabindra Nath Sen*, 1963 I LLJ 582.

Sub-section (22)—"religious festival"

The expression, "religious festival" has been defined to mean any festival which the Government may, by notification in the Official Gazette, declare to be religious festival for the purpose of this Act. By Notification No. F 12 (54) I & L dated 31st January, 1956 published in the Delhi State Gazette Part V dated 9th February, 1976 at page 69, the Government has declared Holi, Dussehra, Janam Ashtami, Chet Shudi Parwa, Baisakhi, Guru Nanak's Birthday, Guru Govind Singh's Birthday, Id-ul-Zuha, Id-ul-Fitar, Christmas, Lord Mahavir's Birthday as the religious festivals in exercise of the powers conferred on it by this sub-section. The definition has been given in the context of sub-clause (ii) of sub-section (3) of section 16 of the Act which enables the occupier of a shop or commercial establishment to open his shop or commercial establishment on a close day in case such a day happens to coincide with a religious festival.

Sub-section (24)—"restaurant" or "eating house"

"Restaurant" or "eating house" as defined in this sub-section means any premises in which is carried on wholly or principally the business of the supply of meals or refreshments to the public or a class of the public for consumption on the premises. The Lt. Governor, Delhi issued a notification in exercise of the powers conferred on him by sub-section (9) of section 2 declaring all canteens and clubs which were not residential hotels, restaurants, eating houses or other places of public amusement or entertainments, to be "establishments" within the meaning of the Act; Notification No. F 2(11) 79, dated 23rd September, 1976, published in the Delhi Gazette Part IV, dated October, 1976.

Sub-section (27)—"Shops"

The word 'shop' has acquired an expanded meaning. Where in a premises any economic activity is carried on leading to sale or purchase, that premises will have to be held a 'shop' for the purpose of the Act, even though there is no actual giving or taking of goods in such premises. If the business carried on a premises results in having some nexus with the purchase or sale of goods. It is sufficient to be 'shop'; *Southern Agencies, Rajamundry* v. *Andhra Pradesh Employees' State Insurance Corporation,* 2001 LLR 93 (SC).

Sub-section (28)—"spread over"

The period between the commencement and the termination of the work of an employee on any day is called "spread over". The spread over in respect of shops is 12 hours and in respect of other establishments is 10 ½ hours.

An establishment can be both, *i.e.,* a shop and an establishment

While elaborating the scope and meaning of "Shops and Establishments", the Supreme Court has held that a Company having several offices engaged in import and export, clearing and forwarding of cargo, travel and tourism and courier services will be both a Shop and Commercial Establishment; *Air Freight Ltd.* v. *State of Karnataka,* 1999 LLR 1008 (SC).

3. Rights and privileges under other law, *etc.*, not affected.—Nothing in this Act shall affect any rights or privileges which an employee in any establishment is entitled to at the date this Act comes into force or under any other law, contract, custom or usage applicable to such establishment or an award, settlement or agreement binding on the employer and the employee in such establishment, if such rights or privileges are more favourable to him than those to which he would be entitled under this Act.

COMMENTS

A plain reading of this section would go to show that it has a limited operation confined to a particular date, *i.e.,* the date on which this Act came into force. On that day if a right or privilege had accrued to any employee under any other law, contract, custom or usage, and if that right or privilege was more favourable or advantageous to him than those declared under this Act, the employee was entitled to retain that right or privilege.

4. Exemptions.—Notwithstanding anything contained in this Act, the provisions of this Act mentioned in the third column of the Schedule shall not apply to the establishment, employees and other persons mentioned against them in the second column of the said Schedule:

Provided that the Government, may, by notification published in the Official Gazette, add to, omit or alter any of the entries of the said Schedule, and on the publication of such notification, the entries in either column of the said Schedule shall be deemed to be amended accordingly.

COMMENTS

The provisions of this section shall be given effect to irrespective of the other provisions of the Act. The provisions of this Act mentioned in the third column of the Schedule shall not apply to the establishments, employees and other persons mentioned against them in the second column of the said Schedule. This section also empowers the Government by notification in the Official Gazette to add to, omit, or alter any of the entries in the Schedule.

***5. Registration of Establishments.**—(1) Within the period specified in sub- section (5), the occupier of every establishment shall send to the Chief Inspector a statement in a prescribed form, together with such fees as may be prescribed, containing:

(a) the name of the employer and the manager, if any;

(b) the postal address of establishment;

(c) the name, if any, of the establishment;

(d) the category of the establishment, *i.e.*, whether it is a shop, commercial establishment, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment;

(e) the number of employees working about the business of the establishment; and

(f) such other particulars as may be prescribed.

(2) On receipt of the statement and the fees, the Chief Inspector shall, on being satisfied about the correctness of the statement, register the establishment in the Register of Establishments, in such manner as may be prescribed and shall issue, in a prescribed form a registration certificate to the occupier.

(3) The registration certificate shall be prominently displayed at the establishment and shall be renewed at such intervals as may be prescribed in this respect.

(4) In the event of any doubt or difference of opinion between an occupier and Chief Inspector as to the category to which an establishment should belong, the Chief Inspector shall refer the matter to the Government which shall, after such enquiry, as it may think proper, decide the category of the establishment and the decision thereof shall be final for the purpose of this Act.

(5) Within ninety days from the date mentioned in column 2 below in respect of any establishment mentioned in column 1, the statement together with fees shall be sent to the Chief Inspector under sub-section (1):

Establishment	Date from which the period of 90 days is to commence
(i) Establishments existing in municipal areas, notified areas, and cantonment limits of Delhi, New Delhi, Shahdara, Civil Lines, Mehrauli, Red Fort and Delhi Cantonment.	The date on which this Act comes into force.
(ii) Establishments existing in local areas in which this Act is brought into force by notification under sub-section (4) of section 1.	The date on which this Act comes into force in the local areas concerned.
(iii) New establishment in areas mentioned in clauses (i) and (ii) of this sub-section	The date on which the establishment commences the work.

6. Change to be communicated to the Chief Inspector.—It shall be the duty of the occupier to notify to the Chief Inspector, on a prescribed form any change in respect of any information contained in his statement under sub-section (1) of section 5 within thirty days after the change has taken place. The Chief Inspector shall on the receipt of such notice and the prescribed fee and on being satisfied about its correctness make the change in the register of establishments in accordance with such notice and shall amend the registration certificate, or issue a fresh registration certificate, if necessary.

7. Closing of an establishment to be communicated to the Chief Inspector.—The occupier shall within fifteen days of his closing the establishment, notify to the Chief Inspector in writing accordingly. The Chief Inspector shall on receiving the information and being satisfied about the nature of closure remove such establishment from the register of establishments and cancel the registration certificate:

Provided that the Chief Inspector may not, if satisfied that the establishment is likely to re-start within a period of six months, remove it from the Register of Establishment and cancel the registration certificate.

8. Employment of adults, hours of work.—No adult shall be employed or allowed to work about the business of an establishment for more than nine hours on any day or 48 hours in any week and the occupier shall fix the daily periods of work accordingly:

Provided that during any period of stock taking or making of accounts or any other purpose as may be prescribed, any adult employee may be allowed or required to work for more than the hours fixed in this section, but not exceeding 54 hours in any week subject to the conditions that the aggregate hours so worked shall not exceed 150 hours in a year:

Provided further that advance intimation of at least three days in this respect has been given in the prescribed manner to the Chief Inspector and that any person employed on overtime shall be entitled to remuneration for such overtime work at twice the rate of his normal remuneration calculated by the hour.

Explanation.—For the purpose of calculating the normal hourly wage the day shall be reckoned as consisting of eight hours.

COMMENTS

(a) Mode for calculation of overtime wages

For any work in excess of nine hours on any day or for more than 48 hours in any week, overtime wages are to be paid at the rate of double the wages. It is provided therein that where a worker is required to work beyond the normal hours of work or on any day of rest, he shall be entitled to wages at rate of twice his ordinary rate of wages in respect of the overtime work or work done on a day of rest, as the case may be.

The cases where a workman is paid a daily rate present no difficulty. However, when payment is made on monthly scale of pay, the daily rate of wages for a worker can be obtained only by dividing the amount of wages for 30 days by 26. This is done because the workman is entitled to four days as weekly rest during which period he does not work. The reason is that workman actually gets monthly wages for the work done only for 26 days. Thus for a workman, it is the actual receipt for 26 days which is his monthly scale of pay, *i.e.*, 30 days wages. Therefore, a day's wage should mean the result obtained by dividing the monthly wages by actual number of

working days, *i.e.*, 26 days. This principle will, however, be applicable in case of such workers who get monthly wages only for the actual number of working days. The formula for calculation of the overtime wages for one hour is to divide the month's wages by 26 into the number of normal working hours and the result so obtained by them then multiplied by two to calculate one hour's overtime wages; *P. Radhakrishnan Nair* v. *K.S.R.T.C.,* 1983 Lab. IC 276 (Ker. HC). Similarly, a day's wage should mean the result obtained by dividing the monthly wages by actual number of working days; *K.S. Verma* v. *The Madhya Pradesh State Road Transport Corporation,* 1979 Lab IC 107: 1979 LLR 150.

