been paid on the basis of the trading results of the previous year and depended upon the profits earned in the previous year. In the circumstances it cannot be held that one month's pay as closing bonus is payable as an implied condition of service irrespective of the profit made by the appellant. It seems to have been of the nature of profit bonus, even though it may have been paid at a uniform rate for ten years.

We therefore allow the appeal, set aside the order of the tribunal and reject the claim of the workmen for any closing bonus over and above that paid by the appellant for the year 1958. In the circumstances we order the parties to bear their own costs.

Appeal allowed.

THE MANAGEMENT OF INDIAN CABLE CO., LTD., CALCUTTA

v.

ITS WORKMEN

(B. P. SINHA, C.J., K. SUBBA RAO, N. RAJAGOPALA AYYANGAR, J. R. MUDHOLKAR and T. L. VENKATARAMA AIYAR, JJ.)

Industrial Dispute—Closure of branch—Retrenchment of workmen—Right to be absorbed in other branches—Branch, if an industrial establishment—Individual dispute and industrial dispute—Distinction—Dispute raised by majority of workmen, if an industrial dispute—Competence of State Government to make reference—"Industrial dispute" "Industrial establishment", meaning of—Industrial Disputes Act, 1947 (14 of 1947), ss. 2(k), 10, 25G.

Section 25-G of the Industrial Disputes Act, 1947, provided : "Where any workman in an industrial establishment....is to be retrenched and he belongs to a

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particular category of workmen in that establishment.... the employer shall ordinarily retrench the workman who was the last to be employed in that category...."

The appellant company which was carrying on business in the manufacture and sale of electric cables, wires etc., had a number of branches including Ambala all over India. Its registered office was at Calcutta. The business of the Ambala branch consisted, apart from the sale of goods manufactured by the appellant, in the execution of certain contracts with the Government. After the contracts were completed the appellant considered that, having regard to the volume of its own business in that area, the maintenance of a branch at Ambala was unremunerative, and decided to close it. Accordingly on May 8, 1958, the appellant terminated the services of all its workmen at Ambala, numbering 11 in all, paid them their salaries etc., and wound up the branch. On a representation made by six of the workmen who had been discharged that the closure of the branch was unjustified, that all the branches of the company formed one unit the retrenchment should be done according to All-India seniority basis, and that the workmen had a legal right to get employment in the other branches, the Punjab Government referred the matter for adjudication to the Industrial Tribunal, Punjab, on the questions whether the retrenchment was justified and legal under s. 25-G of the Industrial Disputes Act, 1947, and whether the seniority of workmen in all the branches of the company should be pooled for the purpose of effecting retrenchment. By an order dated February 11, 1960, the Tribunal directed the appellant company to take back the six workmen in their employment with effect from May 8, 1958, so that there was no break in the continuity of service of any of them.

The appellant challenged the legality of the order on the grounds, *inter alia*, (1) that after the closure of the branch at Ambala it had no place of business on the State of Punjab and that, in consequence, the Government of Punjab had no jurisdiction to make the reference, (2) that the disputes of the workmen were individual disputes and not industrial disputes as defined in the Act and that, therefore, the Government had no power to refer the same for adjudication, and (3) that, in any case, the branch at Ambala was an industrial establishment within s. 25G of the Act and that having been closed no relief could be granted to the workmen under that section. After the Government of Punjab had made the reference, the Delhi Union and the Union of Kanpur branch appeared before the Tribunal and supported the cause of the six workmen. The

evidence in this case showed (1) that though all the employees of the company were treated alike in the matter of provident fund, bonus and similar benefits, the rules relating to the category of workmen and their scales of wages for the various branches were different, (2) that each branch had its own labour union, maintained its own accounts and had its own banking accounts, and (3) that the workmen when recruited for the particular branch were to be employed only there.

Held, (1) that in coming to a decision on the question whether a particular branch of company is an industrial establishment under s. 25 G of the Industrial Disputes Act, 1947, the decisive elements are the location of the establishment and the functional integrality i.e., the existence of one code relating to the categories of workmen and their scales of wages, and that, as in the present case, the branches were located in different places and there was also a lack of functional integrality, the Ambala branch was a separate industrial establishment.

Associated Cement Companies v. *Their Workmen*, (1960) 1 S.C.R. 703, relied on.

India Tyre and Rubber Co. v. Their *Workmen*, (1957)2 L.L.J. 506 and *Tulsidas Khimji* v. *F. Jeejeebhoy*, (1960) 19 F.J.R. 396, approved.

The question whether a branch or a department is in itself an industrial establishment within s. 25 G of the Act is one of mixed fact and law, and the correct inference to be drawn from the facts established is one of law open to consideration by the Court.

