

The Child Labour (Prohibition & Regulation) Act, 1986

The Child Labour (Prohibition & Regulation) Act, 1986, was the culmination of efforts and ideas that emerged from the deliberations and recommendations of various committees on child labour. Significant among them are National Commission on Labour (1966-69), Gurupadaswamy Committee on Child Labour (1979), Sanat Mehta Committee (1984), and others.

The basic objective of the Child Labour (Prohibition & Regulation) Act, 1986, is to ban employment of children below the age of 14 years in 16 occupations and 65 processes that are hazardous to their lives and health. These occupations and processes are listed in the Schedule to the Act. The list of hazardous occupations and processes is progressively being expanded as per the recommendations of Child Labour Technical Advisory Committee constituted under the Act. (24)

In October 2006, the Government included children working in the domestic sector as well as roadside eateries and motels under the prohibited list of hazardous occupations. More recently, in September 2008, the list of prohibited occupations and processes was extended to include diving as well as processes involving excessive heat (e.g., working near a furnace) and cold; mechanical fishing; food processing; beverage industry; timber handling and loading; mechanical lumbering; warehousing; and processes involving exposure to free

silica such as slate, pencil industry, stone grinding, slate stone mining, stone quarries as well as the agate industry.

(Source: <http://www.ilo.org/legacy/english/regions/asro/newdelhi/ipec/responses/india/national.htm>)

The Supreme Court of India, in the M.C. Mehta Vs State of Tamil Nadu case, has given certain directions regarding the manner in which children working in hazardous occupations are to be withdrawn from work and rehabilitated, and the manner in which the working conditions of children working in non-hazardous occupations are to be regulated and improved. These directions include:

- Withdrawal of children working in hazardous industries and ensuring their education in appropriate institutions;
- Contribution of Rs 20,000 per child to be paid by the offending employers of children to a welfare fund to be established for this purpose;
- Employment to one adult member of the family of the child so withdrawn from work, and if that is not possible, a contribution of Rs 5,000 to the welfare fund to be made by the State Government;
- Financial assistance to the families of the children so withdrawn to be paid out of the interest earnings on the corpus of Rs 20,000/25,000 deposited in the welfare fund, as long as the child is actually sent to school;
- Regulating hours of work for children working in non-hazardous occupations so that their working hours do not exceed six hours per day, and education for at least two hours is ensured.

(Source: <http://www.legalindia.in/child-labour-in-india-present-scenario>)

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THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986 AND RULES

(Act No. 61 of 1986)

[23rd December, 1986]

Be it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:

Comments

Social and beneficial legislation – Social legislation is designed to protect the interest of a class of society who, because of their economic conditions, deserves such protection. With a view to pass the test of reasonable classification there must exist intelligible differentia between persons or thing grouped together from those who have been left out and there must be a reasonable nexus with the object to be achieved by the legislation.

The Court must strive to so interpret the statute as to protect and advance the object and purpose of enactment. Any narrow or technical interpretation of the provisions would defeat the legislative policy. The Court must, therefore, keep the legislative policy in mind in applying the provisions of the Act to the facts of the case.

PART I PRELIMINARY

1. Short title, extent and commencement –

(1) This Act may be called the Child Labour (Prohibition and Regulation) Act, 1986.

(2) It extends to the whole of India.

(3) The provisions of this Act, other than Part III, shall come into force at once, and Part III shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint, and different dates may be appointed for different States and for different classes of establishments.

Comment

May and shall – Where the Legislature uses two words “may” and “shall” in two different parts of the same provision, prima facie it would appear that the Legislature manifested its intention to make one part directory and another mandatory. But that by itself is not decisive. The power of the Court still to ascertain the real intention of the Legislature by carefully examining the scope of statute to find out whether the provision is directory or mandatory remains unimpaired even where both the words are used in the same provision.

In interpreting the provisions the exercise undertaken by the Court is to make explicit the intention of the Legislature which enacted the legislation. It is not for the Court to reframe the legislation for the very good reason that the powers to “legislate” have not been conferred on the Court.

In order to sustain the presumption of constitutionality of a legislative measure, the Court can take into consideration matters of common knowledge, matters of common report, the history of the times and also assume every state of facts which can be conceived existing at the time of the legislation.

