out in it. If the Income-tax Authorities register the partnership as between the adults only contrary to the terms of the document, in substance a new contract is made out."

That decision, however, does show that the partnership document, to which a minor is a party contrary to section 30 of the partnership Act, would be invalid. Mr. Radhey Lal says that that document by itself may be invalid but still for the purposes of taking accounts effect can be given to the document *qua* other partners. That, as I have already said, will require re-writing of the entire contract and compelling the major partners to do something contrary to the express terms thereof. The Court will then have to say that each major partner's liability in losses extends to 1/4th and not to 1/5th as expressed in the document. In the view that I have taken I am supported by a Division Bench decision of the Calcutta High Court reported as *Durga Charan* v. *Akkari Das* (4). In these circumstances, I am in agreement with the view of the learned Single Judge that the suit deserves to be dismissed.

Mr. Radhey Ial sought to canvass certain points relating to the frame of the issues, which do not appear to have been raised in any of the Courts below or in the grounds of appeal. I cannot, therefore, permit those points to be raised in the Letters Patent Appeal for the first time.

In the result, the appeal fails and is dismissed. The parties will bear their own costs in this appeal.

A. N. GROVER, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

THE SURGICAL DRESSINGS MANUFACTURING CO., PRIVATE LTD.,—*Petitioner*

versus

THE PUNJAB STATE AND ANOTHER,—*Respondents*

Civil Writ No. 1334 of 1965

August 5, 1966

Minimum Wages Act (XI of 1948)—Item 17 of the Schedule added by the Punjab Government—"Employment in textile industry"—Whether includes

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(4) A.I.R. 1949 Cal. 617.

employees engaged in the manufacture of surgical dressings out of completed textiles —Constitution of India 1950—Art. 226—Alternative remedy—Whether a bar to *the grant of the writ.*

Held, that the notification of the Punjab Government, dated 14th/16th April, 1958, issued in exercise of the powers conferred on the State Government by section 27 of the Minimum Wages Act, 1948, adding the phrase "employment in textile industry" in item 17 of the Schedule to the Act, does not extend to the employees engaged in the manufacture of surgical dressing out of completed textiles. In the context in which entry No. 17 occurs in the schedule to the Act, the words "textile industry" refer to industry engaged in the manufacture of textile and not merely in some isolated processing of pre-existing textile fabrics for the purpose of converting them into another article capable of being used for some specified purpose. If any kind of handling of textiles can be included in the expression "textile industry" within the meaning of the Schedule under the Act, the street dyer, a tailor, and a draper would all be deemed to be engaged in the textile industry. That is obviously not the intention of the Legislature.

Held, that the alternative remedy by way of facing the claim of the employees and raking it up for adjudication before authorities under the Act or authorities under the Industrial Disputes Act, can hardly be described as an equally convenient and efficacious remedy. This one as well as the other remedy of taking up the defence of the plea raised in the writ petition in a possible criminal prosecution involve very onerous, expensive and lenghty proceedings, decision in which may again be subject to the jurisdiction of the High Court. In the circumstances of this case the suggested alternative remedies are no bar to the grant of relief to the petitioner in the writ petition.

Petition under Article 226 of the Constitution of India, praying that a writ in the nature of certiorari, mandamus *or any other appropriate writ, order or direction be issued quashing the notification, dated 4th August, 1964 and the revising notification, dated 4th March, 1965.*

D. N. Awasthy, Advocate, for the Petitioner.

C. D. Dewan, Deputy Advocate-General, for the Respondent.

ORDER

Narula, J.—This petition under Article 226 of the Constitution relates to the interpretation and scope of the phrase "employment in textile industry" as used in item 17 of the Scheduled to the Minimum Wages Act No. 11 of 1948 (hereinafter referred to as the Wages Act) as introduced in the Schedule by the Punjab Government on 14/16th April, 1958, in exercise of powers conferred on the State Government by section 27 of the Wages Act.