(2) that what imparts to the dispute of a workman the character of industrial dispute is that it affects the rights of the workmen as a class, so that where the dispute of a workmen is sponsored by a Union or by a considerable number of workmen it becomes an industrial dispute within s. 2(k) of the Act.

In order that an individual dispute can validly become an industrial dispute by being supported by a Union or by a considerable number of workmen such support must precede the reference.

Central Provinces Transport Services Ltd. v. *Raghunath Gopal Patwardhan*, (1956) S.C.R. 956, *The newspapers Ltd.* v. *The State Industrial Tribunal, U.P.*, (1957) S.C.R. 754 and *Bombay Union of Journalists* v. *"Hindu", Bombay*, (1961) 2 L.L.J. 436, relied on.

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(3) that in considering whether the Punjab Government was competent to make the order of reference, the principle that a court or tribunal would have jurisdiction if the parties reside within jurisdiction or if the subject matter of the dispute substantially arises within jurisdiction, was applicable.

Lalbhai Tricumlal Mills Ltd. v. *Vin and others*, (1956) 1. L.L.J. 557, approved and applied.

In the instant case, as the majority of the workmen in the Ambala branch had joined in the dispute, it was an industrial dispute, and as the dispute was in Punjab, the reference made by the Punjab Government was proper, but as the establishment had been closed and the closure itself was not impugned, s. 25 G had no application, and therefore, the respondent workmen were not entitled to any relief under that section.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 402 of 1961.

Appeal by special leave from the award dated February 11, 1960, of the Industrial Tribunal, Punjab, Reference No. 5 of 1959.

G. B. Pai, J. B. Dadachanji, O. C. Mathur and *Ravinder Narain*, for the appellant.

C. B. Aggarwal, H. C. Aggarwal and *Janardan Sharma*, for the respondents.

1962. March 5. The Judgment of the Court was delivered by

Aiyar J.

VENKATARAMA AIYAR, J.—This is an appeal by special leave against the award of the Industrial Tribunal, Punjab, passed in Reference No. 5 of 1959 on February 11, 1960. The appellant is a Public Limited Company incorporated under the Indian Companies Act, 1913, and it carries on business in the manufacture and sale of electric cables, wires etc. Its registered office is at Calcutta and its factory is located at Jamshedpur. Before January 1, 1956, it had no branches and was selling its goods through Messrs Gillanders Arbuthnot and Co., as its agents. During this period, a company incorporated in England and called the British Insulated

Callendars Cables Ltd. referred to as the B.I.C.C. Ltd., in these proceedings was carrying on business in the sale of cables and wires in India with branches at Bombay, Madras, Calcutta, Delhi, Trivandrum, Ahmedabad, Nagpur, Kanpur, Bangalore and Ambala. Towards the end of 1955, the B.I.C.C. Ltd. decided to stop its trading in India and to close its branches. The appellant Company then decided to take them over and run them as its own. The workmen in the service of the B.I.C.C. Ltd. were most of them offered re-employment on terms and conditions contained in a communication dated November 23, 1955, sent by the appellant to them, and they having accepted them the branches began to function as those of the appellant from January 1, 1956. Among the branches thus taken over was the one at Ambala. The business of that branch consisted, apart from the sale of goods manufactured by the appellant, in the execution of the contracts of the B.I.C.C. Ltd., with the Government of Punjab, which it had taken over. These contracts were about to be completed in the beginning of 1958, and as, having regard to the volume of its own business in that area, the appellant considered that the maintenance of a branch at Ambala was unremunerative, it decided to close it. Accordingly on May 8, 1958, it terminated the services of all its workmen at Ambala, numbering 11 in all, paid them their salaries, wages in lieu of notice, retrenchment compensation, gratuity, and provident fund, and wound up the branch. According to the appellant, the workmen accepted these amounts without any protest and co-operated with the management in the despatch of its goods to Delhi and other places. It is the case of the workmen that they received the amounts under protest. But nothing, however, turns on this. On June 5, 1958, six of the workmen who had been discharged on

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May 8, 1958, sent a representation to the management complaining that the closure of the branch was unjustified, that as all the branches of the Company formed one unit, the retrenchment should be done according to "All India seniority basis" and that the workmen had a legal right to get employment in the other branches. A copy of this representation was sent to the Punjab Government, which issued a notification on February 2, 1959, referring the dispute for adjudication to the Industrial Tribunal, Punjab, under s. (1)(d) of the Industrial Disputes Act, 1947, hereinafter referred to as "the Act." The reference was in these terms :—

> "Whether the retrenchment of the following workmen of Ambala Branch of the Indian Cable Company Ltd., is justified and legal under the provisions of section 25 G of the Industrial Disputes Act, 1947, and whether the seniority of workmen in all the branches of the company was pooled for the purpose of effecting retrenchment? If not, to what relief are the following workmen entitled ?