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

- (i) “appropriate Government” means, in relation to an establishment under the control of the Central Government or a railway administration or a major port or a mine or oilfield, the Central Government, and in all other cases, the State Government;
- (ii) “child” means a person who has not completed his fourteenth year of age;
- (iii) “day” means a period of twenty-four hours beginning at midnight;
- (iv) “establishment” includes a shop, commercial establishment, work-shop, farm, residential hotel, restaurant, eating-house, theatre or other place of public amusement or entertainment;
- (v) “family” in relation to an occupier, means the individual, the wife or husband, as the case may be, of such individual, and their children, brother or sister of such individual;
- (vi) “occupier”, in relation to an establishment or a workshop, means the person who has the ultimate control over the affairs of the establishment or workshop;
- (vii) “port authority” means any authority administering a port;
- (viii) “prescribed” means prescribed by rules made under Sec.18;
- (ix) “week” means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Inspector;
- (x) “workshop” means any premises (including the precincts thereof) wherein any industrial process is carried on, but does not include any premises to which the provisions of Sec. 67 of the Factories Act, 1948 (63 of 1948), for the time being, apply.

Comments

This section defines the various words and expressions occurring in the Act.

Interpretation of section – The Court can merely interpret the section; it cannot re-write, re-cast or re-design the section.

Ambiguous expression – Courts must find out the literal meaning of the expression in the task of construction. In doing so if the expressions are ambiguous then the construction that fulfils the objects of the legislation must provide the key to the meaning. Courts must not make mockery of legislation and should take a constructive approach to fulfil the purpose and for that purpose, if necessary, iron out the creases.

PART II PROHIBITION OF EMPLOYMENT OF CHILDREN IN CERTAIN OCCUPATIONS AND PROCESSES

3. Prohibition of employment of children in certain occupations and processes – No child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on :

Provided that nothing in this section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by or receiving assistance or recognition from, Government.

Comment

This section imposes prohibition on employment of children in the occupation and processes specified in the Schedule.

Proviso – A proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself.

4. Power to amend the Schedule – The Central Government, after giving by notification in the official Gazette, not less than three months' notice of its intention so to do, may, by like notification, add any occupation or process to the Schedule and thereupon the Schedule shall be deemed to have been amended accordingly.

Comment

This section empowers the Central Government to amend the Schedule so as to include therein any occupation or process considered necessary.

Construction of a section – it is an elementary rule that construction of a section is to be made of all parts together. It is not permissible to omit any part of it. For, the principle that the statute must be read as a whole is equally applicable to different part of the same section.

5. Child Labour Technical Advisory Committee –

(1) The Central Government may, by notification in official Gazette, constitute an advisory committee to be called the Child Labour Technical Advisory Committee (hereinafter in this section referred to as the Committee) to advise the Central Government for the purpose of addition of occupations and processes to the Schedule.

(2) The Committee shall consist of a Chairman and such other members not exceeding ten, as may be appointed by the Central Government.

(3) The Committee shall meet as often as it may consider necessary and shall have power to regulate its own procedure.

(4) The Committee may, if it deems it necessary so to do, constitute one or more sub-committees and may appoint to any such sub-committee, whether generally or for the consideration of any particular matter, any person who is not a member of the Committee.

(5) The term of office of, the manner of filling casual vacancies in the office of, and the allowances, if any, payable to, the Chairman and other members of the Committee, and the conditions and restrictions subject to which the Committee may appoint any person who is not a member of the Committee as a member of any of its sub-committees shall be such as may be prescribed.

Comment

This section empowers the Central Government to constitute the Child Labour Technical Advisory Committee for giving advice in the matter of inclusion of any occupation and process in the Schedule.

PART III REGULATION OF CONDITIONS OF WORK OF CHILDREN

6. Application of Part – The provisions of this Part shall apply to an establishment or a class of establishments in which none of the occupations or processes referred to in Sec. 3 is carried on.

Comment

This section lays down that provisions of this Part shall apply to an establishment in which none of the prohibited occupations or processes is carried on.

7. Hours and period of work –

(1) No child shall be required or permitted to work in any establishment in excess of such number of hours as may be prescribed for such establishment or class of establishments.

(2) The period of work on each day shall be so fixed that no period shall exceed three hours and that no child shall work for more than three hours before he has had an interval for rest for at least one hour.

(3) The period of work of a child shall be so arranged that inclusive of his interval for rest, under sub-section(2), it shall not be spread over more than six hours, including the time spent in waiting for work on any day.

- (i) No child shall be permitted or required to work between 7 p.m. and 8 a.m.
- (ii) No child shall be permitted or required to work overtime.
- (iii) No child shall be permitted or required to work in any establishment on any day on which he has already been working in another establishment.

Comment

This section prescribes working hours for a child labour.

Provision if mandatory or directory – The surest test for determination as to whether the provisions is mandatory or directory is to see as to whether the sanction is provided therein.

