

LABOUR WELFARE FUND LAWS IN GUJARAT

Containing

**The Bombay Labour Welfare
Fund Act, 1953**

(Bom. Act No. XL of 1953)

As Amended by

**The Bombay Labour Welfare Fund
(Gujarat Amendment) Act, 2005**

**The Labour Welfare Fund
(Gujarat) Rules, 1962**

Alongwith

Notifications and Short Comments

[The] Bombay Labour Welfare Fund Act, 1953

(Bom. Act No. XL of 1953)

Contents

Sec.	Page No.	Sec.	Page No.
Preamble.....	5	15. Power of State Government to remove any person on staff of Board.....	24
1. Short title, extent and commencement.....	5	16. Power of State Government or authorised officer to call for records etc.....	24
2. Definitions.....	5	17. Mode of recovery of sums payable into Fund, etc.....	24
2-A. (Deleted).....	10	17-A. Penalty for failure to make payment of unpaid accumulations etc.....	24
3. Welfare Fund.....	10	17-B. Penalty for unlawful deduction.....	24
4. Board.....	13	17-C. Penalty for obstructing inspectors exercising powers of discharging duties etc.....	25
4-A. (Deleted).....	15	17-D. Offences by companies.....	25
5. Disqualifications and removal.....	15	17-E. Provisions relating to jurisdiction.....	26
6. Resignation of office by member and filling up of casual vacancies.....	16	18. Supersession of Board.....	26
6-A. Unpaid accumulations and claims thereto.....	17	19. Rules.....	26
6-B. Contributions.....	19	20. Members of Board, Welfare Commissioner, Inspectors and all officers and servants of Board to be public servants.....	27
6-C. Interest on unpaid accumulations, fines and contributions after notice of demand.....	20	21. Protection to person acting in good faith.....	28
7. Vesting an application of Fund.....	21	22. Exemption.....	28
8. Power of board to Borrow.....	22	23. Amendment of Section 8 of Act IV of 1936.....	28
9. Investment of Fund.....	22		
10. Directions by State Government to Board.....	22		
11. Appointment and powers of Welfare Commissioner.....	22		
12. Appointment of Inspectors.....	23		
13. Absorption of the existing staff under Commissioner of Labour.....	23		
14. Appointment of clerical and other staff by Board.....	24		

☆☆☆☆☆

Gujarat Notifications Under The Bombay Labour Welfare Fund Act, 1953.....	29
The Labour Welfare Fund (Gujarat) Rules, 1962.....	33
Appendix : The Bombay Labour Welfare Fund (Gujarat Amendment) Act, 2005.....	45

☆☆☆☆☆

(The) Bombay Labour Welfare Fund Act, 1953¹

(Bombay Act No. XL of 1953)²

(17th June, 1953)

List of Amending Act & Orders.—

Amended by Bom. No. 16 of 1956.

Adapted and modified by the Bombay Labour Welfare Board (Reconstitution) Order, 1959³

Adapted and modified by the Bombay Labour Welfare Board (Organisation) Order, 1960.

Adapted and modified by the Gujarat Adaptation of Laws (State of Concurrent Subjects) Order, 1960.

Adapted and modified by the Gujarat Adaptation of Laws (State of Concurrent Subjects) Order, 1960.

Amended by Guj. Act No. 47 of 1961.

Amended by Guj. Act No. 8 of 1963.

Amended by Guj. Act No. 29 of 1973.

Amended by Guj. Act No. 36 of 1980.

Amended by Guj. Act No. 1 of 1999.

Amended by Guj. Act No. 5 of 2005 w.e.f. 31.12.2004.

An Act to provide for the constitution of Fund for the financing of activities to promote welfare of labour in the State of ⁴(Gujarat) for conducting such activities and for certain other purposes)

Whereas it is expedient to constitute a Fund for the financing of activities to promote welfare of labour in the State of ⁴(Gujarat) ⁵(for conducting such activities and for certain other purposes) it is hereby enacted as follow.—

Section 1. Short title, extent and commencement .—

(1) This Act may be called *The Bombay Labour Welfare Fund Act, 1953*.

⁶((2) It extends to the whole of the State of Gujarat.)

(3) It shall come into force in such area and on such date as the State Government may, by notification in the Official Gazette, appoint in this behalf.

Section 2. Definitions.—

In this Act, unless the context otherwise requires—

(1) "**Board**" means ¹(²(the Gujarat Labour Welfare Board) constituted under Section 4;

¹ This Act was extended throughout the State of Gujarat vide Gujarat Act 47 of 1961.

² For Statement of Objects and Reasons, see Bombay Government Gazette, 1953, Part V, pages 327-328.

³ This Order was published in Government of India, Ministry of Home Affairs. Notification No. 8-2-59-SR (R) 9, dated 04.12.1959. It came force on 15.12.1959.

⁴ Substituted for the word "Bombay" by Guj. Act No. 47 of 1961, Section 2(a).

⁵ Substituted for the words "and for conducting such activities" by Guj. Act No. 47 of 1961, Section 2(b).