Then follow the names of the six workmen.

Before the Tribunal, the appellant raised certain preliminary objections to the maintainability of the referedce. By its order dated August 17, 1959, the Tribunal overruled these objections. Then the matter was heard on the merits, and on February 11, 1960, the Tribunal pronounced its award directing the appellant to take back the "six workmen in their employment with effect from 8-5-1958 so that there is no break in the continuity of service of any of them" and to pay them "their full wages from 8-5-1958 till the date they are absorbed". It is against this award that the present appeal by special leave has been brought.

The appellant has urged the following contentions in support of this appeal:—

(1) The Tribunal was not competent to entertain or adjudicate on the reference.

(2) The Punjab Government was not competent to make the order of reference dated February 2, 1959.

(3) The disputes of the workmen were individual disputes and not industrial dispputes as defined in the Act and that, in consequence the Government had no power to refer the same for adjudication.

(4) The branch at Ambala was an industrial establishment within s. 25G and that having been closed no relief could be granted to the workmen under that section.

(1) The question as to the competence of the Tribunal to entrtain or adjudicate on the reference could shortly be disposed of as it is covered by our decisions in *The Atlas Cycle Industries Ltd.* v. *Their Workmen* (1) and *M/s. Dalmia Dadri Cement Ltd.* v. *Shri A.N. Gujral and others*(2) with which the present appeal was heard. The material facts bearing on this question are that Shri A.N. Gujral was appointed to the Industrial Tribunal on April 28, 1953, when he was over sixty years of age. The validity of his appointment is impugned on the ground that it is not in accordance with s. 7(3)(c) of the Act. Then, on April 9, 1957, Shri A. N. Gujral was appointed as presiding officer of a new Tribunal constituted under s. 7C of the Act. The validity of this appointment is attacked on the ground that as his appointment as Tribunal on April 28, 1953, was invalid he was not qualified to be appointed under s. 7A(3)(b) of the Act. Then again, under s. 7C(b), Shri A. N. Gujral would have had to retire on June 4, 1957, when he would have attained the age of

(1) C.A. No. 188 of 1961 decided on February 8, 1963.
(2) C.A. No. 375 of 1960 decided on Februaty 12, 1962.

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sixty-five. But the Punjab Legislature then enacted Act 8 of 1957 raising the age of retirement under s. 7C (b) from sixty-five to sixty-seven. This law, it is said, is repugnant to Art. 14 of the Constitution as its object was to benefit one individual Shri A. N. Gujral and the notifications under the Act extending his term of office from time to time are inoperative. The present reference which was made to him on February 2, 1959, is said to be invalid on the ground that Shri Gujral was not validly in office. On June 4, 1959, the term of office of Shri A. N. Gujral expired, and Shri Passey, retired Judge of the Punjab High Court was appointed as Tribunal in his place. The present reference came up before him and resulted in the award dated February 11, 1960, which is the subject matter of the present appeal. It is said that as the reference was not validly pending before Shri A. N. Gujral, Shri Passey was not seized of it as his successor and that as there was no fresh reference to him, the proceedings are without jurisdiction and void. We have held in our Judgments in *The Atlas Cycle Industries case* (1) and *M/s Dalmia Dadri Cement case* (2) that the notification dated April 28, 1953, appointing Shri A. N. Gujral as Tribunal under s 7(3) of the Act and the notification dated April 19, 1957, appointing him as the Presiding Officer under s. 7C are valid, that the Punjab Act 8 of 1957 is not unconstitutional, and the notifications extending the tenure of office of Shri A. N. Gujral till June 4, 1959, are *intra vires*. Following these decisions, we must overrule this contention.

(2) We shall next consider the question as to the competence of the Punjab Government to make the order of reference dated February 2, 1959. The contention of the appellant is that after the closure of the branch at Ambala on May 8, 1958, it had no place of business in the State of Punjab,

(1) C.A. No. 188 of 1961 decided on February 8, 1962.
(2) C.A. No. 375 of 1960 decided on February 12, 1962.

and that, in consequence, on February 2, 1959, the Government of Punjab had no jurisdiction to make the reference. Section 10 of the Act provides that when an industrial dispute exists or is apprehended the appropriate Government may refer it to a Tribunal for adjudication. Section 2 (a) defines appropriate Government as meaning the Central Government in relation to certain classes of disputes and State Government in relation to other industrial disputes. It is common ground that the dispute with which we are concerned is not one falling within the jurisdiction of the Central Government and that it is only the State Government that has the competence to make the reference. The point in controversy is as to which of the States has jurisdiction to do so. The Act contains no provisions bearing on this question, which must, consequently, be decided on the principles governing the jurisdiction of Courts to entertain actions or proceedings. Dealing with a similar question under the provisions of the Bombay Industrial Relations Act, 1946, Chagla, C. J. observed in *Lalbhai Tricumlal Mills Ltd. v. Vin and other* (1):

> "But what we are concerned with to decide is : where did the dispute substantially arise? Now, the Act does not deal with the cause of action, nor does it indicate what factors will confer jurisdiction upon the Labour Court. But applying the well-known tests of jurisdiction, a court or tribunal would have jurisdiction if the parties reside within jurisdiction or if the subject matter of the dispute substantially arises within jurisdiction.