In one case before the Supreme Court, the management had prescribed 39 hours and had agreed to pay overtime wages for any work taken in excess of such normal working hours and upto the maximum, *i.e.*, 48 hours at 1½ times the ordinary rate of wages and beyond the maximum, *i.e.*, 48 hours and upto 54 hours at double the rate of ordinary wages and the question posed was where the employer prescribes working hours less than the maximum permissible in the statute, does he incur the obligation to pay overtime wages at the rates prescribed in the Tamil Nadu Shops & Establishments Act, 1947. The Supreme Court allowed the appeals filed by the management and reversed the decision of the High Court directing payment of overtime wages by twice the ordinary rates of wages for any work beyond the prescribed 39 hours and upto 48 hours; *Philips India Ltd.* v. *Labour Court, Madras,* AIR 1985 SC 1034: 1985 (1) LLN 633: 1985 (66) FJR 474.

However, the Allahabad High Court has held that if the workers are required to work for additional hours but if such additional hours will be less than 48 hours in a week, the employees will be entitled to wages and not overtime; *New Victoria Mills, Unit of National Textile Corporation, Uttar Pradesh Ltd.* v. *Labour Court (1) Kanpur,* 1990 LLR 113.

Claim for overtime should be made within reasonable time. It has been held by Delhi High Court that the claim for overtime by the employee when he was in Iraq or if he could not make his claim there, he should have served a notice in writing upto the employer as soon as he returned to India; *Bhandari Builders* v. *M.K. Seth,* 1988 (72) FJR 134: 1988 LLR 91: 1988(1) CLR 279.

It is, however clarified that the Delhi Shops & Establishments Act, 1954 is not exhaustive on all the rights and obligations of the employers and the employees as such the provisions of Industrial Disputes Act, 1947 being Central Act governs the matters.

For instance if an employer who proposes to effect any change prejudicial to the workmen, in respect of any matter specified in the fourth schedule to the Act, should give the workmen concerned twenty one days notice under section 9A of the Industrial Disputes Act. The real object and purpose of section 9A of the Act is to afford an opportunity to the workmen to consider the effect of the proposed change and, if necessary, to represent their point of view on the proposal. Such consultation further serves to stimulate a feeling of common interest of the management and workmen in industrial progress, efficiency and increased productivity. This approach on the part of the employer would reflect his harmonious and sympathetic cooperation in improving the status and dignity of the employee in accordance with the egalitarian and progressive trend of our industrial jurisprudence which strives to treat capital and labour as co-sharers and to break away from the tradition of labour's subservience to capital. In order to achieve the object underlying section 9A, it would be more appropriate to place on the fourth schedule read with section 9A of the Industrial Disputes Act, a construction liberal enough to include change of weekly rest days from Sundays to some other week day.

The Fourth Schedule as appended to the Industrial Disputes Act, 1947 provides as follows:

"Conditions of Service for Change of which Notice is to be given

1. Wages, including the period and mode of payment;
2. Contribution paid, or payable, by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force;
3. Compensatory and other allowances;
4. *Hours of work and rest intervals;*
5. Leave with wages and holidays;
6. Starting alteration or discontinuance of shift working otherwise than in accordance with standing orders;
7. Classification by grades;
8. Withdrawal of any customary concession or privilege or change in usage;
9. Introduction of new rules of discipline, or alteration of existing rules, except in so far as they are provided in standing orders;
10. Rationalisation, standardization or improvement of plant or technique which is likely to lead to retrenchment of workmen;
11. Any increases or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift, not occasioned by circumstances over which the employer has no control."

For instance, in one case, it has been held that increasing of half an hour daily by the employees will amount to change in conditions of service hence notice under section 9A of the Industrial Disputes Act will be imperative; *Director of Agriculture* v. *Dev Raj*, 2006 LLR 1019 (HP HC).

9. Restriction on double employment.—No person shall work about the business of an establishment or two or more establishments or an establishment and a factory in excess of the period during which he may be lawfully employed under this Act.

10. Interval for rest and meals.—(1) The period of work of an adult employee in an establishment each day shall be so fixed that no period of continuous work shall exceed five hours and that no employee shall be required or allowed to work for more than five hours before he had an interval for rest and meals of at least half an hour.

(2) The time for such interval shall be fixed by the employer and intimated to the Chief Inspector a week before such fixation and shall remain operative for a period of not less than three months.

11. Spread over.—The periods of work on any day of an adult person shall be so arranged that inclusive of his interval for rest or meals as required under section 10, they shall not spread over for more than ten and a half hours in any commercial establishment or for more than twelve hours in any shop.

12. Prohibition of employment of children.—No child shall be required or allowed to work whether as an employee or otherwise, in any establishment notwithstanding that such child is a member of the family of the employer.

COMMENTS

Although a child has been defined a person who has not completed his twelfth year of age but it is to be read as fourteen year. It is pertinent to state that the employment of children as domestic servants in dhabas (roadside eateries), restaurants, hotels, motels, teashops, resorts, spas or in other recreational centres has been banned from October 10, 2006 not only in Delhi but all over India. The ban, notified by the labour ministry has been imposed under the Child Labour (Prohibition & Regulation Act, 1986).

The decision has been taken on the recommendation of the Technical Advisory Committee on Child Labour.

The committee had stated that the occupations mentioned were hazardous for children and had recommended their inclusion in the occupations which are prohibited for persons below 14 years under the Child Labur (Prohibition & Regulation) Act, 1986.

13. Employment of young persons—Hours of work.—(1) No young person shall be required or allowed to work about the business of an establishment for more than six hours a day.

(2) No young person shall be employed continuously for more than three and a half hours without an interval of at least half an hour for rest or meals and the spread over shall not exceed eight hours on any day.

COMMENTS

The persons who have completed twelve years of age but are below eighteen years fall within the definition of "young persons" as given in section 2 (34) of the Act. The provisions of this section also apply to all kinds of establishments like the preceding section 12 of the Act. Read as a whole, this section contemplates that (i) no young person can be employed or allowed to work in any establishment for more than six hours a day; (ii) there must be an interval of at least half an hour for rest or meals after he has continuously worked for three and a half hours on any day; and (iii) the periods of work in respect of such persons including the time given for rest or meals should not exceed more than eight hours on any day. These restrictions are absolute and the violation of any of these restrictions is an offence punishable under the Act.

14. Young persons and women to work during day time.—No young person, or woman shall be allowed or required to work whether as an employee or otherwise in any establishment between 9 p.m. and 7 a.m. during the summer season and between 8 p.m. to 8 a.m. during the winter season.

COMMENTS

Like preceding sections 12 and 13, this section puts restrictions on the employment of young persons and women during certain hours. It lays down that no young person or woman can be required or allowed to work, whether as an employee or otherwise, between 9 p.m. and 7 a.m. during summer and between 8 p.m. and 8 a.m. during winter. The summer season starts from 1st April and ends on 30th September while the winter season starts from 1st October and ends on 31st March of the following year. The Lt. Governor has withdrawn such exemptions available to: Akbar Hotel, Hotel Oberoi Intercontinental, Ashok Hotel, The Taj Mahal Hotel and Hotel Sidharth, New Delhi.

15. Opening and closing hours of shops and commercial establishments.—(1) No shop or commercial establishment on any day, be opened earlier than such hour or closed later than such hour, as may be fixed by the Government by general or special order made in that behalf:

Provided that any customer who was being served or was waiting to be served in any shop or commercial establishment at the closing hour so fixed may be served during the period of fifteen minutes immediately following such hour.

(2) Before making an order under sub-section (1), the Government shall hold an enquiry in such manner as may be prescribed.

(3) The Government may, for the purposes of this section, fix different opening hours and different closing hours for different classes of shops or commercial establishments or for different areas or for different times of the year.

COMMENTS

Opening and closing hours

The opening and closing hours of all shops, within the urban, semi-urban and rural areas of the Union Territory of Delhi, whether comprised in the Municipal Corporation of Delhi, the New Delhi Municipal Committee or the Delhi Cantonment Board, are 9 a.m. and 7 p.m. respectively, while in respect of commercial establishments within such territory, the opening and closing hours are 8 a.m. and 6 p.m respectively, *vide* Notification No. F. 9(1)/79/LC (S), dated 19th July, 1979.