8. Weekly holidays – Every child employed in an establishment shall be allowed in each week, a holiday or one whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months.

Comment

This section lays down that a weekly holiday should be allowed to every child labour.

9. Notice to Inspector –

(1) Every occupier in relation to an establishment in which a child was employed or permitted to work immediately before the date of commencement of this Act in relation to such establishment shall, within a period of thirty days from such commencement, send to the Inspector within whose local limits the establishment is situated, a written notice containing the following particulars, namely :

- (a) the name and situation of the establishment;
- (b) the name of the person in actual management of the establishment;
- (c) the address to which communications relating to the establishment should be sent; and,
- (d) the nature of the occupation or process carried on in the establishment.

(2) Every occupier, in relation to an establishment, who employs, or permits to work, any child after the date of commencement of this Act in relation to such establishment, shall, within a period of thirty days from the date of such employment, send to the Inspector within whose local limits the establishment is situated, a written notice containing the following particulars as are mentioned in sub-section (1).

Explanation – For the purposes of sub-sections (1) and (2), “date of commencement of this Act, in relation to an establishment” means the date of bringing into force of this Act in relation to such establishment.

(3) Nothing in Secs. 7,8 and 9 shall apply to any establishment wherein any process is carried on by the occupier with the aid of his family or to any schools established by, or receiving assistance or recognition from, Government.

Comment

This section makes provision for furnishing of information regarding employment of a child labour to Inspector.

Explanation – It is now well settled that an explanation added to a statutory provision is not a substantive provision in any sense of the term but as the plain meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision.

10. Disputes as to age –

If any question arises between an Inspector and an occupier as to the age of any child who is employed or is permitted to work by him in an establishment, the question shall, in the absence of a certificate as

to the age of such child granted by the prescribed authority, be referred by the Inspector for decision to the prescribed medical authority.

Comment

This section makes provision for settlement of disputes as to age of any child labour.

11. Maintenance of register –

There shall be maintained by every occupier in respect of children employed or permitted to work in any establishment, a register to be available for inspection by an Inspector at all times during working hours or when work is being carried on in any such establishment showing –

- (a) the name and date of birth of every child so employed or permitted to work;
- (b) hours and periods of work of any such child and the intervals of rest to which he is entitled;
- (c) the nature of work of any such child; and
- (d) such other particulars as may be prescribed

Comment

This section makes provision for maintenance of register in respect of child labour.

12. Display of notice containing abstract of Secs. 3 and 14 –

Every railway administration, every port authority and every occupier shall cause to be displayed in a conspicuous and accessible place at every station on its railway or within the limits of a port or at the place of work, as the case may be, a notice in the local language and in the English language containing an abstract of Secs. 3 and 14.

Comment

This section makes provision for display of notice in a conspicuous place at every railway station or port or place of work regarding prohibition of employment of child labour, penalties, etc., in the local languages and in the English language.

13. Health and safety –

(1) The appropriate Government may, by notification in the official Gazette, make rules for the health and safety of the children employed or permitted to work in any establishment or class of establishments.

(2) Without prejudice to the generality of the foregoing provisions, the said rules may provide for all or any of the following matters, namely :

- (a) cleanliness in the place of work and its freedom for nuisance;
- (b) disposal of wastes and effluents;
- (c) ventilation and temperature;
- (d) dust and fume;

- (e) artificial humidification;
- (f) lighting;
- (g) drinking water;
- (h) latrine and urinals;
- (i) spittoons;
- (j) fencing of machinery;
- (k) work at or near machinery in motion;
- (l) employment of children on dangerous machines;
- (m) instructions, training and supervision in relation to employment of children on dangerous machines;
- (n) device for cutting off power;
- (o) self-acting machinery;
- (p) easing of new machinery;
- (q) floor, stairs and means of access;
- (r) pits, sumps, openings in floors, etc.;
- (s) excessive weight;
- (t) protection of eyes;
- (u) explosive or inflammable dust, gas, etc.;
- (v) precautions in case of fire;
- (w) maintenance of buildings; and
- (x) safety of buildings and machinery.

Comments

This section lays down that the Government is required to make rules for the health and safety of the child labour.

PART IV MISCELLANEOUS

14. Penalties –

(1) Whoever employs any child or permits any child to work in contravention of the provisions of Sec. 3 shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both.

(2) Whoever, having been convicted of an offence under Sec. 3, commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years.

(3) Whoever –

- (a) fails to give notice as required by Sec. 9, or
- (b) fails to maintain a register as required by Sec. 11 or makes any false entry in any such register; or

- (c) fails to display a notice containing an abstract of Sec. 3 and this section as required by Sec. 12; or
- (d) fails to comply with or contravenes any other provisions of this Act or the rules made thereunder;

shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both

Comments

This section makes provision for penalty for contravention of the provisions of the Act.