⁶ Sub-section (2) Substituted by Guj. Act No. 47 of 1961.

³((1-A) "**Contribution**" means the sum of money payable as contribution to the Board in accordance with the provisions of Section 6-B.),

(2) "**Employee**" means any person who is employed for hire or reward to do any work, skilled or unskilled, ⁴(manual, clerical, Supervisory or technical) in an establishment ⁵(but does not include any person.

(a) Who is employed mainly in a managerial capacity, or,

(b) Who, being employed in a supervisory capacity, draws wages exceeding ⁶(three thousand and five hundred rupees) per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature).

(3) "**Employer**" means any person who employs either directly or through another person either on behalf of himself or any other person, one or more employees in an established and includes-

(i) in a factory, any person named under Section (7)(i)(f) of the Factories Act (LXIII of 1948) as the manager;

(ii) in any establishment, any person responsible to the owner for the supervision and control of the employees or for the payment of wages:

(4) "**Establishment**" means —

(i) a factory;

(ii) a tramway or motor omnibus service; and

⁷((iii) any establishment within the meaning of the Bombay Shops and Establishment Act, 1948, (Bom. Act No. LXXIX of 1948) which employs, or on any working day during the twelve months proceeding the specified date employed, ten or more persons:

Provided that, any such establishment shall, subject to the provision contained in the succeeding proviso continue to be an establishment for the purposes of this Act, notwithstanding a reduction in the number of persons to less than ten at any subsequent time:

Provided further that, where or a continuous period of not less than three months the number of persons employed therein has been less than ten, such establishment shall cease to be an establishment for the purposes of this Act with effect from the beginning of the month following

¹ Substituted for the words "the Bombay Labour Welfare Board" by the Bombay Labour Welfare Board (Reorganisation) Order, 1960.

² Substituted for the words "any of the Labour Welfare Boards" by Guj. Act No. 47 of 1961, Section 4(a).

³ Inserted by Guj. Act No. 29 of 1973, Section 2(1).

⁴ Substituted for the words "manual or clerical" by Guj. Act No. 29 of 1973, Section 2(i).

⁵ Inserted by Guj. Act No. 29 of 1973, Section 2(ii).

⁶ Substituted for "Rs. 750" by Guj. Act No. 5 of 2005, Section 2(1) (w.e.f. 31.12.2004) See Appendix.

⁷ Inserted by Guj. Act No. 29 of 1973, Section 2 (3).

the expiry of the said period of three months, and the employer shall, within one month from the date of such cessation, intimate by registered post the fact thereof to such authority as the State Government may specify in this behalf.)

- (5) "**Factory**" means a factory as defined in Section 2 (m) of the Factories Act 1948 (LXIII of 1948.);
- (6) "**Fund**" means the ¹(Labour Welfare Fund) constituted under Section 3;
- (7) "**Independent member**" means a member of the Board who is not connected with the management of any establishment or who is not an employee, and includes an officer of Government nominated as a member.
- (8) "**Inspector**" means an Inspector appointed under Section 12:
- ³(x x x x x x x x x)
- (9) "**Prescribed**" means prescribed by rules made under this Act;
- ⁴((9-A) "**Specified date**" in relation to any establishment for the purpose of payment to the Board of any sum specified in item (a), (b) or (c) of Sub-section (2) of Section 3 shall be the date on or before which any such sum becomes payable to the Fund.)
- (10) "**Unpaid accumulations**" means all payments due to the employees but not made to them within a period of ⁵(one year) from the date on which they became due whether before or after the commencement of this Act including the wages, and gratuity legally payable ⁶(but not including the amount of contribution if any, paid by an employer to a provident fund establishment under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952).
- ⁷((11) "**Wages**" means wages as defined in Clause (vi) of Section 2 of the Payment of Wages Act, 1936 (IV of 1936)).
- (12) "**Welfare Commissioner**" means the Welfare Commissioner appointed under Section 11.

Synopsis

1. **Unpaid accumulations—Meaning of.**—The words used in the definition of unpaid accumulation refer to all payments due to the employees and mean each and every payment due to the employees.

¹ Substituted for the words "the Bombay Labour Welfare Fund" by the Bombay Labour Welfare Board (Reconstitution) Order, 1959

² Substituted for the words "any of the Labour Welfare Fund" by Guj. Act No. 47 of 1961, Section 4(d).

³ Clauses (8a) and (8b) were deleted, by Guj. Act No. 47 of 1961, Section 4(e).

⁴ Clause (9-A) was inserted by Guj. Act No. 29 of 1973, Section 2(4).

⁵ Substituted for "Three years" by Guj. Act No. 5 of 2005, Section 2(2) (w.e.f. 31.12.2004).—See Appendix.

⁶ Inserted by Guj. Act No. 47 of 1961, Section 4(1).