The Surgical Dressings Manufacturing Co., Private Ltd. *v.* The Punjab State etc. (Narula, J.)

The Surgical Dressings Manufacturing Company, Private Limited (hereinafter referred to as the petitioner) is a manufacturer of surgical dressings under a license issued to it under the Drugs Act No. 23 of 1940, as subsequently amended in 1955 and 1960. The petitioner is engaged in this business since 1933. It employs about 80 to 90 workmen, and manufactures surgical cotton, surgical lint, gauzes and bandages for use in medical treatment and aid. For this purpose the petitioner uses cotton and raised lint cloth and handloom fabrics as raw material.

The Employees' Provident Funds Act, No. 19 of 1952 (hereinafter called the Provident Funds Act), was passed on 4th of March in that year. The said Act applied to all factories engaged in any industry specified in the First Schedule attached thereto wherein 50 or more persons were employed. The First Schedule to the Provident Fund Act, as enacted in 1952, refers amongst others to "any industry engaged in the manufacture or production of textiles (made wholly or in part of cotton or wool or jute or silk, whether natural or artificial)". The word "manufacture" as used in the schedule was not defined in the principal Act. On October, 14, 1953, the definition of "manufacture" was introduced into the Provident Funds Act by paragraph 2 of the Employees' Provident Funds (Amendment) Ordinance, 1953. By the said provision the definition was introduced as clause (ia) in section 2 of the Provident Funds Act. The relevant provisions of the Ordinance were subsequently incorporated in section 3 of the Employees Provident Funds (Amendment) Act, 37 of 1953 (hereinafter referred to as the 1953 Act). The said definition as introduced into the Provident Fund Act in 1953 was in the following terms:—

> "Manufacture means making, altering, ornamenting, finishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal".

The petitioner was advised that despite the enlarged definition of "manufacture" introduced into the Provident Fund Act by the 1953 Ordinance and subsequent Act of that year, he was not liable to deduct Provident Fund from his employees under that Act. He, therefore, filed Civil Writ No. 368 of 1955, to issue a direction to the Regional Provident Fund Commissioner not to enforce the provisions

of the Provident Fund Act against the petitioner, which petition was dismissed on April 17, 1956, by G. D. Khosla, J. (as he then was) with the following observations:—

> "The definition of 'manufacture' has been considerably widened and the definition of 'textile' has also been enlarged and now a person (like the petitioner) who purchases cloth or other textiles and then alters, ornaments, finishes or otherwise treats or adapts the article with a view to its use, sale, transport, delivery or disposal is said to manufacture. The petitioner company buys various types of cloth and then treats them and alters them in order to convert them into bandages, gauzes, lints, etc. The petitioner is, therefore, clearly manufacturing textiles within the meaning of the amended Act. "The amendment was made with effect from 14th October, 1953, and, therefore, it is clear that the Act applies to the petitioner company with effect from 1st April, 1954."

From the above-quoted passage of the judgment on which rested the decision of Civil Writ No. 368 of 1955, it is clear that the case of the petitioner was not covered by the Provident Funds Act before the amendment of 1953, which had come into force with effect from 1st April, 1954. Even otherwise a reference to the Provident Funds Act would show that in the absence of extended definitions of "manufacture" and "textile", it could not be argued that manufacture of surgical lint or bandages was engaged in any industry for the "manufacture of textiles". Mr. Awasthy has referred to a subsequent amendment of the Provident Funds Act by which the definition of the word "manufacture" has been further widened in 1963. That is, however, not relevant for the purpose of deciding this case.

On March 5, 1965, the Punjab Government issued notification No. S.O. 55-CA/XI48/S-5/65, dated March 4, 1965. (Annexure I) in exercise of powers conferred on it by section 5(2) of the Wages Act revising the minimum rates of wages in respect of employment in Textile Industry, which had been previously fixed by notification on 4th August, 1964. In the detailed items of semi-skilled labour contained in the said notification, Bandage Rolling Machineman, Lint Rolling Machineman, Bandage Cutting Machineman and Lint Raising Machineman had been classified as persons engaged in the manufacture of surgical dressings, which had been treated as part

of the textile industry. It is the inclusion of such employees in the list of workmen engaged in textile industry by the above-said notification of the Punjab Government that has been impugned by the petitioner in this case.