Penalty – Mensrea – Essential – Penalty proceedings are quasi criminal proceedings. Before penalty can be imposed it has to be ensured that mens rea has been established.

Penal provision – Object of – The law in its wisdom seeks to punish the guilty who commits the sin, and not his son, who is innocent.

15. Modified application of certain laws in relation to penalties –

(1) Where any person is found guilty and convicted of contravention of any of the provisions mentioned in sub-section(2), he shall be liable to penalties as provided in sub-sections (1) and (2) of Sec. 14 of this Act and not under the Acts in which those provisions are contained.

(2)The provisions referred to in sub-section (1) are the provisions mentioned below:

- (a) Section 67 of the Factories Act, 1948 (63 of 1948);
- (b) Section 40 of the Mines Act, 1952 (35 of 1952);
- (c) Section 109 of the Merchant Shipping Act, 1958 (44 of 1958); and
- (d) Section 21 of the Motor Transport Workers Act, 1961 (27 of 1961).

Comment

This section makes provision of penalties under the Act even when any person is found guilty and convicted of contravention of any of the provisions of Sec. 67 of the Factories Act, 1948, Sec. 40 of the Mines Act, 1952, Section 109 of the Merchant Shipping Act, 1958 and Sec. 21 of the Motor Transport Workers Act, 1961.

16. Procedure relating to offences –

(1) Any person, police officer or Inspector may file a complaint of the commission of an offence under this Act in any Court of competent jurisdiction.

(2) Every certificate as to the age of a child which has been granted by a prescribed medical authority shall, for the purposes of this Act, be conclusive evidence as to the age of the child to whom it relates.

(3) No court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence under this Act.

Comment

This section lays down that any person, police officer or Inspector can make a complaint regarding commission of offences. It also lays down the procedure for disposal of such a complaint.

Court Duty of – The Court should meticulously consider all facts and circumstances of the case. The Court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter into the judicial verdict. The Court should take care to see that it is used as an instrument of oppression to have an unfair advantage to plaintiff.

17. Appointment of Inspectors – The appropriate Government may appoint inspectors for the purposes of securing compliance with the provisions of this Act and any inspector so appointed shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 Of 1860).

Comment

This section empowers the appropriate Government to appoint inspectors for securing compliance of the provisions of the Act. Such Inspector is deemed to be a public servant with in the meaning f the Indian Penal Code (45 of 1860).

Public servant – Every public officer is a trustee and in respect of the office he holds and the salary and other benefits which he draws, he is obliged to render appropriate service to the State. If an officer does not behave as required of him under the law he is certainly liable to be punished in accordance with law.

18. Power to make rules –

(1) The appropriate Government may, by notification in the official Gazette and subject to the condition of previous publication, make rules for carrying into effect the provisions 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 :

- (a) the term of the office of, the manner of filling casual vacancies of, and the allowances payable to, the Chairman and members of the Child Labour Technical Advisory Committee and the conditions and restrictions subject to which a non-member may be appointed to a sub-committee under sub-section (5) of Sec.5;
- (b) number of hours for which a child may be required or permitted to work under sub-section (1) of Sec. 7;
- (c) grant to certificates of age in respect of young persons in employment or seeking employment, the medical authorities which may issue such certificate, the form of such certificate, the charges which may be made thereunder and the manner in which such certificate may be issued;

Provided that no charge shall be made for the issue of any such certificate of the application is accompanied by evidence of age deemed satisfactory by the authority concerned;

- (d) the other particulars which a register maintained under Sec. 11 should contain.

Comment

This section empowers the appropriate Government to make rule for carrying out the provisions of the Act.

Rules for effectuating the purpose of the Act – The general power of framing rules for effectuating the purposes of the Act, would plainly authorize and sanctify the framing of such a rule.

9. Rules and notifications to be laid before Parliament or State legislature –

- (1) Every rules made under this Act by the Central Government and every notification issued under Sec. 4, shall be laid, as soon as may be after it is made or issued, 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 or more successive sessions, and if, before the expiry of the session immediately following the session or the successive session aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made or issued, the rule or notification 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 that rule or notification.
- (2) Every rule made by a State Government under this Act shall be laid as soon as may be after it is made, before the Legislature of that State.

Comment

Under this section the rules and notifications are to be laid before Parliament of State Legislature for approval.