⁷ Clause (11) was substituted by Guj. Act No. 47 of 1961.

whether admitted, not admitted or disputed. The word 'all' is an all embracing word intended to bring within the compass of the definition clause each and every payment due to the employees. Even where a payment is in fact due to an employee but is not admitted by the employer to be due and therefore, not made such a case would come fairly and squarely within the language employed in the definition clause.—*The Arvind Mills Ltd. vs. State of Gujarat & Ors.*, 1966 GLR 156 (Guj.) = 1969 (1) LabLJ 124 (Guj) = ILR 1966 (Guj) 313.

2. Wages—Meaning of.—The definition of the word 'Wages' as given is comprehensive enough to include such of the allowances as the workman is for the time being entitled. Yet, despite such comprehension, the inclusive meaning is subject to a meaningful change if there is anything repugnant in the subject or context. One month's wages as thought and provided to be given are conceptually for the month to follow, the month of unemployment and in the context wages for the month following the date of dismissal and not a repetitive wage of the month previous to the date of dismissal. Night shift allowance could never be part of wages, and those would be due only in the event of working. This Court in *M/s. Podar Mills vs. Bhagwan Singh & Anr.*, 1973 (27) FLR 71 ruled that the date of dismissal under Section 33(2)(b) of ID Act is the date when the approval application is filed, after dismissal. With effect from that date, the occasion to earn right shift allowance cannot, and will not, arise. *Bharat Electronics Limited, Bangalore vs. Industrial Tribunal Karnataka & Anr.*, 1990 (60) FLR 622 (SC) = 1990 (76) FJR 300 = AIR 1990 SC 1080 = 1990 (2) LLJ 32 = 1990 LIC 854 (SC).

Non-inclusion of night shift allowance in calculation of wages to be paid under Section 33(2)(b) would amount to non-compliance of mandatory requirement of Section 33(2)(b).—*LIB-MAC Batteries Ltd. vs. T. Rajendran & Anr.*, 1990 (1) LLJ 134 (Per.).

Wages includes Commission received by agents of Insurance Company.—*Sudarshan Lal Dubey vs. Union of India*, 1997 (1) LLN 344 (M.P.).

The High Court observed that from a reading of the definition of wages in the Act it is clear that there is no reason to exclude House Rent Allowance, Shift Allowance, etc., from the definition of wages.—*Management of Kaveri Engineering Industries Ltd. vs. Employees' State Insurance Corporation*, 2000 (2) LLJ 196 (Mad.).

Wages meaning of full wages last drawn Sections 2 (rr), 17(B) and as per Section 17-B, 'full wages drawn' could not be read as 'full wages which would have been drawn', and the term "full" only emphasised that all emoluments mentioned in Sub-clauses (i) to (iv) of Section 2 (rr) of I.D. Act were required to be paid.—*Navinchandra Laxmidas Mandavia vs. State of Gujarat & Ors.*, 2000 (1) LLJ 509 (Guj).

Employee—Meaning of — Teacher not 'employee'.—*Municipal Corporation of Delhi vs. Jai Rani*, 2007 (1) LLJ 344 (Del)

Employee — Meaning of — Persons engaged in canteen run by recreation club of employees of company — Held, they were not 'employees' of company, as club did not consist of all employees of company.—*Regional Director, vs. Godrej Soaps (P) Ltd.*, 2007 (1) LLJ 505 (Madras).

Employee — Meaning of — Persons found working in the premises of employer. But not under its supervision or control. Nor wages paid by it. Question involved in appeal was one of fact and not of law, much less substantial.—*Employees State Insurance Corporation vs. R.K. Furances and Anr.*, 2001 (1) LLJ 549.

Employer — Meaning of — Person to whom services of workman are temporarily lent, employer.—*Zila Sahakari Kendra Bank Maryadit vs. Shahjadi Begum*, 2007 (1) LLJ 5 (SC).

Employees — Meaning of — Persons coming in truck and unloading bamboos in factory manufacturing paper — Such persons held, to be discharging work for factory and, therefore, 'employees'.—*Orient Paper Mills vs. Regional Provident Fund Commissioner & Anr.*, 2006 (1) LLJ 1136 (MP).

Wages — Meaning of — Incentive payment voluntarily by employer, at intervals of 3 months, held not 'wages' and demand for contribution in respect thereof not sustainable.—*Employees State Insurance Corporation vs. EVI Industries*, 2006 (1) LLJ 814 (Ker).

Respondent, serving in Air India as Handyman (*Safai*) was dismissed from service for unlawfully removing 92 gold bars from an aircraft in collusion with another employee. Petitioner sought approval of his dismissal in an application under Section 33(2)(b) before the National Industrial Tribunal. The High Court held the impugned order of the Tribunal not sustainable for the following reasons. *First*, it held there was no breach of requirement of Section 33(2)(b), by petitioner in not including increments in "wages", during period of respondent's suspension. The first proviso to Model Standing Order 14(4)(c) made this clear. *Second* there was no breach by the petitioner of principles of natural justice either. The Tribunal ought to have borne in mind that its jurisdiction under Section 33(2)(b) was to determine *prima facie* validity or otherwise of the domestic enquiry. It exceeded the limit by elaborate evaluation of facts and evidence in the domestic enquiry—Third Section 2(rr) of the Industrial Disputes Act, 1947, defining "wages" did not include increments as earning them during suspension period was not automatic and "all remuneration . . . in terms of money" could not bring them within its ambit.—*Air India Ltd. vs. L.R. Solanki & Anr.*, 2006 (1) LLJ 180 (Bom).