Same relexations have been given and as such.1

16. Close day.—(1) Every shop and commercial establishment shall remain closed on a close day.

(2) In addition to the close day every shop and commercial establishment shall remain closed on three of the National holidays each year as the Government may by notification in the Official Gazette specify.

(3) (i) The Government may, by notification in the Official Gazette, specify a close day for the purposes of this section and different days may be specified for different classes of shops or commercial establishments or for different areas.

(ii) Notwithstanding anything contained in sub-section (1), the occupier of any shop or a commercial establishment may, open his shop or commercial establishment on a close day, if such a day happens to coincide with a religious festival, "or the *Mahurat day"*, the day of the commencement of the financial year of the establishment concerned, provided a notice to this effect has been given to the Chief Inspector at least twenty-

four hours before the close day and that in lieu thereof the shop or the commercial establishment is closed on either of the two days immediately preceding or following that close day.

COMMENTS

Long overdue changes in section 15 & 16 of the Act were brought about in September 2004 by the Lieutenant Governor of Delhi. (Please see Schedule I, Item No. 249).

The closing of 11 P.M. is completely optional. Shops owner cannot be forced to keep their shops open till then, and no employee can be made to work till 11 P.M. against his will. The timings depend solely on the needs and wishes of they owners as long as they are within the stipulated time mentioned in the Act, *i.e.* 9 to 9.30 A.M. –11 P.M.

17. Period of rest (weekly holiday).—Every employee shall be allowed at least twenty-four consecutive hours of rest (weekly holiday) in every week, which shall, in the case of shops and commercial establishments required by this Act to observe a close day, be on the close day.

18. Wages for the holiday.—No deduction shall be made from the wages of any employee on account of the close day under section 16 or a holiday granted under section 17 of this Act.

If an employee is employed on a daily wage, he shall nonetheless be paid his daily wage for the holiday and where an employee is paid on piece rates, he shall receive the average of the wages received during the week.

COMMENTS

It was held that the notification under Minimum Wages Act by Delhi Administration providing that the daily rates of wages include wages for weekly off days will not be attracted since no rates were fixed in respect of wages to be paid on the basis of piece rate; *Co-operative Stores Ltd.* v. *K.S. Khurana,* 1988 (1) Delhi Lawyers 452: 1988 (ii) CLR 670.

19. Time and conditions for payment of wages.—(1) Every employer or his agent or the manager of any establishment shall fix periods in respect of which wages to the employees shall be payable and such person shall be responsible for the payment to persons employed by him or all wages required to be paid under this Act.

(2) No wage period so fixed, shall exceed one month.

(3) The wages of every employee in any shop or establishment shall be paid on a working day before the expiry of the seventh day of the last day of the wage period in respect of which the wages are payable.

(4) All wages shall be paid in cash.

(5) Where the employment of any person is terminated by or on behalf of the employer, the wages earned by him shall be paid before the expiry of the second working day after the day on which his employment is terminated.

20. Deductions which may be made from wages.—(1) The wages of an employed person shall be paid to him without deduction of any kind except those specified in sub-section (2).

Explanation.—Every payment made by the employed person to the employer or his agent or the manager shall for the purpose of this Act be deemed to be a deduction from wages.

(2) Deduction from the wages of an employee shall be of one or more of the following kinds namely:—

(i) Fines;

(ii) Deductions of absence from duty;

(iii) Deductions for damage to or loss of goods expressly entrusted to the employed person for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default;

(iv) Deductions for house accommodation supplied by the employer;

(v) Deductions for such amenities and services supplied by the employer as the Government may by general or special order authorise;

Explanation.—The words ‘amenities’ and ‘services’ in this clause do not include the supply of tools and protectives required for the purpose of employment.

(vi) Deductions for the recovery of advances or for adjustment of over-payments of wages, provided that such advances do not exceed an amount equal to wages for two calendar months of the employed

person and, in no case, shall the monthly instalment of deduction exceed one-fourth of the wages earned in that month;

(vii) Deductions of income tax payable by the employed person;

(viii) Deductions required to be made by order of a court or other competent authority;

(ix) Deductions for subscription to, and for repayment of advances from, any provident fund to which the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) applies or any recognised provident fund as defined in section 2(38) of the Income-Tax Act, 1961 (43 of 1961) or any provident fund approved in this behalf by the Government during the continuance of such approval;

(x) Deductions for payment to co-operative societies or to a scheme of insurance approved by the Government.

(3) Any employer desiring to impose a fine on an employed person or to make a deduction for damage or loss caused by him shall explain to him personally and also in writing the act or omission or the damage or loss, in respect of which the fine or deduction is proposed to be imposed or made, and give him an opportunity to offer any explanation in the presence of another person. The amount of the said fine or deduction shall also be intimated to him.

(4) The amount of fine or deduction mentioned in sub-section (3) shall be such as may be specified by the Government. All such deductions and realisations thereof shall be recorded in a register maintained in a form as may be prescribed.

(5) The amount of fine imposed under sub-section (3) shall be utilised in accordance with the directions of the Government.

(6) Nothing in this section shall be deemed to affect the provisions of the Payment of Wages Act, 1936 (4 of 1936).

21. Claims relating to wages.—(1) The Government may by notification in the Official Gazette, appoint any Commissioner for Workmen's Compensation Act or other officer with experience as a Judge of a Civil Court or as a Stipendiary Magistrate to be the authority to hear and decide all claims arising out of delayed payment or non-payment of earned wages of an employee employed in any establishment.

(2) Application for any such claim may be made to the authority appointed under sub-section (1) by the employee himself or any Official of a registered trade union authorised in writing to act on his behalf or any legal practitioner or the Chief Inspector for a direction under sub-section (3):

Provided that every such application should be presented within one year from the date the claim for such wages has become payable under this Act:

Provided further that an application may be admitted after the said period of one year when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

(3) When any application under sub-section (2) is entertained, the authority shall hear the applicant and the employer, or give them an opportunity of being heard and after such further enquiry, if any, as it may consider necessary may without prejudice to any other penalty to which employer may be liable under this Act, direct the payment to the employee of the amount due to
him together with the payment of such compensation as the authority may think fit, not exceeding half the amount so due or Rs. 100, whichever is less.

(4) If the authority hearing any application under this section is satisfied that it was either malicious or vexatious, it may direct that a penalty not exceeding hundred rupees be paid to the employer by the person presenting the application.

(5) Any amount directed to be paid under this section may be recovered,—

(a) if the authority is a Magistrate, by the authority as if it was a fine imposed by the authority as a Magistrate, or

(b) if the authority is not Magistrate, by any Magistrate to whom the authority makes application in this behalf, as if it were a fine imposed by such Magistrate.

(6) Every direction of the authority under this section shall be final.

(7) Every authority appointed under sub-section (1) shall have all powers of a civil court under the Code of Civil Procedure, 1908 (5 of 1908) for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (5 of 1898).

COMMENTS

Jurisdiction of the Authority

If an employee works for extra hours voluntarily and without any direction by the management, the claim for overtime will not be admissible; *Bhandari Builders Pvt. Ltd.* v. *M.K. Seth,* 1988 (15) DRJ 77 (SN).

22. Leave.—(1) Every person employed in an establishment shall be entitled—

(a) after every twelve months' continuous employment, to privilege leave for a total period of not less than fifteen days;

(b) in every year, to sickness or casual leave for a total period of not less than twelve days:

Provided that:

(i) an employee who has completed a period of four months in continuous employment, shall be entitled to not less than five days' privilege leave for every such completed period; and

(ii) an employee who has completed a period of one month in continuous employment, shall be entitled to not less than one day's casual leave for every month:

Provided further that a watchman or caretaker who has completed a period of twelve months in continuous employment and to whom the provisions of sections 8, 10, 11, 13 and 17 do not apply by virtue of an exemption granted under section 4, shall be entitled to not less than thirty days' privilege leave.

(1A) (i) Privilege leave to which an employee is entitled under clause (a) of sub-section (1) or under any such law, contract, custom or usage, award, settlement or agreement as is referred to in section 3, or any part of such leave, if not availed of by such employee, shall be added to the privilege leave in respect of any succeeding period to which he is so entitled to, however, the total period of such privilege leave which may be accumulated by such employee shall not at any one time exceed three times the period of privilege leave to which he is entitled after every twelve months' employment under that clause or under such law, contract, custom or usage, award, settlement or agreement.