In our opinion, these principles are applicable for deciding which of the States has jurisdiction to make a reference under s. 10 of the Act.

(1) [1956] I.L.L.J. 557, 558.

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Discussing the question on the principles stated above, it is not in dispute that the appellant was not carrying on business anywhere in Punjab on the date of the reference. The Punjab Government would, therefore have jurisdiction to make the reference only if the cause of action had arisen wholly or in part within the State. If the validity of the closure of the branch had itself been in dispute, the cause of action must undoubtedly be held to have arisen within the State and the reference would be competent. It is argued for the respondents that as the retrenchment on which, the dispute has arisen was made in Ambala, the State of Punjab had jurisdiction to refer under s. 10 of the Act, the question of the appropriate reliefs to be granted under s. 25G. But the appellants contend that when once the closure itself is accepted as valid and binding, then there could be no question of retrenchment, which can only be with reference to a continuing industry as held by this Court in *Pipraich Sugar Mills Ltd. v. Pipraich Sugar Mills Mazdoor Union* (1) and *Hariprasad Shivshankar Shukla* v. *A. D. Divikar* (2) and that to attract s. 25G, it must be held that the Calcutta office and the branches all form one establishment and that in that view as relief under that section could be granted only in relation to branches situate in other States, no part of the cause of action could be held to have arisen within the State of Punjab. In the view we are taking on the question as to whether the branch at Ambala was an industrial establishment within s. 25G, we do not consider it necessary to express any opinion on this question.

(3) It is next contended for the appellant that the disputes raised by the respondent-workmen were not industrial disputes as defined in the Act but merely individual disputes, and that in consequence the Government had no power to refer

(1) [1956] S. C. R. 872. (2) [1957] S.C.R. 121.

them to a tribunal under s. 10 of the Act. Section 2 (k) defines industrial dispute as meaning "any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person." According to the appellant a dispute can be an industrial dispute within this definition only when it is raised by *workmen* and not merely by one of them. The respondents, on the other hand, contend that on its true construction, s. 2(k) will comprehend even a dispute between an employer and a single workman, and the observations in *R* v. *National Arbitration Tribunal* (1) are relied on as supporting that position. There the question discussed was whether the expression "dispute or difference between employers and workmen" in Article 7 of the Conditions of Employment and National Arbitration Order, 1940, would cover a dispute between an employer and one workman, and Lord Goddard, C. J., answered it in the affirmative, basing himself on s. 1 (1) of the Interpretation Act, 1889, which provides that words in the plural shall include the singular. The argument is that, having regard to the rule of interpretation embodied in s. 13 (2) of the General Clauses Act, 1897, the ratio of this decision is equally applicable to the construction of s. 2 (k) and that it must be held to include a dispute between an employer and a single workman.

This question however is not *res integra*. It has been considered in a number of cases in this Court and decided adversely to the present contention of the respondents. In *Central Provinces Transport Services Ltd. v. Raghunath Gopal Patwardhan* (2) the point in controversy was whether an individual

(1) [1951] 2 All. E.R. 828, 831. (2) [1956] S.C.R. 956.

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dispute was an industrial dispute within s. 2 (k) of the Act. After stating that three divergent views had been expressed on the question and that the preponderance of judicial opinion was in favour of the view that a dispute between an employer and a single employee could not *per se* be an industrial dispute but that it might become one if it was taken up by a Union or a number of workmen, this Court observed:

> "there is considerable reason behind it. Notwithstanding that the language of s. 2 (k) is wide enough to cover a dispute between an employer and a single employee, the scheme of the Industrial Disputes Act does appear to contemplate that the machinery provided therein should be set in motion, to settle only disputes which involve the rights of workmen as a class and that a dispute touching the individual rights of a workman was not intended to be the subject of an adjudication under the Act, when the same had not been taken up by the Union or a number of workmen." (p. 964).