Senior Office Assistant in Indian Airlines removed from service on charges of lack of integrity etc.. The appellant took out a notice of motion for grant of wages under Section 17-B of the Act. The appellant would be entitled to receive as wages Basic pay, V.D.A., C.C.A., H.R.A., Conveyance Allowance and educational allowance, as contemplated

by Section 2(rr).—*Amit Kumar vs. Indian Airlines Ltd.*, 2006 (II) LLJ 699 (Bom).

Section 2-A. (Construction of certain reference in the Act) Deleted by Gujarat Act No. 47 of 1961, Section 5.

Section 3. Welfare fund.—

¹((1) The State Government shall constitute a fund called the Labour Welfare Fund and notwithstanding anything contained in any other law for the time being in force, the sums specified in Sub-section (2) shall, subject to the provisions of Sub-section (4) and ²(Sections 6A and 6B) be paid into the Fund);

(2) The Fund shall consist of—

(a) all fines realised from the employees;

(b) all unpaid accumulations;

³((bb) any contribution paid under Section 6-B.)

⁴((bbb) any interest paid under Section 6-C.)

(c) any voluntary donations;

(d) any fund transferred under Sub-section (5) of Section 7⁵;

(e) any sum borrowed under Section 8.

⁶((f) any loan grant-in-aid or subsidy paid by the State Government or any local authority or statutory corporation;

(g) all sums receive in any other manner or from any other source.)

(3) The sums specified in Sub-section (2) shall be collected by such agencies and in such manner and the accounts of the Fund shall be maintained and audited in such manner as may be prescribed.

⁷((4) Notwithstanding anything contained in any other law for the time being in force or any contract or instrument, all unpaid accumulations shall be collected by such agencies and in such manner as may be prescribed and be paid in the first instance to the Board which shall keep a separate account therefore until claims thereto have been decided in the manner provided in Section 6A.)

✍

Synopsis

1. Abandoned property — Nature of.—Where the impugned legislation is, in substance, one in respect of abandoned property, that, by its very nature, cannot be held to violate the rights of any person either under Article 19(1)(f) or Article 31(2). For it is only a person who has some interest in property that can complain that the impugned legislation invades that

¹ Sub-section (1) was substituted by Bombay Labour Welfare Board (Reconstitution) order, 1959.

² Substituted for "Section 6-A" by Guj. Act No. 29 of 1973, Section 3(1).

³ Clause (bb) was inserted by Guj. Act No. 29 of 1973, Section 3(29).

⁴ Clause (bbb) was inserted by Guj. Act No. 36 of 1980, Section 2.

⁵ The word "and" was deleted by Guj. Act No. 29 of 1973, Section 3(b).

⁶ Clauses (f) and (g) were added by Guj. Act No. 29 of 1973, Section 3(2c).

⁷ Sub-section (4) was added by Guj. Act No. 47 of 1961, Section 6(b).

rights, whether it be under Article 19(1)(f) or Article 31(2), and if it is abandoned property, ex hypothesi there is no one who has any interest in it.

The expression "abandoned property" or to use the more familiar term "*bona vacantia*" comprises properties of two different kinds, those which come in by escheat and those over which no one has a claim. There is, however, this distinction between the two classes of property that while the State becomes the owner of the properties of a person who dies intestate as his ultimate heir, it merely takes possession of property which is abandoned. The principle behind the law is that the State may, more properly, be custodian and beneficiary of abandoned property than any other person. Case law referred.

The Bombay Labour Welfare Fund Act cannot be regarded as one relating to abandoned property. The purpose of a legislation with respect to abandoned property being, in the first instance, to safeguard the property for the benefit of the true owner and the State taking it over only in the absence of such claims, a law which vests the property absolutely in the State without regard to the claims of the true owners cannot be considered as one relating to abandoned property.—*Bombay Dyeing & Manufacturing Co. Ltd., vs. The State of Bombay & Ors.*, AIR 1958 SC 328 = 1958 SCR 1122 = 1958 SCJ 620 = 1958 (1) LLJ 778 (SC).

2. Constitutional Validity.—Articles 31(1) and 31(2) are not mutually exclusive and it is not an essential requisite of acquisition under Article 31(2) that there should be a transfer of title to the State. Deprivation of property and substantial abridgement of the rights of the owner are also within Article 31(2) and a law which produces those results must, in order to be valid, satisfy the conditions laid down in that Article.

Thus, Articles 31(1) and 31(2) cover the same ground, and substantial interference with rights to property would be within the operation of Article 31(2). AIR 1954 SC 92 and AIR 1954 SC 119, Relied on.