The preamble of the Wages Act shows that it has been enacted to provide for fixing the minimum rates of wages in respect of only "certain employments" and not all employments in the country. Section 2(b) of the Act defines "appropriate Government" to include the State Government in relation to any scheduled employment other than those carried on by or under the authority of the Central Government or a railway administration, etc. Section 2(g) provides that "scheduled employment" means an employment specified in the Schedule to the Act or any process or branch of work forming part of such employment. The schedule to the Wages Act, as enacted by the Central Legislature, does not refer to employment in any textile industry or any industry relating to manufacture of drugs or surgical dressings, etc. Section 3 of the Wages Act authorises the appropriate Government to fix the minimum rates of wages payable to employees employed in an employment specified in the Schedule including an employment added to the Schedule by any notification under section 27 of the Act. Section 27 authorises the appropriate Government, after giving at least three months' notice by a notification in the official gazette, to add to either part of the Schedule any empolyment in respect of which the appropriate Government is of the opinion that minimum rates of wages should be fixed under the Wages Act. On the issue of such a notification the schedule to the Wages Act is deemed to have been amended in its application to the relevant State. In exercise of powers conferred by section 27 of the Wages Act, the Punjab Government issued a notification whereby it added to Part I of the Schedule to the Wages Act amongst others, item No. 17 which reads—"employment in textile industry". It is on the basis of the said amendment of the Schedule and addition of "employment in textile industry" therein that the respondents claimed the petitioner to be bound to pay the minimum wages fixed for employees of the textile industry in Punjab to the classes of employees enumerated in the notifications, dated 4th August, 1964 and 4th March, 1965.

The petitioner's case is that he applied for the grant of a license to manufacture drugs as the surgical dressings, etc., which are

manufactured by him, fall within the extended definition of drugs under the Drugs Act, and that after a full enquiry, the petitioner was granted a license under the Drugs Act on the 6th May, 1959, which has thereafter been renewed from time to time. Annexure E to the writ petition is the copy of the latest renewed license under which the petitioner was carrying on the above-said manufacturing business at the time of filing of this writ petition on May 17, 1965. The petitioner claims that on account of the various restrictions, etc., imposed upon him by the Drugs Act and the Rules framed thereunder and on acount of the other industrial legislation, he is hardly able to cope with the competitive market dealing in the goods he manufactures and that the unauthorised inclusion of his employees in the Schedule to the Wages Act by the Punjab Government is likely to cause great hardship to him and would ruin his industry. At the same time non-compliance with the provisions of the Wages Act is likely to involve the petitioner into good deal of complications including possible penal action. In these circumstances the petitioner has prayed that so much of the impugned notifications, dated August 4, 1964, and March 4, 1965, as relate to surgical dressings and surgical industry should be declared to be void and should be directed to be cancelled as the Punjab Government has refused to afford the relief in question to the petitioner despite repeated representations in writing. Petitioner's prayer for interim stay during the pendency of the writ petition was refused by the Motion Bench while admitting the writ petition on May 18, 1965.

The respondents have contested this petition and have claimed in their written statement, dated August 16, 1965, that the application of the Drugs Act to the manufacture of surgical cotton, surgical dressings, etc., does not purport to exclude the same from the provisions of the Wages Act. The case of the respondents is that the Wages Act having been made applicable to the textile industry and to any process or processes connected or engaged therein, the industry of the petitioner would be covered by the same. It has also been averred in the written statement that the application of the Wages Act depends not upon the analogy of the Provident Funds Act but on the construction of the term "textile industry" which would also include surgical dressings. According to the respondents, the impugned notification does not purport to enlarge the ordinary meaning of the expression "manufacture of textile industry" but merely makes the Wages Act applicable to all processes engaged in or connected with the textile industry within the ordinary meanings

of that expression. An additional plea has been taken up by the respondents in their return to the effect that the petitioner has an equally efficacious remedy open to it for challenging the validity of the impugned notification either by resisting the claims of workmen filed for payment of minimum wages or in the prosecutions which might be filed against the petitioner for non-implementation of the provisions of the Wages Act.