This view was adopted in *The Newspapers Ltd.* v. *The State Industrial Tribunal*, U. P. (1) where the point arose directly for decision. Discussing the meaning of the expression "industrial dispute" in the U.P. Industrial Disputes Act which is the same as s. 2(k) of the Act, this Court observed that though on the rule of construction laid down in s. 13(2) of the General Clauses Act, 1897, the plural would include the singular, in the context of the legislation, the word "workmen" did not include "a workman", and that a dispute between an employer and a single workman did not fall within the definition of industrial dispute. Both these decisions were followed by this Court in *Bombay Union of*

(1) [1957] S. C. R. 754.

Journalists v. *"Hindu", Bombay* (1) and the law was thus stated :—

> "Therefore, the applicability of the Industrial Disputes Act to an individual dispute as distinguished from a dispute involving a group of workmen is excluded, unless the workmen as a body or a considerable section of them make common cause with the individual workman". (p. 439).

The respondents seek to distinguish these decisions on the ground that in all of them the dispute was raised by a single workman, whereas in the present case six of the workmen have joined in making a demand. They urge that a dispute ceases to be an individual dispute and becomes an industrial dispute when more than one workman joins in it. It is true that in the decisions cited above the dispute was raised by a single workman. But the reasons on which these decisions rest, viz., that the policy behind the Industrial Disputes Act is to protect workmen as a class against unfair labour practices and not to enact special provisions for enforcing the claims of individual workmen, would equally militate against the contention that a dispute which is essentially individual in character would become an industrial dispute merely because two persons have joined in it. What imparts to the dispute of a workman the character of industrial dispute is that it affects the rights of the workmen as a class. That is why the above decisions lay down that the dispute of a single workman would become an industrial dispute when it is sponsored by a Union or by a considerable number of workmen; for it can then be taken that it does affect them as a class. No hard and fast rule can laid down as to the number of workmen whose association will convert an individual into an industrial dispute. That must depend on the facts of each case, and the nature of

(1) [1961] 2. L.L.J. 436.

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the dispute. The group might even be a minority, as held by this Court in *Associated Cement Companies Ltd.* v. *Their Workmen*(1). But it must be such as to lead to an inference that the dispute is one which affects workmen as a class.

In this veiw, we shall have now to consider whether the dispute of the respondents was taken up by a Union, or by a large number of workmen. The Ambala branch had a Union of the workmen of the appellant company, and that has not moved in the matter. The Delhi branch of the appellant has its own union, and it wrote to the Conciliation Officer, Delhi, on December 10, 1958, to intervene in the dispute, but he replied on December 17, 1958 that he had no jurisdiction in the matter. Thereupon the union withdrew its application. According to the respondents the Commercial Employees' Union in Delhi was also moved by them to take up their cause and it did so, but this is not established. Moreover as it is admitted that no other employees of the appellant company were members of this Union, it would have had, on the decision of this Court in *Bombay Union of Journalists* v. *"Hindu", Bombay*(2), no locus standi to take up the dispute. After the Government of Punjab had made the reference on February 2, 1959, the Delhi Union appeared before the Tribunal in March 1959, and so did the Union of the Kanpur branch in April 1959, and both of them supported the respondents. It is argued that this was sufficient to clothe the disputes of the respondents with the character of industrial dispute. But if a reference can validly be made only if an industrial dispute exists or is apprehended, and if an individual dispute becomes an industrial dispute only when it is supported by a Union or by a considerable number of workmen, that support must necessarily precede the reference and from the foundation for it. The intervention, therefore, of the Delhi Union

(1) [1960] 3. S.C.R. 157. (2) [1961] 2 L. L. J. 436.

in March, 1959 and of the Kanpur Union in April, 1959, cannot give validity to the reference, if it was not valid when it was made. That has been held by this Court in *Bombay Union of Journalists* v. *"The Hindu", Bombay*(1), where it was observed that the validity of a reference must be judged on the facts as they stand on the date of reference and that just as a withdrawal of the support by a union after a reference is made cannot render it invalid, likewise the support by it after the date of reference cannot make it valid. If, therefore, the validity of the reference dated February 2, 1959, depended upon whether the cause of the respondents had been taken up by a Union, the question will have to be answered in the negative.

It is then contended for the respondents that even apart from the support of the union, their dispute must be considered to be an industrial dispute, because six of the workmen have joined in it, and if regard is had only to the Ambala branch, they even constituted a majority. To this the appellant replies that the claim of the respondents that retrenchment should have been made under s. 25 G of the Act after pooling for purposes of seniority all the branches proceeds on the footing that all the branches from one establishment, that that is also the basis on which the reference dated February 2, 1959, is made, that therefore in deciding whether a considerable number of workmen have joined in the dispute, regard must be had to the number of workmen in all the branches, and that was 860, and that six out of 860 was an infinitesimal number, a mere drop in an ocean, and that therefore the disputes did not become industrial disputes. The respondents retort that the contention of the appellant that in discharging the respondents, it had not violated s. 25 G proceeds on an assertion that the Ambala branch is a distinct industrial establishment,

(1) [1961] 2. L.L.J. 436.