It would, therefore, follow that Section 3(1) in so far as it relates to the payment of the unpaid accumulations to the Board under Section 3(2)(b) was bad as infringing Article 31(2), in that it deprives the employer of its moneys without giving any compensation.—*Bombay Dyeing & Manufacturing Co. Ltd., vs. The State of Bombay & Ors.*, AIR 1958 SC 328 = 1958 SCR 1122 = 1958 SCJ 620 = 1958 (1) LLJ 778 (SC).

3. Property in Article 19(1)(f) includes money.—Assuming that the contention that Section 3(1) is not within the prohibition of Article 31(2), because it operates only on money, and money is not property for purposes of that Article is correct, the protection against the deprivation of money is to be sought in Article 19(1)(f) as the word "property" therein has a wider connotation than what it bears in Article 31(2) and includes money. The citizens have the right to hold money subject only to law such as is saved by Article 19(5), and as Section 3(1) as it relates to Section 3(2)(b) of the Bombay Act, is not covered by Article 19(5) it must be held

as contravening Article 19(1)(f).—*Bombay Dyeing & Manufacturing Co. Ltd., vs. The State of Bombay & Ors.*, AIR 1958 SC 328 = 1958 SCR 1122 = 1958 SCJ 620 = 1958 (1) LLJ 778 (SC).

4. Wages are transferred to Board—No substitution of creditors—Liability of employers continues.—Sections 3(1) and 5(1) operate to transfer the debts due to the employees by the employers to the Board free from the bar of limitation.

When a debt becomes time-barred, it does not become extinguished but only unenforceable in a Court of law. Indeed, it is on that footing that there can be a statutory transfer of the debts due to the employees, and that is how the Board gets title to them. If then a debt subsists even after it is barred by limitation, the employer does not get, in law, a discharge therefrom. The modes in which an obligation under a contract becomes discharged are well-defined and the bar of limitation is not one of them.

Section 15 of the Payment of Wages Act also does not give an absolute protection to the employer when the bar of limitation arises under the Limitation Act. The result therefore is that when an employer makes a payment under Section 3(1) of the Bombay Act he gets no discharge from his obligation to the employees, even when the enforcement thereof is barred by limitation.

Further, it cannot be said that the performance of the contract of service has been rendered impossible by reason of Section 3(1) of the impugned Act. But assuming that that is the position, the matter would then be governed by Section 65 of the Contract Act, the employer would be liable to make compensation to the employee for the work done by him, and that liability can be enforced against him in spite of the fact that he has paid the unclaimed wages to the Board under Section 3(1) of the Act.

The result, therefore, is that even if the matter is governed by Section 56 of the Contract Act, the employer is no more discharged than by the operation of the bar of limitation under Section 15 of the Wages Act, or the provisions of the Limitation Act. In this view, it must be held that the Sections 3(1) and 3(2)(b) of the impugned Act are unconstitutional, in that they take away the property of the appellant in violation of either Article 19(1)(f) or Article 31(2) of the Constitution.—*Bombay Dyeing & Manufacturing Co. Ltd., vs. The State of Bombay & Ors.*, AIR 1958 SC 328 = 1958 SCR 1122 = 1958 SCJ 620 = 1958 (1) LLJ 778 (SC).

5. Validity—Contravention of Articles 31 and 19(1)(f).—So far as Sections 3(1) and 3(2)(a) of the Bombay Act which require the employers to handover to the Board the fines realised from the employees are concerned, the position of the employees is wholly different from what it is as regards unpaid accumulations. Under Section 8 of the Payment of Wages Act the fines are constituted a trust fund and the employers are bare trustees in respect of such trust. Validity of Section 3(1) and Section 3(2)(a) cannot be questioned on the ground that these provisions deprive

the employers of their rights as trustees because they have no beneficial interest in the fund and hence it cannot be held that there is any such substantial deprivation of property as would offend Article 31(2) or such unreasonable interference with rights to property as would infringe Article 19(1)(f) of the Constitution.

As regards the enlarging of the circle of beneficiaries, the Act has encroached on the rights of the employees of a particular employer. But then, the trust is the creation not of the employers but of the Legislature, which gave the employees certain rights which they did not have before, and what it can give, it can also take away or modify, and the employers are not aggrieved by it.

There are, therefore, no valid grounds on which Section 3(1) and Section 3(2)(a) of the Bombay Act could be attacked as unconstitutional, and they must accordingly be held to be valid.—*Bombay Dyeing & Manufacturing Co. Ltd., vs. The State of Bombay & Ors.*, AIR 1958 SC 328 = 1958 SCR 1122 = 1958 SCJ 620 = 1958 (1) LLJ 778 (SC).