20. Certain other provisions of law not barred –

Subject to the provisions contained in Sec. 15, the provisions of this Act and the rules made thereunder shall be in addition to, and not in derogation of, the provisions of the Factories Act, 1948 (63 of 1948), the Plantations Labour Act, 1951 (69 of 1951) and the Mines Act, 1952 (35 of 1952).

Comment

This section lays down that the provision of this Act shall be in addition to and not in derogation of, the provisions of the Factories Act, 1948, the Plantations Labour Act, 1951 and the Mines Act, 1952.

21. Power to remove difficulties –

(1) If any difficulty arises in giving effect of the provisions of this Act, the Central Government may, by order published in the official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removal of the difficulty :

Provided that no such order shall be made after the expiry of a period of three years from the date on which this Act receives the assent of the President.

(2) Every order made under this section shall, as soon as may be after it is made, before the Houses of Parliament.

Comment

Under the provisions of this section the Central Government is empowered to remove difficulties which arise in giving effect to the provisions of this Act.

22. Repeal and savings –

(1) The Employment of Children Act, 1938 (26 of 1938) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken or purported to have been done or taken under the Act so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

Comment

The Employment of Children Act, 1938 (26 of 1938) has been repealed by this section.

Implied repeal – It is well settled that when a competent authority makes a new law which is totally inconsistent with the earlier law and that the two cannot stand together any longer it must be construed that the earlier law had been repealed by necessary implication by the latter law.

23. Amendment of Act 11 of 1948 –

In Sec. 2 of the Minimum Wages Act, 1948 –

(i) for Cl. (a), the following clauses shall be substituted, namely :
“(a) ‘adolescent’ means a persons who has completed his fourteenth year of age but has not completed his eighteenth year;

(aa) ‘adult’ means a person who has completed his eighteenth year of age;”:

(ii) after Cl.(b), the following clause shall be inserted, namely :

“(bb) ‘child’ means a person who had not completed his fourteenth year of age;”.

Comment

Under this section Sec. 2 of the Minimum Wages Act, 1948 has been amended so as to define the terms “adolescent”, “adult” and “child”.

24. Amendment of Act 69 of 1951 –
In the Plantations Labour Act, 1951 –

- (a) in Sec.2 in Cls.(a) and (c), for the word “fifteenth”, the word “fourteenth” shall be substituted;
- (b) Sec. 24 shall be omitted;
- (c) in Sec. 26, in the opening portion, the words “who has completed his twelfth year” shall be omitted.

Comment

Under this section, sec. 2 of the Plantations Labour Act, 1951, has been amended so far as it relates to the employment of child labour

25. Amendment of Act 44 of 1958 –

In the Merchant Shipping Act, 1958, in Sec. 109, for the word “fifteen”, the word “fourteen” shall be substituted.

Comment

Under this section Sec. 109 of the Merchant Shipping Act, 1958, has been amended so far as it relates to the employment of child labour.

26. Amendment of Act 27 of 1961 –

In the Motor Transport Workers Act, 1961 in Sec.2, in Cls.(a), and (c), for the word “fifteenth”, the word “fourteenth” shall be substituted.

Comment

Under this section, Sec.2 of the Motor Transport Workers Act, 1961, has been amended so far as it relates to the employment of child labour.

THE CHILD LABOUR (PROHIBITION AND REGULATION) RULES, 1988

G.S.R. 847(E), dated 10th August, 1988 – In exercise of the powers conferred by sub-section (1) of Sec. 18 of the said Act, the Central Government, hereby makes the following rules, namely :

Comment

Rule-making power – The general power of framing rules for effectuating the purposes of the Act, would plainly authorize and sanctify the framing of such a rule.

1. Short title and commencement –

(1) These rules may be called the Child Labour (Prohibition and Regulation) Rules, 1988.

(2) They shall come into force on the date of their publication in the official Gazette.

Comment

These rules have been framed by the Central Government in the exercise of the powers conferred by Sec. 18 (1) of the Child Labour (Prohibition and Regulation) Rules, 1986.

Rules – Whether validly framed – The question whether rules are validly framed to carry out the purposes of the Act can be determined on the analysis of the provisions of the Act.

2. Definitions –

In these rules, unless the context otherwise requires –

- (a) “Act” means the Child Labour (Prohibition and Regulation) Rules, 1986 (61 Of 1986);
- (b) “Committee” means the Child Labour Technical Advisory Committee constituted under sub-section (1) of Sec. 5 of the Act;
- (c) “Chairman” means the Chairman of the Committee appointed under sub-section (2) of Sec. 5 of the Act;
- (d) “Form” means a Form appended to these rules;
- (e) “register” means the register required to be maintained under Sec. 11 of the Act;
- (f) “Schedule” means the schedule appended to the Act;
- (g) “section” means a section of the Act.