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and that on that footing the respondents from a majority of the workmen being six out of eleven. It is manifest that the stand taken by both the parties on the question whether the dispute in backed by a considerable number of workmen is inconsistent with the stand taken by them on the question whether the discharge of the workmen at Ambala was in contravention of s. 25G of the Act. In this situation the course which we propose to adopt is first to determine whether the branch at Ambala is a separate industrial establishment within s. 25 G of the Act, and then decide the rights of the parties in accordance therewith.

(4) Section 25 G provides that when it is proposed to retrench workmen on the ground of surplusage the rule that the last to come should be the first to go should ordinarily be observed. But this is subject to two limitations. It operates only within the establishment in which the retrenchment is to be made and to the category to which the retrenched workmen belong. It is these two factors that are determinative of the true scope of the section.

Now what is an industrial establishment? There is a definition of it given in the Explanation to s. 25 A(2) but that is limited to ss. 25C, 25D and 25E. There being no definition of the expression in that Act applicable to s. 25G, we must construct it in its ordinary sense, guided by such indications as the context might furnish. In *Pravat Kumar Kar* v. *W.T.C. Parker* (1), Harries, C.J., observed that the words "industrial establishment" meant the place at which the workmen were employed, and that accordingly s. 23 of the Act which imposes a prohibition against strikes by any "workman who is employed in any industrial establishment", "could not cover a case of workmen in Bombay striking against an employer with whom employees in Calcutta have a

(1) 1949] I.F.J.R. 245.

dispute." According to this view, it is of the essence of the concept of an industrial establishment that it is local in its set-up. This is also implicit in the Explanation to the definition of "lay-off" in s.2(kkk) of the Act, that "every workman whose name is borne on the muster rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid-off for that day within the meaning of this clause."

If this be the correct connotation of the words "industrial establishment", then the branches of a company located in different places must be held to be distinct "industrial establishments", for purposes of s. 25G. This question came up directly for decision before the Madras High Court in *India Tyre and Rubber Co.* v. *Their workmen* (1). In that case, a company whose business was to manufacture and sell tyres had its head office in Bombay and a branch office at Madras. There were sub-depots at Ernakulam, Bangalore and Vijawada within the jurisdiction of the Madras Branch. The company retrenched some of the workmen at the Madras office as surplus, and on that a dispute was raised by them that as the retrenchment had been made without pooling all the depots as one unit, s. 25G had been infringed. The Tribunal accepted that contention and held that the retrenchment was bad. The correctness of this decision having been questioned in a petition under Art. 226, the Madras High Court held on an examination of the scheme of the Act and on a review of the authorities, that if an industry had establishments located in different places, each of them would be a separate industrial establishment within s. 25G of the Act, and that accordingly the office at Madras was one industrial establishment

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and that the sub-depots in the different States were separate industrial establishments. On the facts, this decision is very near the present case and is strongly relied on for the appellant.

We should, in this connection, refer also to s. 10(1A) of the Act, wherein it is provided that when the dispute relates to industrial establishments in more than one State, the Central Government might refer it for adjudication to a National Tribunal. This provision is based on the notion that the industrial establishments of a concern situated in different States are distinct establishments.

Then again on the terms of s. 25G, the relief provided therein is to be granted within the category of workmen who are proposed to be discharged. This posits that there is one code governing the grades of workmen and their scales of wages and that is ordinarily possible only when the establishment is functioning at a given place. If there are different branches in different places and there are different scales of wages, the rule laid down in s. 25G would be incapable of compliance unless all the branches have one scale of wages and the rules provide for automatic transfer from place to place having regard to the seniority and grades. Thus whether we have regard to the popular sense of the words 'industrial establishment', or to the limitation of relief under s. 25G to workmen in the same category, the conclusion would appear to be inescapable that each branch of a company should normally be regarded as a distinct industrial establishment.

Bearing the above principles in mind, we may now proceed to consider whether, on the facts found the Ambala branch is an industrial establishment. The Tribunal has held that it is not and the respondents insist that it is a finding of fact with which this Court cannot interfere in an appeal

under Art. 136 of the Constitution. We are unable to agree. In *Associated Central Companies* v. *Their Workmen* (1), this Court has held that the question whether a factory at Chaibasa and a quarry at Rajanka owned by the appellant were two different establishments for the purpose of s. 25E was not merely one of fact, as its determination involved the application of the correct tests underlying s. 25E, and in that view, this Court examined the correctness of the conclusions of the Tribunal and reversed its decision on the merits. In our judgment, the question whether a branch or a department is in itself an industrial establishment within s. 25G is likewise one of mixed fact and law, and the correct inference to be drawn from the fact established is one of law open to consideration by this Court, *vide* also the decision of the Bombay High Court in *Tulsidas Khimji* v. *F. Jeejeebhoy* (2), where a finding by the Tribunal that four departments of a firm which were all parts of one establishment was set aside in an application under Art. 226, the Court holding that it was not purely a question was fact.