6. When unpaid accumulations become abandoned property?—There is no real difference between abandoned property and *bona vacantia*. The sovereign has a prerogative right to appropriate *bona vacantia* and abandoned property. The unpaid accumulations being regarded as abandoned property the State would be entitled to take over the unpaid accumulations by virtue of its prerogative right but before it does so, it takes possession of the unpaid accumulations and give an opportunity to the true owner to come forward and claim them. If no claim is made for a certain specified period or if a claim is made but is rejected wholly or in part, the State then appropriates the unpaid accumulations. It is not as if the unpaid accumulations become *bona vacantia* on the expiration of the specified period. They are *bona vacantia* under Section 6-A but they are not appropriated as *bona vacantia* unless and until an opportunity is given to the true owners to come forward to claim them and it is only when no claim is found that they are appropriated as *bona vacantia*.—*The Arivnd Mills Ltd. vs. State of Gujarat & Ors.*, 1966 GLR 156 (Guj.) = 1969 (1) LabLJ 124 (Guj.) = ILR 1966 (Guj.) 313.

Section 4. Board.—

¹(The State Government shall, by notification in the Official Gazette constitute a Board for the State of Gujarat for the purpose of administering the Fund, and to perform other functions assigned to the Board by or under this Act); The Board shall consist of the following members, namely;—

¹ This portion was substituted for the sentence beginning with "The State Government" and ending with "under this Act" by the Bombay Labour Welfare Board (Reconstitution) Order, 1959.

² This portion was substituted for the portion beginning with the words "The State Government of Bombay" and ending with the words "the Karnataka area respectively" by Guj Act No. 47 of 1961, Section 7(a).

- (a) such member as may be prescribed of representative of employers and employees to be nominated by the State Government;

Provided that both employers and employees shall have equal representation on the Board;

- (b) such number of independent members as may be prescribed, nominated by the State Government; and

- (c) such member of independent member as may be prescribed, nominated by such State Government to represent women.

(2) The members of the Board shall elect one of its independent members as the Chairman of the Board,

¹((3) The members of the Board shall hold office during the pleasure of the State Government.)

(4) The allowance, if any, payable to the members of the Board and the conditions of appointment of the representatives of the employers and employees shall be such as may be prescribed.

(5) ²(The Board shall be a body corporated by the name of the Gujarat Labour Welfare Board) having perpetual succession and a common seal, with power to acquire property both movable, and immovable, and shall by the said name sue and be sued.

³((6) Notwithstanding anything contained in this section, until the Board for the State of Gujarat is duly constituted in accordance with the provisions of Sub-section (1), the existing Board functioning and operating immediately before the commencement of the Bombay Labour Welfare Fund (Gujarat Extension and Amendment) Act, 1961 (Gujarat XLV II of 1961) in any area of the State, shall continue to function and operate in that area and shall be the Board for the purpose of this Act for that area; and on the constitution of the Board for the State of Gujarat under Sub-section (1),—

(a) Such existing Board shall stand dissolved and the members thereof shall vacate office;

(b) all properties, fund and dues which are vested in realisable by the existing Board shall vest in, and be realisable by Board so constituted.

(c) all rights and liabilities which are enforceable by or against the existing Board, shall be enforceable by or against the Board so constituted, and where in any proceeding, in any Court or Tribunal

¹ This portion was substituted for the sentence beginning with "save as otherwise" and ending with "names are notified in the Official Gazette" by Guj. 1 of 1999 (w.e.f. 09.03.1999)

² These words were substituted for the portion beginning with the words "The Board shall be known" and ending with the words "a body corporate" by Guj. Act No. 47 of 1961, Section 7(b).

³ Sub-section (6) was substituted for the Sub-sections (6) and (7) by Guj. Act No. 47 of 1961, Section 7(c).

the existing Board is a party thereto, the Board so constituted shall be deemed to be substituted as a party to those proceedings; and (d) the Welfare Commissioner and the other officers and servants of the existing Board shall continue to be the Welfare Commissioner and officers and servants of the Board so constituted; but the terms and conditions of service of the Welfare Commissioner and other officers and servants shall not, until duly altered by a competent authority, be less favourable under the Board so constituted than those admissible to them while in service of the existing Board.)

¹(Section 4-A. Power of the Board in respect of the Karnataka area to be exercised by the Government of Mysore for certain period).—(Deleted by Gujarat 47 of 1961, Section 8).

Section 5. Disqualification and removal.—

(1) No person shall be chosen as, or continue to be a member of, the Board who—

- (a) is a salaried official of the Board; or
- (b) is or at any time has been adjudged insolvent or has suspended payment of his debts or has compounded with his creditors; or
- (c) is found to be a lunatic or becomes of unsound mind; or
- (d) is or has been convicted of any offence involving moral turpitude.

(2) The State Government may remove from office any member who—

- (a) is or has become subject to any of the disqualifications mentioned in Sub-section (1); or
- (b) is absent without leave of the Board for more than three consecutive meetings of the Board.

✍

Synopsis

Wages are transferred to Board—No substitution of creditors—Liability of employers continues.—Sections 3(1) and 5(1) operate to transfer the debts due to the employees by the employers to the Board free from the bar of limitation.

When a debt becomes time-barred, it does not become extinguished but only unenforceable in a Court of law. Indeed, it is on that footing that there can be a statutory transfer of the debts due to the employees, and that is how the Board gets title to them. If then a debt subsists even after it is barred by limitation, the employer does not get, in law, a discharge therefrom. The modes in which an obligation under a contract becomes discharged are well-defined and the bar of limitation is not one of them.