(ii) Leave admissible under clause (b) of sub-section (1) shall not be accumulated.

(2) If an employee entitled to leave under clause (a) of sub-section (1) of this section is discharged by his employer before he had been allowed the leave, or if, having applied for and having been refused the leave, he quits his employment before he has been allowed the leave, the employer shall pay him full wage for the period of leave due to him.

23. Wages during Leave.—Every employee shall be paid for the period of his leave at a rate equivalent to the daily average of his wages for the days on which he actually worked during the preceding three months, exclusive of any earnings in respect of overtime but inclusive of dearness allowance.

24. Contracting Out.—Any contract or agreement, whether made before or after the commencement of the Delhi Shops and Establishments (Amendment) Act, 1970, whereby an employee relinquishes any right conferred by this Act, shall be null and void in so far as it purports to deprive him of such right.

COMMENTS

Under section 24 no contract or agreement can be made by an employee with his employer by which he purports to relinquish any right conferred on him by this Act and if such a contract or agreement is made, it would be null and void. In other words, this section makes a contract or agreement under which an employee relinquishes any right conferred by this Act, null and void to the extent it purports to deprive him of the right. A workman will not be legally bound by the contents of the receipt for full and final settlement executed by him if he is waiving any legal dues; *Bhandari Builders Pvt. Ltd.* v. *M.K. Seth,* 1988 (15) DRJ 77 (SN).

25. Cleanliness.—The premises of every establishment shall be kept clean and free from effluvia arising from any drain or privy or other nuisance and shall be cleaned at such times and by such methods as may be prescribed. These methods may include lime washing, colour washing, painting and disinfection.

26. Lighting and ventilation.—(1) The premises of every establishment shall be kept sufficiently lighted and ventilated during all working hours.

(2) Suitable arrangements shall be made for supply of drinking water to the employees.

27. Power to enforce cleanliness, *etc.*—If it appears to an Inspector that the premises of any establishment within his jurisdiction are not sufficiently lighted, cleaned or ventilated, he may serve on the employer an order in writing specifying the measures which in his opinion should be adopted and requiring them to be carried out before a date specified in the order.

The Government may prescribe standards in respect of any of the matters.

28. Precautions against fire.—In every establishment, except such establishments or class of establishments, as may be prescribed, such precautions against fire shall be taken as may be prescribed.

29. Accidents.—The provisions of Workmen's Compensation Act, 1923 (VIII of 1923) and of Rules made thereunder, shall apply *mutatis mutandis* to every employee of an establishment.

30. Notice of Dismissal.—(1) No employer shall dispense with the services of an employee who has been in his continuous employment for not less than three months, without giving such person at least one month's notice in writing or wages in lieu of such notice:

Provided that such notice shall not be necessary where the services of such employee are dispensed with for misconduct, after giving him an opportunity to explain the charge or charges alleged against him in writing.

(2) No employee who has put in three months' continuous service shall terminate his employment unless he has given to his employer a notice of at least one month, in writing. In case he fails to give one month's notice he will be released from his employment on payment of an amount equal to one month's pay.

(3) In any case instituted for a contravention of the provision of sub-section (1), if a Magistrate is satisfied that an employee had been dismissed without any reasonable cause or discharged without proper notice or pay in lieu of notice, the Magistrate may, for reasons to be recorded in writing, award, in addition to one month's salary compensation to the employee as follows:

(a) Where immediately before his discharge or dismissal, the employee was in receipt of a salary not exceeding Rs. 100 per month, such amount of compensation not exceeding his month's salary, as the Magistrate may direct;

(b) Where immediately before his dismissal or discharge, the employee was in receipt of a salary exceeding hundred rupees per mensem, such amount of compensation not exceeding hundred rupees as the Magistrate may direct.

(4) The amount payable as compensation under this section shall be in addition to any fine payable under section 40.

(5) No person who has been awarded compensation under this section shall be at liberty to bring a civil suit in respect of the same claim.

COMMENTS

(a) Applicability of section 30

The protection of the provisions of the section is available to all persons who fall within the definition of the term "employee" as given in section 2(7) of the Act and who have put in three months' continuous services. In the absence of any standing orders or any contract between the employer and the contesting respondent containing any particular terms or conditions, the conditions of service of the employee relating to his employment in an establishment at Delhi are covered by section 30(1) of Delhi Shops and Establishments Act, 1954; *Goodlass Nerolac Paints (P) Ltd.* v. *Commissioner, Delhi,* 1967 (14) FJR 115: 1967 I LLJ 545: 30 FJR 442.

The payment of wages in lieu of notice is one of the modes by which the service of an employee can be terminated, the other mode being the giving of at least one month's notice in writing. Under the mandatory provision of section 30 of the Delhi Shops and Establishments Act, 1954, the service of an employee who has put in more than three months' continuous service cannot be terminated without giving him at least one month's notice in writing or one month's wages in lieu of such notice except where the termination of service is for misconduct. Therefore, where an employee has worked for one day more than the three months stipulated in the section, he will be entitled to one month's notice or one month's salary in lieu thereof; *Ram Prakash Sablok* v. *Mahesh Chander,* 1973 (43) FJR 239 (Del HC).

(b) Notice or wages in lieu thereof under section 30—When to be given?

A plain reading of section 30 of the Act would make it clear that whereas the notice of one month under sub-section (1) is for the benefit of the employee, the notice under sub- section (2) is for the benefit of the employer. If an employer gives the notice under sub- section (1), it is open to the employee to quit the service even before the expiry of the period of one month. Similarly, where the notice is given under sub-section (2), it is open to the employer to dispense with the services of the employee even before the expiry of the period of one month. It is not necessary for the employer to wait for the full period of one month before dispensing with services, just as it is not necessary for an employee who has received notice under sub-section (1) to wait for the full period of one month before quitting the services of the employer.

For example, when the employee served a notice of one month on the employer on 17-7-1968 tendering his resignation to be effective from 16th August, 1968 and the employer accepted the same on 23-7-1968 with immediate effect, then the employee cannot insist on continuing in service till the expiry of the notice of one month on 16th August, 1968; *Dass Studios* v. *R.K. Baweja, Labour Court, Delhi,* 1972 (1) ILR 856 (Del HC).

One month's notice or wages in lieu thereof is necessary in case the employees is having more than three months' service under section 30 of the Delhi Shops and Establishments Act. This will be applicable even if an employee has completed only one day more than three months; *Ramprakash Sablok* v. *Mahesh Chandra,* (1973) 43 FJR 239: 1973 1 LLN 339 (Del. HC) (A case under section 39 of the Delhi Shops and Establishments Act decided by the Delhi High Court).When the services of an employee are terminated by payment of one month's wages in lieu of notice, his services come to an end on the date on which he is terminated. On the other hand, if he had been given one month's notice and on the expiry of the one month his services are terminated, his services would come to an end only after the notice period; *May and Baker (India) Ltd.* v. *Their Workmen,* 1961 (2) FLR 594: (1961) 1LLJ 94 (SC): AIR 1967 SC 678: 20 FJR 147.

It may also be pointed out that if the employer has preferred to dismiss or discharge an employee on giving one month's notice or one month's wages in lieu of such notice, it matters little whether the services are dispensed with for a minor misconduct or a major misconduct. If, however, the employer does not give one month's notice or one month's wages in lieu thereof, it is incumbent upon him to hold an enquiry and then to find the employee guilty of any of the acts of misconduct as have been prescribed by the Government under Rule 13 of Delhi Shops and
Establishments Rules. If, however, the termination of service is *bona fide* and in compliance with the provisions of section 30(1) of the Act, the Industrial Tribunal cannot interfere with the same; *Goodlass Narolac Paints Pvt. Ltd.* v. *Chief Commissioner,* 30 FJR 442 of Circuit Bench of Punjab High Court at Delhi.

(c) Acts and omissions constituting misconduct

For the purpose of section 30, for the term, "misconduct" reference be made to Rule 13 of the Delhi Shops and Establishments Rules but the list is not exhaustive in view of the word 'includes'.