Comments

This rule defines the various expressions occurring in the Rules.

Interpretation by a court – The Court can merely interpret the section; it cannot re-write, re-cast or re-design the section.

Otherwise – What amounts to – The words “otherwise” is not to be construed *ejusdem generis* with the word “circulars, advertisement”.

3. Term of office of the members of the Committee –

(1) The term of office of the members of the Committee shall be one year from the date on which their appointment is notified in the official Gazette;

Provided that the Central Government may extend the term of office of the member of the Committee for a maximum period of two years;

Provided further that the member shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(2) The members appointed under sub-rule (1) shall be eligible for re-appointment.

Comment

“shall” cannot be interpreted as “may”

Proviso – In *Abdul Jabar Butt v. State of Jammu and Kashmir*, it was held that a proviso must be considered with relation to the principal matter to which it stands as a proviso.

4. Secretary to the Committee –

The Central Government may appoint an officer not below the rank of an Under-Secretary to the Government of India as Secretary of the Committee.

Comment

This rule empowers the Central Government to appoint an officer not below the rank of an Under-Secretary to the Government of India as the Secretary to the Child Labour Technical Advisory Committee.

5. Allowances to non-official members –

The non-official members and Chairman of the Committee shall be paid such fees and allowances as may be admissible to the officers of the Central Government drawing a pay of rupees four thousand and five hundred or above.

6. Resignation –

(1) A member may resign his office by writing under his hand addressed to the Chairman.

(2) The Chairman may resign his office by writing under his hand addressed to the Central Government.

(3) The resignation referred to in sub-rule (1) and sub-rule (2) shall take effect from the date of its acceptance or on the expiry of thirty days from the date of receipt of such resignation, whichever is earlier, by the Chairman or the Central Government, as the case may be.

7. Removal of Chairman or member of the Committee –

The Central Government may remove the Chairman or any member of the Committee at any time before the expiry of the term of office after giving him a reasonable opportunity of showing cause against the proposed removal.

Comment

This rule lays down procedure for removal of Chairman or member of the Committee by the Central Government.

8. Cessation of membership –

if a member –

- (a) is absent without leave of the Chairman for three or more consecutive meetings of the Committee; or
- (b) is declared to be of unsound mind by a competent court; or
- (c) is or has been convicted of any offence which, in the opinion of the Central Government, involves moral turpitude; or
- (d) is, or at any time, has been adjudicated insolvent or has suspended his debts or has compounded with his creditors, shall cease to be a member of the Committee.

Comment

This rule deals with the matter relating to cessation of membership.

9. Filling up of casual vacancies –

in case a member resigns his office under rule 6 or ceases to be a member under rule 8, the casual vacancy thus caused shall be filled up by the Central Government and the member so appointed shall hold office for the unexpired portion of the term of his predecessor.

Comment

This rule empower the Central Government to fill up casual vacancies and it lays down that the member so appointed shall hold office for the unexpired portion of the term of his predecessor.

10. Time and place of meetings –

The Committee shall meet at such times and places as the Chairman may fix in this behalf.

11. Notice of meetings –

The Secretary to the Committee shall give at least seven days notice to every member of the Committee of the time and place fixed for each meeting along with the list of business to be transacted at the said meeting.

12. Presiding at meetings –

The Chairman shall preside at every meeting of the Committee at which he is present; if, however, the Chairman is unable to attend a meeting, any member elected by the members present among themselves shall preside at the meeting.

Comment

“Shall” – It is well-known principle that in the interpretation of statutes that where the situation and the context warrants it, the word “shall” used in a section or rule of a statute has to be construed as “may”.

13. Quorum –

No business shall be transacted at a meeting of the Committee unless atleast three members of the Committee other than the Chairman and the Secretary are present:

Provided that at any meeting in which less than three of the total members are present, the Chairman may adjourn the meeting to a date as he deems fit and inform the members present and notify other members that the business of the scheduled meeting shall be disposed of at the adjourned meeting irrespective of the quorum and it shall be lawful to dispose of the business at such adjourned meeting irrespective of the member of members attending the meeting.

Comment

Scope of proviso – The scope of a proviso is well settled. In *Ram Narain Sons Ltd. V. Asstt. Commissioner of Sales Tax*, it was held :

“It is a cardinal rule of interpretation that a proviso to a particular provision of statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other.”