We may now proceed to examine the facts of the present case. The Tribunal begins its award with the statement, "it may be held straightaway that the workmen have not been able to prove strictly any common pool of seniority". The appellant contends that having regard to the scope of the reference, the Tribunal should have on this finding answered it against the respondents. What the Tribunal did was that it then went on to examine certain other facts and stated its conclusion thus :—

> "All these facts establish abundantly that each of the branches of the I. C. C. is ot a separate industrial entity or establishment but only a component part of the central unit at Calcutta to which it belongs. It is thus th[e]

(1) [1960] 1 S.C.R. 703. (2) [1960] 19 F.J.R. 396.

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> Company (I. C. C.) that forms the industrial unit and it must have as required by s. 25G of the Industrial Disputes Act given effect to the principle of last come first go when the occasion for the retrenchment had arisen."

Now the facts on which the above conclusion was reached may be classed into two categories—those which have reference to the management of the industry and those which bear on the service conditions of the workmen. Dealing with the former, the Tribunal finds that it is the company with its registered office at Calcutta that controls and runs all the branches, that it is the company that employs the workmen and dismisses them, that the six respondents were appointed not by the Ambala branch but by the company and that they were discharged on May 8, 1958, by the company, that the branches do not prepare each its own individual annual balance sheet but that it is only the company that prepares its annual balance sheet including therein the accounts of all the branches and that it is the company that meets the financial requirements of the branches. These facts, it is said, show that the branches have no separate existence of their own.

We are of the opinion that the facts stated above do not support the conclusion of the Tribunal that all the branches from one unit of industrial establishment. If a Company establishes several branches, the control of these branches must necessarily vest in it, and under the provisions of the Indian Companies Act, there can be only one annual balance sheet for the whole company. On this point R. W. I gave the following evidence :—

> "My duty consists of amalgamation of all the accounts of the various branches of the Co., and to get them audited. The audited accounts are forwarded to the head office at Calcutta,

under my signatures and they are later incorporated in the Company's accounts. The branches prepare their own accounts and forward them to me. I then make a consolidated statement and get the accounts audited and send them to the head office."

It is therefore clear that while the branches have their own separate accounts the company has its own consolidated annual balance sheet as required by the provision of the Companies Act. In our opinion, the facts stated above do not necessarily lead to the conclusion that the head office and the branches must all be regarded as forming one industrial establishment. On the reasoning of the Tribunal, where the industry has a head office, and branches in other places,—it may be, even in different States—all of them will have to be regarded as forming one establishment. Such a conclusion would in our opinion, be wholly erroneous.

Turning next to the facts relating to service conditions of the workmen, the finding is that the rules of the company relating to provident fund, gratuity and bonus and service conditions in general are applicable to the employees of the company in all its branches. But this again appears to us to be not of much consequence. It only signifies that all the employees of the company were treated alike in the matter of provident fund, bonus and similar benefits. It does not lead to the inference that all the branches were treated as one. What is material for the purpose of the present discussion is whether the same rules relating to the category of workmen and their scales of wages are in force in all the branches. It is only then that the s. 25G could be applied. On that the uncontradicted evidence of R. W. 1 is that "the I. C. C. has different scale of pay for different branches". On this evidence, there can be no question of integrating workmen trenched in one branch in another branch and, in

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consequence, the establishment in each branch must be treated as a separate entity. An attempt was made on behalf of the respondents to get over this evidence by showing that transfers from one branch to another were usual. R. W. 1 denied that there was any provision in the rules for transfer of the employees from one branch to another, and cross-examined with reference to the transfer of some of the employees from Bombay to Delhi, he stated :

> "The Delhi branch wanted a typist very very urgently and we sent Mr. Mamm from Bombay. After doing his work at Delhi, he was reverted to Bombay. The same was the case with regard to Mr. Tamboowala. Mr. Tamboowala was also sent from Bombay. After having been at Delhi for several weeks he returned back to Bombay. No employee of one branch is sent to another even for a temporary period without his consent."