(d) Section 30 of the Delhi Shops and Establishments Act, 1954 does not exclude the application of the Industrial Disputes Act, 1947

A plain reading of section 30 would go to show that its scope is very narrow and limited. Sub-section (1) of this section only speaks of giving of a notice to an employee before dispensing with his services and on payment of wages in lieu of such notice. It also says that a notice of dismissal shall not be necessary where the services of an employee are dispensed with for misconduct. Sub-section (2) of section 30 deals with the obligation of an employee to give a notice to the employer when he wishes to leave the services. By sub-section (3) of section 30, any employee who complains that his services have been terminated in contravention of section 30(1), can apply to a Magistrate for payment to him of one month's wages as compensation. Section 30 nowhere deals with the granting of relief or reinstatement to a discharged or dismissed employee or with the payment of retrenchment compensation to any employee. That being so, it is difficult to see how the Delhi Shops and Establishments Act, 1954 is a complete Code in itself, giving to an employee, all the reliefs which he can get as a result of an award given on a reference made under section 10 of the Industrial Disputes Act and how section 30 of the Delhi Shops and Establishments Act, 1954 takes away the power of the Government to make the reference to a Labour Court or Industrial Tribunal and the jurisdiction of the Labour Court or Tribunal is in no way affected even by sub-section (3) which deals with the grant of compensation. Further the expression, "under any other law" occurring in section 24 of the Delhi Shops and Establishments Act, 1954, clearly means not "under a law replaced by the Delhi Shops and Establishments Act, 1954" but under any law which is operative and in force at the time of the coming into force of the Delhi Shops and Establishments Act, 1954 and which continues to be in force thereafter. So judged from any angle, the Delhi Shops and Establishments Act, 1954 does not exclude the application of the Industrial Disputes Act, 1947, provided the person concerned is a workman and the shop or establishment is an

industry as defined in the Act; *Chalchitra Karamchari Sangh* v. *Regal Talkies,* 1964 I LLJ 684 (MP HC): 1963 Lab. LJ 728: (1963) 7 Fac. IR 328: (1965-66) 90 FJR 56: ILR (1965) Madh Pra 56: AIR 1964 Mad. Pra 20. (The above was decided under similar provision of the Madhya Pradesh Shops and Establishments Act, 1954 and it was held that the said Act does not exclude the application of ID Act).

The object of the provisions of Delhi Shops and Establishments Act is entirely different from that of the Industrial Disputes Act. No doubt on the basis that the petitioner's business is a shop or establishment and the respondent is an employee within the meaning of Delhi Shops and Establishments Act, the said Act would be applicable to them, and on the basis that respondent is a "workman" and the petitioner's business is an "industry" within the meaning of the Industrial Disputes Act, the said Act also would be applicable to them. But the question of the provisions of one Act excluding the provisions of the other Act will arise only if the subject-matter of the claim is one which has been provided for in both the Acts. When the claim was for retrenchment compensation under section 25F of the Industrial Disputes Act and there was no corresponding provision in the Delhi Shops and Establishments Act which provided for such retrenchment compensation, the question of the latter Act excluding the former does not arise at all; *Adishwar* v. *Labour Court Delhi,* 1970 Lab. IC 936 (Del. HC). *See* also *Delhi Consumer Co-operative WholeSale Stores Ltd.* v. *Secretary (Labour),* 1984 (1) ELJ (L & S) 433 Del.

31. Provisions in respect of shops and commercial establishments where more than one business is carried on.—Where any retail trade or business which is exempted from all or any of the provisions of the Act, is carried on along with other retail trade or business, the exemption shall not apply to that part of trade or business which is not exempted from the provisions of the Act.

COMMENTS

This section makes provision in respect of shops and commercial establishments where more than one retail trade or business is carried on and lays down that if any one of such retail trade or business is exempted from the provisions of this Act and the others are not so exempted, the exemption shall apply only to such trade or business as is so exempted and shall not extend to other trade or business not so exempted. In short, if the exemption from opening and closing hours and close day is granted to a shop dealing in Pan and Cigarettes then other provisions cannot be sold at such shop beyond the prescribed opening or closing hours or on a close day alongwith Pan or Cigarettes; *State of Uttar Pradesh* v. *Chandra Dutt,* 1969 All Cri R 411 (Sp. bench of All. HC).

32. Provisions as to trading elsewhere than in shops.—No person shall carry on any retail trade or business of any class near any shop or commercial establishment at any time before the opening and after the closing hours and on the close day, and if any person carries on any such trade or business in contravention of this section, this Act shall apply as if he were the occupier of the shop or commercial establishment which was being kept open in contravention of this Act.

COMMENTS

This section prohibits absolutely the carrying on of any retail trade or business of any class whatsoever near any shop or commercial establishment, by any person whatsoever, (a) at any time before the opening hours and after the closing hours, or (b) on any close day notwithstanding whether he be the occupier or owner of a shop or commercial establishment or a third person. If any person carries on any retail trade or business near any shop or commercial establishment on a close day or before the opening hours or after the closing hours, whether such business be of a class or nature of the trade or business usually carried on in such shop or commercial establishment or not, he shall be deemed to be the occupier of such shop or commercial establishment who has kept the same open before the opening hours and after the closing hours or on a close day as the case may be, and shall be liable to be punished under section 40 of the Act.

33. Records.—(1) The occupier of every shop or commercial establishment shall, in the prescribed form and in the prescribed manner, keep exhibited in the shop or establishment a notice setting forth the close day.

(2) The occupier of any shop or establishment, about the business of which persons are employed, shall in the prescribed form and in the prescribed manner keep a record of the hours worked and the amount of leave taken by, and of the intervals allowed for rest and meals to every person employed about the business of the shop or establishment, and particulars of all the employment overtime shall be separately entered in the record.

(3) The occupier of any shop or establishment, about the business of which persons are employed, shall in the prescribed form and in the prescribed manner keep exhibited in the shop or establishment notice setting forth the number of hours in the week during which persons may in accordance with the provisions of this Act be employed about the business of a shop or establishment and such other particulars as may be prescribed.

(4) The occupier of every shop or establishment shall for the purpose of this Act maintain such other records and registers and display such other notices as may be prescribed.

COMMENTS

(a) Particulars and forms of the records required to be maintained under section 33 Failure to maintain the records in the prescribed form and in the prescribed manner, *i.e.,* not keeping exhibited a notice setting-forth the close day or a record of the hours worked and the amount of leave taken by end of the intervals allowed for rest and meals or not entering the particulars of all employment overtime, amounts to contravention of the provisions of section 33 of the Act and the proprietor, employer or the manager of such an establishment is liable to be punished on conviction to a fine of Rs. 5 for every day on which the contravention occurs or continues.

The register of employment and wages is required to be kept in Form 'G' duly bound and pages serially numbered. Where, however, the opening and closing hours are ordinarily uniform, the employer may maintain such register in Form 'H' alongwith a separate register of wages and record of leave in Form 'I' but the entries relating to a particular date on which an employee if called upon earlier or detained later than the usual working hours are required to be made immediately in the remarks column of Form 'H' before such early or late working commences. In the case of an establishment which is not required to observe a close day under section 16 of the Act, the occupier has to exhibit in a conspicuous place in his establishment a notice in Form 'J' specifying the day or days of the week on which his employees shall be given weekly holidays; the notice should be exhibited before the employees, to whom it relates, before they cease work on the Saturday immediately preceding the first week during which it is to have effect. In any register or record which an employer is required to maintain, the entries relating to any day should be made on the mid-day of the following day provided that in the attendance register the entries relating to any day should be made on the same day. The entries in respect of actual commencement of work should be made immediately where the employee has been called earlier than the hour at which he is ordinarily required to report.

All such registers and records are required to be exhibited at the place of work. Any notice required to be exhibited under the provisions of this section should be exhibited in such a manner that it can be readily seen and read by any person whom it affects and should be renewed, whenever it becomes defaced or otherwise ceases to be clearly legible and such registers, records and notices relating to any calendar year have to be preserved till the end of the following year. This section also requires every occupier to exhibit in his establishment another notice showing the close day, the daily working hours and usual period of the rest, interval fixed for employees in Form 'K'; (Rule 14 and 14A of the Delhi Shops and Establishments Rules, 1954).

(b) Grant of exemption from maintenance of prescribed records

Under rule (14A) of the Rules if on an application made by the employer in writing the Government is satisfied that any register or record maintained by such employer gives in respect of the person employed by him the necessary particulars required to be shown in Form G/H/I to be maintained, the Government may, by order in writing direct that the register or record so maintained by such employer should, to the corresponding extent, be deemed to be a register or record maintained under the Rules framed under this Act.

(c) Failure to maintain records—if single offence

Under sub-sections (2) and (3) of section 33 of the Act read with the rules framed thereunder, the occupier of any shop or establishment is under an obligation to keep a record of the hours worked, the amount of leave taken by end of the intervals allowed for rest and meals to every person and particulars of all employment overtime as also to keep exhibited notices setting forth the number of hours in the week and such other records and registers as may be prescribed and display such other notices as may be prescribed. The attendance registers, wages registers, record of leave registers as well as the form of notices required to be displayed have been prescribed by the Government for this purpose. The failure to maintain a register of attendance or of the hours worked or the amount of leave taken and of the intervals allowed for rest and meals or not entering the particulars of all overtime employment constitutes an offence punishable under sub-section (2) of section 40 of the Act. A separate and distinct offence is not committed in respect of each particular which is omitted to be shown in the register or other records but it is the failure to maintain a particular prescribed register showing the various particulars that constitutes the offence, whether the particulars be one, two or several.