14. Decision by majority –

All questions considered at a meeting of the Committee shall be decided by a majority of votes of the members present and voting and in the event of equality of votes, the Chairman, or in the absence of Chairman, the member presiding at the meeting, as the case may be, shall have a second or casting vote.

Comment

This rule lays down that the matters considered by the Committee in its meeting should be decided by a majority votes of the members present. The rule further lays down that the Chairman or in his absence the member presiding at the meeting shall have a casting vote.

15. Sub-Committees –

The Committee may constitute one or more Sub-Committees, whether consisting only of members of the Committee or partly of members of the Committee and partly of other persons as it thinks fit, for such purposes, as it may decide and any Sub-Committee so constituted shall discharge such functions as may be delegated to it by the Committee.

16. Register to be maintained under Sec. 11 of the Act. –

(1) Every occupier of an establishment shall maintain a register in respect of children employed or permitted to work, in Form A.

(2) The register shall be maintained on a yearly basis but shall be retained by the employer for a period of three years after the date of the last entry made therein.

Comment

Under this rule every occupier of an establishment is required to maintain an yearly register showing the children employed or permitted to work and to retain such registers for a period of three years.

17. Certificate of age. –

(1) All young persons in employment in any of the occupations set-forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on, shall produce a certificate of age from the appropriate medical authority, whenever required to do so by an Inspector.

(2) The certificate of age referred to in sub-rule (1) shall be issued in Form 'B'.

(3) The charges payable to the medical authority for the issue of such certificate shall be the same as prescribed by the State Government or the Central Government, as the case may be for their respective Medical Boards.

(4) The charges payable to the medical authority shall be borne by the employer of the young person whose age is under question.

Explanation - For the purposes of sub-rule (1), the appropriate “Medical authority” shall be Government medical doctor not below the rank of an Assistant Surgeon of a District or a regular doctor or equivalent rank employed in Employees’ State Insurance dispensaries of hospitals.

Comment

Explanation - It is not well settled that an explanation added to a statutory provision is not a substantive provision in any sense of the term but as the plain meaning of the word itself shows it is merely meant to explain and clarify certain ambiguities which may have crept in the statutory provision.

SUPPLEMENT THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986

S.O. 333(E), dated 26th may, 1993 – in exercise of the powers conferred by sub-section(3) of Sec.1 of the Child Labour (Prohibition and Regulation)Act, 1986 (61 of 1986), the Central Government hereby appoints the 26th day of May, 1993 as the date of which the provisions of Part III of the said Act shall come into force in respect of all classes of establishments, throughout the territory of India, in which none of the occupations and processes referred to in Sec. 3 of the said Act is carried on.



THE SCHEDULE

PART A

Occupations

Any occupation concerned with: -

- (1) Transport of passengers, goods or mails by railways;
- (2) Cinder picking, clearing of an ash pit or building operation in the railway premises;
- (3) Work in a catering establishment at a railway station, involving the movement of a vendor or any other employee of the establishment from the one platform to another or in to or out of a moving train;
- (4) Work relating to the construction of a railway station or with any other work where such work is done in close proximity to or between the railway lines;
- (5) A port authority within the limits of any port;
- * (6) Work relating to selling of crackers and fireworks in shops with temporary licenses;
- # (7) Abattoirs/Slaughter House;
- \$ (8) Automobile workshops and garages;
- (9) Foundries;
- (10) Handling of toxic or inflammable substances or explosives;
- (11) Handloom and power loom industry;
- (12) Mines (underground and under water) and collieries;
- (13) Plastic units and fibreglass workshops;
- ** (14) Domestic workers or servants and
- ** (15) Dhabas (roadside eateries), restaurants, hotels, motels, tea shops, resorts, spas or other recreational centres.
- \$\$ (16) Diving

PART B

Processes

- (1) Beedi-making.
- (2) Carpet-weaving.
- (3) Cement manufacture, including bagging of cement.
- (4) Cloth printing, dyeing and weaving.
- (5) Manufacture of matches, explosives and fire-works.
- (6) Mica-cutting and splitting.
- (7) Shellac manufacture.
- (8) Soap manufacture.
- (9) Tanning.
- (10) Wool-cleaning.
- (11) Building and construction industry.
- * (12) Manufacture of slate pencils (including packing).
- * (13) Manufacture of products from agate.
- * (14) Manufacturing processes using toxic metals and substances such as lead, mercury, manganese, chromium, cadmium, benzene, pesticides and asbestos.
- # (15) "Hazardous processes" as defined in Sec. 2 (cb) and 'dangerous operation' as defined in rules made under section 87 of the Factories Act, 1948 (63 of 1948)
- # (16) Printing as defined in Section 2(k) (iv) of the Factories Act, 1948 (63 of 1948)
- # (17) Cashew and cashewnut descaling and processing.
- # (18) Soldering processes in electronic industries.
- \$ (19) 'Aggarbatti' manufacturing.
- (20) Automobile repairs and maintenance including processes incidental thereto namely, welding, lathe work, dent beating and painting.
- (21) Brick kilns and Roof tiles units.
- (22) Cotton ginning and processing and production of hosiery goods.