I do not have the least hesitation in repelling the above-mentioned objection of a preliminary nature against the maintainability of this writ petition. The alternative remedy suggested to the petitioner by the respondents by way of facing the claim of the employees and raking it up for adjudication before authorities under the Act or authorities under the Industrial Disputes Act, can hardly be described as an equally convenient and efficacious remedy. This one as well as other remedy suggested by the respondents, namely, taking up the defence of the plea now raised before me in this case in a possible criminal prosecution involve very onerous, expensive and lengthy proceedings, decision in which may again be subject to the jurisdiction of this Court. In the circumstances of this case, therefore, I hold that the suggested alternative remedies are no bar to the grant of relief to the petitioner in this case.

On the merits of the controversy between the parties, the question to be answered by me falls in a rather narrow compass. The question is whether the employees of the petitioner working on the bandage rolling machines, lint rolling machines, bandage cutting machines and lint raising machines in the process of manufacturing surgical dressings (the kind of employees referred to in Part D of semi-skilled labour in the latest notification, dated March 4, 1965. Annexure I, to the petition) can be described as employed "in textile industry" within the meanings of item No. 17 in the schedule under the Act as modified by the Punjab Government. It cannot be disputed that the petitioner is engaged in an industry. Nor is it disputed that the machinemen working on the above-mentioned machines are the employees of the petitioner. Learned counsel for the petitioner has argued that he has no specific employees working on the machines in question in connection with the manufacture of surgical dressings and that his major enterprise consists of manufacture of surgical cotton and some of the employees engaged in that manufacture are sometimes drawn to the machines in question for the manufacture of surgical dressings. As to how

many men would, in fact, be covered by the impugned notification at a particular time and would be entitled to the minimum wages prescribed by the State Government in that behalf, is a question of fact to be decided by the departmental authorities and does not appear to me to make any difference in the answer which has to be given by me to the question referred to above. The short point that remains to be decided is whether the industry in question can be described as a "textile industry". It is significant that the Act does not contain any special, enlarged or extended definition of the words "industry", "manufacture" or "textile". The decision of this Court (G. D. Khosla J) in the previous writ petition of the petitioner was based entirely on the special and enlarged defintion of the words "manufacture" and "textile" in the Provident Funds Act after its amendment in 1953. According to the special definition of "textile" in clause (D) of item 25 of the Schedule under the Provident Funds Act, the said expression includes the products of carding, spinning, weaving, finishing and dyeing yarn and fabrics, printing, knitting and embroidering. The special definition shows that but for it, some of the processes mentioned therein may not have been included in the expression 'textile' though some of those processes would undoubtedly have been included therein even otherwise. The word "textile" in its ordinary meaning as given in Webster's Third New International Dictionary refers to "cloth, a woven or knit cloth, a fiber filament or yarn used in making of cloth". The petitioner has described the process by which he manufactures surgical dressing in paragraph 2 of his writ petition in the following words:—

> "The company * * *has been engaged in the manufacture of surgical cotton and surgical lint, gauze and bandages, etc., for use in medical treatment and aid. For this purpose the petitioner uses cotton and raised lint cloth and handloom fabrics as raw material. This raw material which is purchased from dealers in cotton or manufacturers of textile or from the handloom industry is subjected to processes yielding the manufactured drug. In the case of cotton only processes like cleaning, boling, washing, drying and rolling are carried out in order to produce the final article * * * *".