(d) Can an Inspector require an employer to produce the record in his office for inspection?

Under section 33 of the Delhi Shops and Establishments Act, 1954, the occupier of every shop or commercial establishment is required to maintain certain registers, records and notices prescribed under rule 14 of the Delhi Shops and Establishments Rules, 1954. Section 35 of the Act casts an obligation on every occupier

of a shop or establishment to produce for inspection of an Inspector, all accounts or records required to be kept for the purpose of this Act and to give any other information in connection therewith as may be required. Under rule 17 of the Rules, it is the duty of an Inspector to make such examination of the premises and of the registers, records
or notices as may appear to him to be necessary for satisfying himself that the provisions of the Act and of the Rules and of any order or notification issued by the Government under the Act, or the Rules made thereunder are being properly observed and in particular shall satisfy himself that the establishment is duly registered under the Act; that the registers, records and notices required to be maintained or displayed under the Act or the Rules are properly maintained or displayed; that the interval of rest and holidays required to be granted or observed under the Act are granted and observed and the limits of hours of work and spread-over laid down under the Act are not exceeded and that the provisions of the Act relating to the opening and closing hours are duly observed; the provisions of the Act and the Rules relating to leave, cleanliness, precautions against fire, payment for overtime, wages and other dues and the ones for dispensing with the services are being observed and complied with.

Clauses (a) and (b) of section 37 empower an Inspector to enter any place which is, or which is being used as a shop or a commercial establishment and to make such examination of the premises and of any prescribed registers, records and notice and take on the spot or otherwise evidence of any person as he may deem necessary of carrying out the purposes of the Act. Reading clauses (a) and (b) of the section it becomes clear that the powers contained in clause (b) are to be exercised when the Inspector visits any shop or establishment and that they do not contemplate an exercise of the powers outside the shop or establishment premises. Under clause (b), he may examine the premises and so far as the prescribed registers, records and notices are concerned the only power he has is to require their production for examination on the spot. In other words, the examination of the prescribed records, registers and notices, *etc.*, is to be made on the premises and this inference is supported by the context. Evidently, the examination of the premises as to opening and closing hours, displaying of prescribed notices, cleanliness, precautions against fire, *etc.*, is to be made on the spot and the production of the other records too, therefore, is intended to be made on the spot, that is, on the premises. So far as the taking of the statements of any person is concerned, they can be taken on the spot or otherwise, that is, even outside the premises, which also indicates that where something was required to be done outside the premises, it was so stated specifically in the section. It is reasonable to infer, therefore, that so far as the production of the registers is concerned, the same is to be done in the premises and not outside, for else there would have been a similar provision in that regard also.

Now apart from section 37 and having regard to section 35 and rule 14 themselves, the demand for production of registers and other records is evidently not a demand for information as contemplated by section 37 read with rule 14 and the said provisions do not empower the Inspector to require the occupier of any shop or establishment to produce them in his office.

For the foregoing reasons, it seems to be clear that a Labour Inspector has no power to call upon the occupier of any shop or commercial establishment to produce the registers and other documents at his office and thus the failure of an employer or occupier to comply with the notice of the Inspector requiring him to produce the records in his office, shall not expose him to any penalty.

(e) Principles to be applied for passing orders of sentence for breach of section 33 of the Act

In passing orders of sentence for breach of the conditions laid down by Delhi Shops and Establishments Act, criminal courts must bear in mind the beneficient purposes which the provisions of the Act are intended to serve. In other words, the sentence of fine to be imposed by the Metropolitan Magistrate should not be unduly lenient. In one case, the sentence of fine of Rs. 10 imposed by the Magistrate was held to be unduly lenient and so, the sentence of fine was enhanced to Rs. 30, *i.e.,* three times of the punishment imposed by the trial courts; *The State* v. *Jamnadas Vasanji,* AIR 1962 Guj. 234.

34. Employer to furnish letters of appointment to employees.—The employer shall furnish every employee with a letter of appointment. Such letters of appointment shall contain the following and such other particulars as may be prescribed, namely:—

(a) the name of employer.

(b) the name, if any, and the postal address of the establishment.

(c) the name, father's name and the age of the employee.

(d) the hours of work.

(e) date of appointment.

COMMENTS

The object of the enactment is to furnish an accurate proof of employment to an employed person and for this object in view, the Legislature provided that the letter of appointment given by the employer to the person employed should contain the following particulars:—

(1) Name of employer.

(2) Name, if any, and the postal address of the establishment.

(3) Name, father's name and the age of the person employed.

(4) Hours of work.

(5) Date of Appointment.

(6) Rate of wages or salary.

(7) Designation or nature of work for which employed; whether employed for clerical, supervisory, managerial, manual work, *etc.*

(8) Any other concession or benefits, if any, that may be special to his appointment.

Failure to issue appointment letters under section 34 of the Act to the employee amounts to 'unfair labour practice' resorted to deprive them of the benefits which accrue to them due to the length of their service; *Bharat Mudranalaya* v. *Workmen, Delhi Gazette,* dated 7-5-1970 (IT).

35. Inspection of Registers and calling for information.—It shall be the duty of every occupier of a shop or establishment to produce for inspection of an Inspector, all accounts or records required to be kept for the purpose of this Act, and to give any other information in connection therewith as may be required.

COMMENTS

This section which applies to all establishments and is not restricted to commercial establishments only, makes it incumbent upon every occupier of an establishment,—

(a) to produce for inspection of an Inspector all accounts or records required to be maintained under this Act; and

(b) to give any other information to the Inspector in connection with such accounts or records as may be required by him.

But it is only the "occupier" which by the definition clause includes the manager, agent or representative of such occupier who is liable under this section to produce for inspection of an Inspector all accounts or records or to give any other information in connection with such accounts or records as may be required by him. However, the occupier, his manager, agent or representative, who is not himself present or available at the time of visit of the Inspector and from whom no demand for production of such records is made, cannot be made liable or prosecuted for violation of the provisions of this section under section 40 of the Act.

36. Appointment of Inspectors.—The Government shall appoint a Chief Inspector and such Inspectors as may be necessary for the purpose of carrying out the provisions of the Act. The Chief Inspector and the Inspectors so appointed shall carry identity cards.

COMMENTS

The provision of this section makes it obligatory on the part of the Government to appoint a Chief Inspector and such Inspectors as may be necessary for the purpose of carrying out the provisions of this Act. The Chief Inspector or the other Inspectors appointed have to carry identity cards. In other words, the Chief Inspector or the Inspectors so appointed cannot carry out the provisions of the Act unless and until they are provided identity cards.

37. Powers and duties of the Inspector.—Subject to any rules made by the Government in this behalf, the Chief Inspector or an Inspector may—

(a) enter at all reasonable times with such assistance as may be necessary any place which is, or which is being used as an establishment;

(b) make such examination of the premises and of any prescribed registers, records and notices and take on the spot or otherwise evidence of any persons as he may deem necessary for carrying out the purpose of this Act;

(c) make copies of or take extracts from any book, registers or other documents maintained for the purpose of this Act;

(d) exercise such other powers as may be necessary for carrying out the purpose of this Act:

Provided that no one shall be required under this section to answer any question or to give any evidence tending to incriminate himself.

COMMENTS

(a) Powers of the Inspector

Under the provisions of this section, the Chief Inspector or an Inspector is empowered to enter at all reasonable times with such assistance as may be necessary, any place which is or which is being used as an establishment and make its examination and that of any prescribed registers, records, notices and take on the spot or otherwise evidence of any persons as he may deem necessary and make copies or take extracts from any book, registers or other documents and exercise such other powers as may be necessary for carrying out the purpose of this Act. But in order to entitle an Inspector to inspect establishments and do all acts enumerated in this section, he must have been appointed by the Government in accordance with the provision of section 36 of the Act. The Chief Inspector or the Inspectors so appointed are empowered under this section to enter any premises which is being used as an establishment and to examine the premises and the records with such assistance as he or they may like. In other words, any Inspector appointed under section 36 of the Act can also take the assistance of any other person or persons as may be necessary for carrying out the purpose of the Act.