Section 15 of the Payment of Wages Act also does not give an absolute protection to the employer when the bar of limitation arises under the Limitation Act. The result therefore is that when an employer makes a payment under Section 3(1) of the Bombay Act he gets no

¹ Section 4-A was inserted by the Bombay Labour Welfare Board (Reconstitution) Order, 1959.

discharge from his obligation to the employees, even when the enforcement thereof is barred by limitation.

Further, it cannot be said that the performance of the contract of service has been rendered impossible by reason of Section 3(1) of the impugned Act. But assuming that that is the position, the matter would then be governed by Section 65 of the Contract Act, the employer would be liable to make compensation to the employee for the work done by him, and that liability can be enforced against him in spite of the fact that he has paid the unclaimed wages to the Board under Section 3(1) of the Act.

The result, therefore, is that even if the matter is governed by Section 56 of the Contract Act, the employer is no more discharged than by the operation of the bar of limitation under Section 15 of the Wages Act, or the provisions of the Limitation Act. In this view, it must be held that the Sections 3(1) and 3(2)(b) of the impugned Act are unconstitutional, in that they take away the property of the appellant in violation of either Article 19(1)(f) or Article 31(2) of the Constitution.—*Bombay Dyeing & Manufacturing Co. Ltd., vs. The State of Bombay & Ors.*, AIR 1958 SC 328 = 1958 SCR 1122 = 1958 SCJ 620 = 1958 (1) LLJ 778 (SC).

Section 6. Registration of office by member and filling up of casual vacancies.—

(1) A member may resign his office by giving notice thereof in writing to the State Government, and on such resignation accepted, shall be deemed to have vacated his office.

(2) A casual vacancy in the office of a member shall be filled up, as soon as conveniently may be, by the authority concerned ¹(x xx)

(3) No act or proceedings of the Board shall be questioned on the ground merely of the existence of any Vacancy in, or any defect in constitution of the Board.

✍

Synopsis

Difference between abandoned property and *bona vacantia*.—There is no real difference between abandoned property and *bona vacantia*. The sovereign has a prerogative right to appropriate *bona vacantia* and abandoned property. The unpaid accumulations being regarded as abandoned property the State would be entitled to take over the unpaid accumulations by virtue of its prerogative right but before it does so, it takes possession of the unpaid accumulations and give an opportunity to the true owner to come forward and claim them. If no claim is made for a certain specified period or if a claim is made but is rejected wholly or in part, the State then appropriates the unpaid accumulations. It is not as if the unpaid accumulations become *bona vacantia* on the expiration of

¹ Certain words beginning with "and a member" and ending with "of this predecessor" were deleted by Guj. Act No. 1 of 1999 (w.e.f. 09.03.1999).

the specified period. They are *bona vacantia* under Section 6-A but they are not appropriated as *bona vacantia* unless and until an opportunity is given to the true owners to come forward to claim them and it is only when no claim is found that they are appropriated as *bona vacantia*.—*The Arvind Mills Ltd. vs. State of Gujarat & Ors.*, 1966 GLR 156 (Guj.) = 1969 (1) LabLJ 124 (Guj.) = ILR 1966 (Guj.) 313.

Section 6-A. ¹(Unpaid accumulations and claims thereto.—

(1) All unpaid accumulations shall be deemed to be abandoned property.

(2) Any unpaid accumulations paid to the Board in accordance with the provisions of Section 3 shall, on such, payment, discharge an employer of the liability to make payment to an employee in respect thereof, but to the extent only of the amount paid to the Board; and the liability to make payment to the employee to the extent aforesaid shall, subject to the succeeding provisions of this section, be deemed to be transferred to the Board.

(3) As soon as possible after any unpaid accumulation is paid to the Board under Sub-section (4) of Section 3 the Board shall by a public notice call upon interested employees to submit to the Board their claims for any payment due to them.

(4) Such public notice shall contain such particulars as may be prescribed and it shall be—

(a) affixed on the notice board, or in its absence on a conspicuous part of the premises, of each establishment in which the unpaid accumulations were earned.

(b) published in the Official Gazette, and

(c) published in any two newspapers in the language commonly understood in the area in which such establishment is situated, and circulating therein or in such other manner as may be prescribe, regard being had to the amount of claim.

(5) After the notice is first affixed and published under Sub-section (4) it shall be again affixed and published from time to time for a period of ²(one year) from the date on which it was first affixed and published, in the manner provided in that Sub-section in the months of June and December ³(xxx)

(6) A certificate of the Board to the effect that the provisions of Sub-sections (4) and (5) were complied with shall be conclusive evidence thereof.

¹ Section 6-A was inserted by Guj Act No. 47 of 1961, Section 9.

² Substituted for the words "three years" by Guj. Act No. 5 of 2005, Section 3(1)(i) (w.e.f. 31.12.2004.)—See Appendix.