The facts stated by the petitioner in his above-quoted averment have not been denied by the respondents in paragraph 2 of their written statement. According to the petitioner himself, therefore,

the raw material which is used by him for the manufacture of surgical dressings is cloth purchased by him from manufacturers of textile or from those engaged in handloom industry. It is the said cloth purchased by the petitioner which is processed by him to yield surgical dressing which is ultimately thrown out by the petitioner in the market. If the relevant entry in the schedule was "employment in any industry connected with textile", I might have thought that the petitioner has no case. In the context in which entry No. 17 occurs in the schedule to the Act, "textile industry" appears to me to refer to industry engaged in the manufacture of textile and not merely in some isolated processing of pro-existing textile fabrics for the purpose of converting them into another article capable of being used for some specified purpose. If any kind of handling of textile can be included in the expression "textile industry" within the meaning of the Schedule under the Act, the street dyer, a tailor, and a draper would all be deemed to be engaged in the extile industry. That is obviously not the intention of the Legislature. Again, if the intention of the Government was to include "employment in an industry engaged in the manufacture of surgical dressing", there could be no difficulty for the Government in adding an entry to that effect in the schedule by a mere notification under section 27 of the Act. It is now more than a year that this writ petition was filed. In fact, about 12 months have gone by since the respondents prepared their return in reply to the rule issued in this case. Once doubt had been raised about the matter, the Government could have set the dispute at rest, at least so far as the future is concerned, by issuing a fresh notification under section 27 of the Act. No such action has been taken by the State.

The Act undoubtedly imposes a restraint on the fundamental rights of the petitioner, guaranteed under Article 19(1)(g) of the Constitution in so far as the Act forces a contract between the citizens who are employers and their employees, which but for the statutory provision would be a matter on which there is freedom of contract. In an industrially developing country such restrictions on fundamental rights would certainly be covered by clause (6) of Article 19 as the restriction is no doubt reasonable and is in the interest of the public. All the same the restriction has to be strictly construed. It has been noticed from the preamble of the Act that the Legislature has not intended to apply the provisions of the Act to all the employees in the country but only to a very small and

insignificant number of employments out of a very large variety of employments in the State. In such a situation though I am aware of the fact that while construing the provisions of a statute of this type, beneficial interpretation has to be preferred which advances the object of the Act, it has nevertheless to be borne in mind that the beneficial interpretation should relate only to those employments which are covered by the Act and not to others. In order to decide whether a particular industry is or is not "textile industry", all the facts and circumstances of the case have to be taken into account. If the question is asked whether the petitioner in this case is manufacturing textile or not, in the absence of any definition of that expression, the answer has to be in the negative. Any and every industry in which cloth is used as a component for preparing certain processed goods cannot on that account alone be called "textile industry". Merely changing the form or pattern of a fabric would also not become a "textile industry" in the restricted sense in which I think the expression has been used in the schedule. Another way of looking at the same thing is whether a shopkeeper, who sells surgical dressings alone, could be called by the man in the street as a trader or dealer in textile. In my opinion, to ask that question is to answer it.

Mr. C. D. Dewan, learned Deputy Advocate-General, referred to the definition of 'employee' as contained in section 2(i) of the Act and argued that the said definition was so wide as to include the employees of the petitioner. I do not, for a moment, doubt the correctness of this contention, though that has no effect on the fate of this case. The definition of "employee" in the Act has purposely been kept wide enough to include all kinds of the employees as section 27 of the Act provides for the relevant provisions of the statute being made applicable to any kind of employment merely by the issue of notification by the appropriate Government. At the time of issuing a notification under that section, the appropriate Government cannot amend the definition of "employer" and "employee" as contained in section 2(e) and (i) of the Act. The purpose of the Act could not possibly by achieved if the Legislature had kept the definition of those two classes of persons rigid and restricted. In the nature of things, the definition of "employer" and "employee" in the Act had to be such as not to leave out any kind of employment which may possibly be added to the Schedule by any appropriate Government under section 27 of the Act. Though the

petitioner must undoubtedly be an employer within the meaning of section 2(e) of the Act and most of the employees of the petitioner in his industry must be employees within the meaning of section 2(i) of the Act, the question still remains whether the employment of the petitioner in which the employees are working is one covered by the expression "textile industry" or not.