- (23) Detergent manufacturing.
- (24) Fabrication workshops (ferrous and non ferrous)
- (25) Gem cutting and polishing.
- (26) Handling of chromite and manganese ores.
- (27) Jute textile manufacture and coir making.
- (28) Lime Kilns and Manufacture of Lime.
- (29) Lock Making.
- (30) Manufacturing processes having exposure to lead such as primary and secondary smelting, welding and cutting of lead-painted metal constructions, welding of galvanized or zinc silicate, polyvinyl chloride, mixing (by hand) of crystal glass mass, sanding or scraping of lead paint, burning of lead in enameling workshops, lead mining, plumbing, cablemaking, wiring patenting, lead casting, type founding in printing shops. Store type setting, assembling of cars, shot making and lead glassblowing.
- (31) Manufacture of cement pipes, cement products and other related work.
- (32) Manufacture of glass, glass ware including bangles, florescent tubes, bulbs and other similar glass products.
- (33) Manufacture of dyes and dye stuff.
- (34) Manufacturing or handling of pesticides and insecticides.
- (35) Manufacturing or processing and handling of corrosive and toxic substances, metal cleaning and photo engraving and soldering processes in electronic industry.
- (36) Manufacturing of burning coal and coal briquettes.
- (37) Manufacturing of sports goods involving exposure to synthetic materials, chemicals and leather.
- (38) Moulding and processing of fiberglass and plastic.
- (39) Oil expelling and refinery.
- (40) Paper making.
- (41) Potteries and ceramic industry.
- (42) Polishing, moulding, cutting, welding and manufacturing of brass goods in all forms.

(43) Processes in agriculture where tractors, threshing and harvesting machines are used and chaff cutting.

(44) Saw mill – all processes.

(45) Sericulture processing.

(46) Skinning, dyeing and processes for manufacturing of leather and leather products.

(47) Stone breaking and stone crushing.

(48) Tobacco processing including manufacturing of tobacco, tobacco paste and handling of tobacco in any form.

(49) Tyre making, repairing, re-treading and graphite beneficiation.

(50) Utensils making, polishing and metal buffing.

(51) 'Zari' making (all processes)'.
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@ (52) Electroplating;

(53) Graphite powdering and incidental processing;

(54) Grinding or glazing of metals;

(55) Diamond cutting and polishing;

(56) Extraction of slate from mines;

(57) Rag picking and scavenging.

\$\$ (58) Processes involving exposure to excessive heat (e.g. working near furnace) and cold;

(59) Mechanised fishing;

(60) Food Processing;

(61) Beverage Industry;

(62) Timber handling and loading;

(63) Mechanical Lumbering;

(64) Warehousing;

(65) Processes involving exposure to free silica such as slate, pencil industry, stone grinding, slate stone mining, stone quarries, agate industry.”

a. for item (2), the following item shall be substituted, namely:-“(2) carpet weaving including preparatory and incidental processes thereof”;

b. for item(4), the following item shall be substituted, namely:-“(4) cloth printing, dyeing and weaving including processes preparatory and incidental thereto:

c. for item (11) the following shall be substituted, namely:- “(11) Building and Construction Industry including processing and polishing of granite stones”.

* Ins. by Notification No. S. O. 404(E) dated the 5th June 1989 published in the Gazette of India, Extraordinary.

Ins. by Notification No. S. O. 263 (E) dated 29th March, 1994 published in the Gazette of India, Extraordinary.

\$ Ins. Sr. No. 8-13 in Part A and Sr. No. 19-51 in Part B by Notification No. S. O. 36 (E) dated 27th January 1999 published in the Gazette of India, Extraordinary.

@ Ins. Sr. No. 52 – 57 part B By Notification No. S.O. 397 (E) dated the 10th May 2001 published in the Gazette of India, Extraordinary.

** Ins. Sr. 14 & 15 in Part A by Notification No. S.O. 1742(E) dated the 10th October, 2006 published in the Gazette of India, Extraordinary.

\$\$ Ins. Sr. 16 in Part ‘A’ & Sr. No. 58 to 65 in Part ‘B’ by Notification No. S.O. 2280 (E) dated the 25th September, 2008.