(b) Duties of the Inspector

The duties of the Inspector have been specified in rule 17 of Delhi Shops and Establishments Rules, 1954. The duties laid down in the said rule make it obligatory on the part of the Chief Inspector/Inspector to make such examination of the premises and of the registers, records or notices as may appear to him to be necessary for satisfying himself that the provisions of the Act and of the Rules and of any order or notification issued by the Government under the Act or the Rules made thereunder are being properly observed, and in particular has to satisfy himself—

(a) that the establishment is duly registered under the Act;

(b) that the registers, records and notices required to be maintained or displayed under the Act or the Rules are properly maintained or displayed;

(c) that the interval of rest and holidays required to be granted or observed under the Act are granted and observed and that the limits of hours of work and spread-over laid down under the Act are not exceeded;

(d) that the provisions of the Act relating to the opening and closing hours are duly observed;

(e) that the provisions of the Act and the Rules regarding leave are property observed;

(f) that the provisions of the Act and the Rules relating to cleanliness and precautions against fire are properly observed;

(g) that the provisions of the Act relating to the payment of overtime are duly observed;

(h) that the wages and other dues are being paid to employees in time as required under the Act;

(i) that in dispensing with the services of an employee the provision of the Act and Rules have been complied with and no dues payable under the Act or Rules have been withheld;

(j) that no child is allowed to work in an establishment.

In carrying out such examinations, the Chief Inspector or any Inspector concerned may interrogate such person on the premises of the establishment as he may consider necessary provided that no such person is required to give answer to any question, the answer to which might tend to incriminate him. However, the Chief Inspector or Inspector concerned may require any employer to produce authentic extract from the record of any school, Panchayat or municipality or in the absence of such extract to produce at his own expense a certificate of age from a registered medical practitioner or a declaration from either of the parents or if the parents are not alive from the nearest living relation or any other evidence of age to the satisfaction of the Chief Inspector or the Inspector, as the case may be, in respect of any young person employed whose age he may have reason to doubt. *See* Rule 17 of the Delhi Shops and Establishments Rules, 1954 as also the Notification No. 12 (23)/55 I & L., dated 2-1-1957.

38. Inspectors to be public servants.—The Chief Inspector and every Inspector appointed under section 36 shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Act XLV of 1860).

COMMENTS

This section contemplates that the Chief Inspector and every Inspector appointed under section 36 shall be deemed to be a public servant. In short, every person in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government or in the service or pay of the local authority or corporation established by or under a Central, Provincial or State Act or a Government Company, is a public servant. To state it differently, the Chief Inspector and other Inspectors appointed under section 36 of this Act are immune from suits, prosecution and legal proceedings if they do or intend to do anything in good faith while acting under the direction of any public servant in pursuance of the provisions of this Act.

39. Protection to persons acting under this Act.—No suit, prosecution, or other legal proceedings shall lie against any public servant or any other person in the service of this Union Territory acting under the direction of any such public servant for anything in good faith done or intended to be done in pursuance of the provisions of this Act or any rule or order made thereunder.

COMMENTS

The object of this section is to afford protection to a public servant or any other person in the service of this Union Territory acting under the direction of any such public servant for anything done or intended to be done in good faith for carrying out the provisions of this Act or any rule or order made thereunder. But a plain reading of this section shows that it not only protects the inspecting staff but its protection also extends to any public servant or any other person in the service of the Union Territory of Delhi acting under the direction of any inspecting staff for anything done in good faith or intended to be done in pursuance of the provisions of this Act or any rule or order made thereunder; *State of Gujarat* v. *Kausara Manilal Bhikhanlal,* AIR 1964 SC 1893: (1965) (1) Cri. LJ 90: (1964) 9 Fac. LR 147: (1964-65) 26 FJR 277: (1964) 2 Lab. LJ 456: (1965) 2 SCJ 385. (In this case the Supreme Court was constructing a similar provision of the Factories Act). The tests for determining whether section 39 applies to a suit, prosecution or other legal proceedings are: (1) whether the person proceeded against can reasonably claim that the act complained of and done or intended to be done by him was necessitated by one or more of the provisions of the Act, and (2) whether he acted in good faith to give effect to the provisions of the Act. The first test could be satisfied if a duty, whether of a positive or of a negative character, was addressed to him by the provisions of the Act, the second test could be satisfied if he acted under an honest belief that he was carrying out the provisions of the Act; *Public Prosecutor* v. *Vattem Venkataramaya,* 24 FJR 198 (AP HC): (1962) 5 Fac. LR 180: (1963) (1) Cri. LJ 283: AIR 1963 AP 106: 1962 II LLJ 21 (AP).

40. Penalties.—(1) If in any shop or establishment there is any contravention of any of the provisions of this Act, or any rule or order made thereunder except sections 33, 41 and 42, the proprietor, the employer or the manager thereof as the case may be, shall, on conviction, be punished with fine which shall not be less than twenty-five rupees and which may extend to two hundred and fifty rupees.

(2) If any person contravenes the provisions of section 33, he shall be liable, on conviction, to a fine of Rs. 5 for every day on which the contravention occurs or continues.

COMMENTS

(a) Procedure

No prosecution under this Act or the rules or orders made thereunder can be instituted except by or with the previous sanction of the Chief Inspector appointed under the Act. Further no court inferior to that of Magistrate of First Class can try any offence under this Act or any rule or order made thereunder. In other words, no prosecution can be launched against any person for violation of any provision of the Act except with the prior approval or previous sanction of the Chief Inspector.

(b) Penalties for contravention of the Act

Section 40 of this Act contemplates that if in any shop or establishment there is any contravention of any of the provisions of this Act or any rule or order made thereunder except sections 33, 41 and 42, the proprietor, the employer or the manager thereof, as the case may be, shall, on conviction, be punished with fine which shall not be less than twenty-five rupees and which may extend to two hundred and fifty rupees. It appears that a division has been made for contravention of any of the provisions of this Act or any rule or order made thereunder into two broad classes, namely: (1) contravention of any provision except sections 33, 41 and 42, is punishable with

fine which shall not be less than twenty-five rupees and which may extend to two hundred and fifty rupees, and (2) contravention of the provision of section 33 punishable with fine of five rupees for every day on which the contravention occurs or continues. In other words, this section provides penalties for contravention of any of the provisions of this Act or of any rule or order made thereunder except those of—

(a) section 41, which provides penalty for wilfully making false entries in records, registers or notice prescribed under section 33; and

(b) section 42, which provides penalty for wilfully obstructing an Inspector in the exercise of any power under section 37 or for concealing an employee in the establishment from appearing before or being examined by an Inspector.

Further this section punishes the proprietor, the employer or the manager, as the case may be, of the shop or establishment in which there has been any such contravention. Even the shop-keepers who have no employee are covered by this section.

(c) Whether the Magistrate while issuing a process under section 204 is required by law to state reasons for doing so?

In view of the phraseology of the provision of section 204(1) of Cr. P.C. it is plain that before he proceeds to issue process for the attendance of the accused, the Magistrate has to form an opinion that *prima facie* there is sufficient ground for proceeding but he does not have to write down his reason in so many words for adopting that course. The purpose of the law will be quite satisfied if it can be gathered from the record of the case that he applied his mind to the material contemplated by section 200 or section 202 of Cr. P.C., as the case may be, and formed an opinion as to the existence of sufficient ground for proceeding on its basis. There is no requirement of the law for a speaking order analysing the evidence adduced by the complainant or taking evidence how his mind worked so as to lead him to the issue of process. If such issue of process is challenged before a higher court it can find out from the complaint, the preliminary evidence, if any, and the result of the inquiry or investigation, if any, without any difficulty whether or not the order directing issue of summons/warrant and specifying the offence/offences made out against the accused *prima facie* was passed after due deliberation and is or is not justified by a sufficient ground; *K.M. Misra* v. *The State,* Cr. R. No. 305 of 1971 decided on 21-9-1971. *See* also *Udey Bir Singh* v. *Smt. Shakuntla*, 1973 (9) DLT 382 and *Manoharlal Sharma* v. *Smt. Prem Lata,* 1973 (9) DLT 379; *Amrik Singh* v. *State* ILR (1975) II Del. 69 (DB of Del. HC.); *Ibid.,* In re *P. Bapanaiah,* AIR 1970 AP 47.

Thus, if the Magistrate thinks fit to postpone the issue of process after the complainant has been examined, he has to record his reasons. When he arrives at a decision that there is no sufficient ground for proceedings, he is required to state his reasons briefly by section 203. Sub-section (7) of section 207A and sub-sections (1) and (2) of section 209 contemplated the discharge of the accused in the course of enquiries into cases triable by the Court of Session or High Court but in each such case it is imperative for the Magistrate to give reasons for passing such an order. An order in writing has to precede the Magistrate's requiring the parties concerned in the relevant dispute to attend his Court under section 145 of the Code. These are only a few of the numerous available examples. The authors of this Code could not have omitted when drafting section 204 to incorporate the requirement of recording of reasons for an order of issue of process, if any, were needed; *Mubarak Karim* v. *Bundu*, 1973 (9) DLT 318, per Safeer J. of Delhi High Court.