The learned State counsel then referred to the judgment of Balakrishna Ayyar, J., in Workers employed in *United Bleachers (Private) Limited, Mettupalayam* v. *Management of the United Bleachers (Private) Limited, Mettupalayam and another* (1), wherein it was held that "textile" within the meaning of the first schedule to the Industrial Disputes Act read with section 2(n)(vi) of that Act includes the process of bleaching and dyeing. The learned Judge held in that context that cotton textile industry includes not only bleaching any dyeing, but all the processes up to the time when the final product is ready to go on its journey to the consuming public. On that basis it was held that a concern engaged only in bleaching or dyeing cloth can be regarded as a cotton textile industry within meaning of item 5 of the first schedule to the Industrial Disputes Act. In the course of the judgment the learned Judge rightly referred to the process of rolling cloth into a bale by a textile mill and observed that the said process would also be a part of the textile industry. The said observation clearly point out the distinction which is relevant for the decision of the instant case. Though the process of rolling cloth into small bales would undoubtedly be a part of the textile industry when the said process goes on in a textile mill but exactly the same process in a cloth merchant's shop involved in re-rolling an un-rolled bale after showing the cloth to the customer, cannot be called "textile industry". Each case, therefore, depends on its own peculiar facts and circumstances. If the process in question is used in the course of manufacturing or finishing or even in the process incidental to the manufacture or finishing of the textile, it would be a part of the textile industry; but once the final product prepared by the textile industry is no only ready to go on its journey to the consuming public but actually goes on that journey and finds its place in the shop of a wholesale cloth dealer from where the petitioner acquires the same for converting it into a different article, it cannot, in my opinion, be said that what the petitioner does to the completed textile is itself a textile industry.

(1) A.I.R. 1960 Mad. 131.

Mr. Dewan then referred to a Division Bench judgment of this Court in *Kanpur Textile Finishing Mills* v. *Regional Provident Fund Commissioner* (2), wherein it was held that the word "textile" in the Provident Funds Act included anything from yarn to woven material which may be coarse or which may be fine, which may be made of cotton or wool or jute or silk, which may be bleached or unbleached, which may be printed or just plain and for the purpose of its being made available for human wants may have to undergo several processes covered by the expression "manufacture or production". I have already mentioned above that the word "textile" in the Provident Funds Act has been given by the statute an extended and enlarged special meaning which has not been attributed to that expression in the Minimum Wages Act. The judgment of the Division Bench in the case of *Kanpur Textile Finishing Mills*, therefore, is of no assistance in deciding the dispute involved in the present petition.

Before parting with this case, I may mention that the learned Deputy Advocate-General suggested that in view of the fact that the question involved in this case is *res integra* I may refer the petition to a larger Bench. In view of the fact that the aggrieved party would have a statutory right of Letters Patent appeal against my judgment, I have not considered it necessary to delay the disposal of the case by making a reference to a larger Bench.

In the view I have taken of this matter, the writ petition must succeed. I, accordingly, allow the petition and hold that the impugned notifications in so far as they relate to employees engaged in the manufacture of surgical dressings out of completed textiles shall not be deemed to be covered by the expression "textile industry" as used in item No. 17 of the Schedule to the Act. In the circumstances of the case, there would be no order as to costs.

B.R.T.

CIVIL MISCELLANEOUS

Before Mehar Singh, C.J. and Daya Krishan Mahajan, J.

KARNAIL SINGH,—*Petitioner*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents*

Civil Writ No. 921 of 1964

August 8, 1966

Punjab Municipal Act (III of 1911)—Ss. 38 and 236—Post of Secretary—Whether can be abolished—Committee passing resolution abolishing post of

(2) I.L.R. 1955 Punj. 879=A.I.R. 1955 Punj. 130.