This evidence is fully borne out by the communication dated November 23, 1955, containing the terms on which the respondents and other workmen in the branches were employed. It expressly provides that the "will be stationed in the same place to do work of a similar nature as at present with British Insulated Callender's Cables Ltd.". This clearly establishes that the workmen were recruited only for the particular branch where they were employed, and that is destructive of the contention that all the establishments are to be regarded as forming one unit. How unrealistic the contention of the respondents is will be easily seen when we examine how it will work in the case of some of the respondents. For example, Shrimati Chameli is a sweepress, who has been in service for 9 years. Is she to be sent to Trivandrum branch, displacing a sweepress, employed there more recently, and on a lower scale of wages ?

Then again Shri Ram Avatar is a peon employed less than two years previously. Is he to be absorbed in the Madras branch, displacing a peon employed one year ago, on lower wages ? There are likewise two clerks recruited some 2 1/2 years previously. It is these workmen that go to make up the majority of six.

The appellant also contends that each branch has its own Labour Union, maintains its own accounts and has its own banking accounts and that these facts go to show that each branch is a distinct industrial establishment.

Now the question is whether on the facts found the Ambala branch is a separate industrial establishment or whether the Head Office and the branches all constitute one establishment. In *Associated Cement Companies* v. *Their Workmen* (1) considering the tests applicable for determining what constitutes one establishment for purpose of s. 25E(3) of the Act this Court observed:—

> "Several tests were referred to in the course of arguments before us such as, geographical proximity, unity of ownership, management and control, unity of employment and conditions of service, functional integrality, general unity of purpose etc..... It is, perhaps, impossible to lay down any one test as an absolute and invariable test for all cases. The real purpose of these tests is to find out the true relation between the parts, branches, unit etc. If in their true relation they constitute one integrated whole we say that the establishment is one; if on the contrary they do not constitute one integrated whole, each unit is then a separate unit." (pp. 716-717)

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Relying on the above observations the respondents contend that as there is unity of ownership: management and control, and of conditions of service between the Head Office and the branches they should be held to be one establishment, where as the appellant contends that as there is absence of geographical unity and functional integrality, each branch should be held to be a separate establishment. In *Associated Cement Companies case* (1) it was held that all the tests referred to in the judgment were satisfied and therefore the question of the comparative weight to be attached to the several tests did not arise for consideration. Having regard to the principles deducible from the language of the section already stated the decisive elements in our judgment are the location of the establishment and the functional integrality i.e. the existence of one code relating to the categories of workmen and their scales of wages. In *Tulsidas Khimji's case* (2) the question was whether four Departments of a business establishment in the city of Bombay were distinct industrial establishments within s. 25G and it was held that as there was no functional integrality between them, they should be held to be different establishments, notwithstanding they were located in the same place. And in this case the branches are located in different places and there is also a lack of functional integrality. We are of opinion that each branch is a separate industrial establishment.

On this finding it follows that the dispute of the respondents is an industrial dispute as defined in s. 2(k) as that has been raised by the majority of the workmen of the Ambala branch, which is an industrial establishment. But as the establishment has been closed and the closure itself is not impugned as bad on the ground that it

(1) [1960] 1. S.C.R. 703. (2) [1960] 30 F.J.R. 396.

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is colourable and not bona fide, s. 25G has no application and the respondents, therefore, are not entitled to any relief under that section. In the result the appeal is allowed, the order of the Tribunal is set aside and the reference answered against the respondents. In the circumstances the parties will bear their own costs throughout.

Appeal allowed.

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March 6.

KEWAL KRISHAN

v.

STATE OF PUNJAB

(J. L. KAPUR, P. B. GAJENDRAGADKAR and T. L. VENKATARAMA AIYAR, JJ.)

Sea Customs—Goods seized in reasonable belief that they are smuggled—Burden of proof—If on person from whose possession goods are seized—Constitutionality of statutory provision—The Sea Customs Act, 1878(8 of 1878), ss. 167(81), 178A—Foreign Exchange Regulation Act, 1947(7 of 1947), s. 23A.

The appellant was searched by a Customs Official and some bars of gold were found tied round his waist. Out of those bars some were of base metal and the rest of pure gold which bore foreign marks. The appellant had no permit from the Reserve Bank of India to import the gold. He was prosecuted and convicted under s. 23A of the Foreign Exchange Regulation Act and s. 167(81) of the Sea Customs Act. He brought an appeal to the Supreme Court by special leave.

Held, that s. 178A of the Sea Customs Act, 1878, is constitutional.

The contention that before the presumption under s. 178A of the Sea Customs Act could be raised the prosecution had to prove that the gold was of foreign origin was rejected and it was held that s. 178A provides that when the goods are seized in the reasonable belief that they are smuggled goods the onus is on the accused to show that they are not smuggled.

Collector of Customs, Madras v. *Nathella Sampathu Chetty* (1962) 3 S.C.R. p. 786 followed.