(d) Plea of guilty—How to be recorded?

When a person pleads guilty before the court then the principle is that such a plea should be in terms of the contravention and not that such and such pleads guilty and hence be punished. In other words, it cannot be contended that it is not incumbent on the Magistrate to record the actual statement of the accused and that it is a sufficient conformity with the requirements of law if he records that the accused pleads guilty. The plea of the accused will be what he actually states and not the conclusion which the Magistrate reaches after hearing his statements.

The plea of guilty only amounts to an admission that the accused committed the acts alleged against him, and not an admission of the guilty under particular section of the Act. An accused person does not plead to a section of a criminal statute. He pleads guilty or not guilty to the facts, alleged to disclose an offence under that section.

(e) Appeal

Any person convicted of an offence for a contravention of any provisions of this Act by a Magistrate of First Class may appeal to the Court of Sessions (section 408 of Cr. P.C.). But no appeal shall lie where a trial is commenced before a Magistrate of First Class and the person convicted of an offence under this Act is sentenced by such Magistrate to fine not exceeding fifty rupees only (section 413 of Cr. P.C.), or is tried summarily by such

Magistrate and sentenced to fine not exceeding two hundred rupees only (section 414 of Cr. P.C.). Where, however, an accused person has pleaded guilty and has been sentenced by a Magistrate of First Class on such plea, for any contravention of the provisions of this Act, there shall be no appeal except as to the extent or legality of the sentence (section 412 of Cr. P.C.).

41. Wilfully making false entries.—If any person with intent to deceive makes or causes or allows to be made in any record, register, or notice prescribed under section 33 an entry which is to his knowledge false in any material particular, or causes or allows to be omitted from any such record, register or notice an entry required to be made therein, he shall be liable on conviction to an imprisonment for a term not exceeding three months or to a fine which shall not be less than fifty rupees and which may extend to two hundred and fifty rupees or to both.

COMMENTS

Penalty under this section can be imposed by a court not below the rank of a Magistrate of the First Class or a Metropolitan Magistrate in a residency town. The penalties which may be imposed are of two types, namely: (i) imprisonment for a period not exceeding three months, or (ii) fine which shall not be less than fifty rupees but which may extend to two hundred and fifty rupees, or both.

42. Penalty for obstructing Inspector.—Whoever wilfully obstructs an Inspector in the exercise of any power under section 37 or conceals any employee in an establishment from appearing before or being examined by an Inspector shall on conviction, be punished with fine which shall not be less than fifty rupees and may extend to two hundred and fifty rupees.

COMMENTS

This section contemplates penalty for causing wilful obstruction to an Inspector in the exercise of his powers under section 37 of the Act. In other words, this section punishes every person who wilfully, (a) obstructs an Inspector in the exercise of his powers under section 37, or (b) conceals any employee in an establishment from appearing before or being examined by an Inspector. But for launching prosecution under this section, it must be proved that the obstruction or concealment, as aforesaid, was wilful. There is no vicarious responsibility for an offence under this section and it is only the person who obstructs or conceals, is liable to be prosecuted under this section.

43. Determination of employer for the purpose of this Act.—(1) Where the owner of an establishment is a firm or other association of individuals, any one of the individual partners or members thereof may be prosecuted and punished under this Act for any offence for which an employer in an establishment is punishable:

Provided that the firm or association may give notice to the Inspector that it has nominated one of its members who is resident in the Union Territory to be the employer for the purposes of this Act and such individual shall so long as he is so resident, be deemed to be the employer for the purposes of this Act until further notice cancelling the nomination is received by the Inspector or until he ceases to be a partner or member of the firm or association.

(2) Where the owner of an establishment is a company, any one of the directors thereof, or in the case of a private company any one of the shareholders thereof, may be prosecuted and punished under this Act for any offence for which the employer in the establishment is punishable:

Provided that the company may give notice to the Inspector that it has nominated a director or, in the case of a private company, a shareholder who is resident in the Union Territory to be the employer in the establishment for the purposes of this Act, and such director or shareholder shall so long as he is so resident be deemed to be the occupier in the establishment for the purposes of this Act, until further notice cancelling his nomination is received by the Inspector or until he ceases to be a director or shareholder.

44. Exemption of occupier from liability in certain cases.—Where the occupier of a shop or commercial establishment is charged with an offence against this Act or the rules or orders made thereunder, he shall be entitled, upon complaint duly made by him, to have his agent or servant whom the charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the occupier proves to the satisfaction of the Court—

(a) that he had used due diligence to enforce the execution of this Act and the rules or orders made thereunder; and

(b) that the said agent or servant committed the offence in question without his knowledge, consent or connivance, or wilful neglect or default.

That agent or servant shall be convicted of the offence and shall be liable to the like fine as if he were the occupier, and the occupier shall be discharged from any liability for the offence.

45. Cognizance of offence.—(1) No prosecution under this Act, or the rules or orders made thereunder shall be instituted except by or with the previous sanction of the Chief Inspector appointed under the Act.

(2) No court inferior to that of a Magistrate of the First Class shall try any offence under this Act or any rule or order made thereunder.

COMMENTS

The Court not inferior to that of a Magistrate of the First Class shall take cognizance of any offence under this Act or any rule or order made thereunder only when a prosecution is instituted with the previous sanction of Chief Inspector appointed under the Act. In other words, in the absence of previous sanction of the Chief Inspector, the Court cannot take cognizance of any offence under this Act or any rules or orders made thereunder. The provisions of this section apply to all offences under this Act or rules or orders made thereunder and make no exemption in any case.

46. Savings.—Nothing in this Act shall apply to—

(a) any office of or under the Central Government or Delhi Administration;

(b) any office of any local authority, any Railway Administration, the Reserve Bank of India, the Delhi Development Authority, the Delhi Water Supply and Sewage Disposal Undertaking, the Delhi Electric Supply Undertaking and the Delhi Transport Undertaking of the Municipal Corporation of Delhi (now Delhi Transport Corporation), the Delhi University or Airlines Corporation; or

(c) any telegraph, telephone or postal service.

47. Power to make rules.—(1) The Government may, after previous publication make, by notification in the Official Gazette, rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

form in which notice required by the Act shall be given;

(c) the conditions subject to which any exemption under this Act may be granted;

(cc) the manner in which inquiry under sub-section (2) of section 15 shall be held;

(d) the manner in which the occupier of a shop or a commercial establishment shall keep exhibited in the premises the notice of close day, closing and opening hours and such other particulars as may be prescribed;

(e) deductions that may be made from the wages of the employee;

(f) fines and dismissals;

(g) the form of submitting a statement, the fees and other particulars under sub-section (1) of section 5, the manner in which the registration of establishment is to be made and the form of registration certificate under sub-section (2) of section 5, and form for notifying a change and the fees under section 5;

(h) further particulars to be prescribed for the letter of appointment under section 34;

(i) fixing time and method for cleaning the establishment under section 25 and prescribing such establishments as are to be exempted from the provisions of and precautions against fire to be taken under section 28;

(j) qualifications of Chief Inspector and Inspectors appointed under section 36 and their powers and duties;

(k) any other matter which is or may be prescribed.

(3) Every rule made under this Act shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if before the expiry of session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under rule 2.

48. Repeal of Punjab Trade Employees Act, 1940, as extended to the Union Territory of Delhi.—On and from the date of commencement of this Act, the Punjab Trade Employees Act, 1940 (Punjab Act No. X of 1940) as extended to Union Territory of Delhi, shall be repealed:

Provided that—

(a) every appointment, order, rule, bye-law, regulation or notice made, issued or given under the provisions of the Act so repealed shall, insofar as it is not inconsistent with the provisions of this Act, deemed to have been made, issued or given under the provisions of this Act, unless and until superseded by any appointment, order, rule, bye-law, regulation, notification or notice made, issued or given under this Act;

(b) any proceedings relating to the trial of any offence punishable under the provisions of the Act so repealed shall be continued and completed as if the said Act had not been repealed but had continued in operation and any penalty imposed on such proceedings shall be recovered under the Act so repealed.

49. Application of General Clauses Act, 1897.—The provisions of General Clauses Act, 1897 (10 of 1897), shall apply for the interpretation of this Act as they apply for the interpretation of Central Act.