³ Deleted words "each year" by Guj. Act No. 5 of 2005, Section 3(1)(ii) (w.e.f. 31.12.2004.)—See Appendix.

(7) Any claim received, whether in answer to the notices or otherwise within a period of ¹(two years) from the date of the first publication of the notice in respect of such claim, shall be transferred by the Board to the authority appointed under Section 15 of the Payment of Wages Act, 1936, (IV of 1936) having jurisdiction in the area in which the factory or establishment, is situated, and the authority shall proceed to adjudicate upon, and decide, such claim. In hearing such claim, the authority shall have the powers conferred by, and shall follow the procedure (in so far as it is applicable) followed in giving effect to the provisions of, that Act.

(8) If in deciding any claim under Sub-section (7), the authority allows the whole or part of such claim, it shall declare that the unpaid accumulation in relation to which the claim is made shall to the extent to which the claim is allowed, cease to be abandoned property and shall order the Board to pay to the claimant the amount of the claim is allowed by it; and the Board shall make payment accordingly:

Provided that, the Board shall not be liable to pay any sum in excess of that paid under Sub-section (4) of Section 3 to the Board as unpaid accumulations, in respect of the claim.

(9) An appeal shall lie in the City of Ahmedabad to the Court of Small Causes and elsewhere to the District Court against a decision under Sub-section (7) rejecting any claim or part thereof, if made within a period of sixty days from the date of such decision.

(10) The Board shall comply with any order made in appeal.

(11) The decision of the Authority, subject to an appeal as aforesaid, and the decision in appeal of the Court of Small Causes, or as the case may be, the District Court, shall be final and conclusive as to the right to receive payment, the liability of the Board to pay and also as to the amount, if any.

(12) If no claim is made within the time specified in Sub-section (7) or a claim or part thereof has been rejected under the foregoing provisions then the unpaid accumulations in respect of such claim shall accrue to and vest in the State as bona vacantia and shall thereafter without further assurance be deemed to be transferred to, and from part of, the fund.)

²((13) Nothing in the foregoing provisions of this section shall apply to unpaid accumulations not already paid to the Board,

(a) in respect of which no separate accounts have been maintained so that the unpaid claims of employees are not traceable, or

(b) which are proved to have been spent before the sixth day of December 1961,

and accordingly such unpaid accumulations shall not be liable to be collected and paid under Sub-section (4) of Section 3.)

¹ Substituted for the word "four years" by Guj. Act No. 5 of 2005, Section 3(2) (w.e.f. 31.12.2004.)—See Appendix.

² Inserted by Guj. Act No. 8 of 1963, Section 2.

¹(Section 6-B. Contribution.—

(1) There shall be paid to the B are for the purposes of this Act, a contribution payable by the employer in respect of an employee in an establishment (hereinafter referred to as "the employer's contribution"), a contribution payable by such employee (hereinafter referred to as "the employee's contribution") and a contribution payable by the State Government, as hereinafter provided and every such contribution shall form part of the Fund.

²(2) The amount of employee's contribution shall be payable every six months in respect of every employee whose name stands on the register of the establishment concerned in the month of June, or as the case may be, in the month of December, at the rate of three rupees for each such employee and the amount of employer's contribution shall be payable at every six months at the rate of six rupees for each such employee:

Provided that the State Government may, by notification in the Official Gazette increase the said rate of employee's contribution to such amount not exceeding six rupees if it considers necessary to do so enable the Board to fulfil the objects of this Act:

Provided further that where the rate of employees contribution is so increased by the State Government, the rate of employer's contribution shall be twice the rate (of employee's contribution as so increased)

(3) Every employer shall pay to the Board both the employer's contribution and the employee's contribution before the 15th day of July and 15th day of January, every year.

(4) Notwithstanding anything, contained in Sub-sections (2) and (3), the employer's contribution and the employee's contribution payable for the first time after the date of the coming into force of the Bombay Labour Welfare Fund (Gujarat Amendment) Act, 1973 (hereinafter referred to as "the appointed date") shall be payable before such date, and at the respective rates as aforesaid for every employee whose name stands on the register of the establishment concerned on such date as may be specified by the State Government by notification in the Official Gazette and such contributions payable next thereafter shall be paid in accordance with the provisions of this Act, irrespective of whether the period of six months as specified in Sub-section (2) has passed or not.

(5) Notwithstanding anything contained in any other enactment but subject to the provisions of this Act and the rules made thereunder the employer shall be entitled to recover from any such employee that employee's contribution by deduction from his wages, and not otherwise; and such deduction shall be deemed to be a deduction authorised by or under the Payment of Wages Act, 1936: (IV of 1936)

¹ Section 6-B was inserted by Guj. Act No. 29 of 1973, Section 4.

² Sub-section (2) was substituted by Guj. Act No. 5 of 2005, Section 4 (w.e.f. 31.12.2004.)

—See Appendix.

Provided that no such deduction shall be made in excess of the amount of the contribution payable by such employee, nor shall any such deduction except the deduction in respect of the employee's contribution payable for the first time after the appointed date be made from any wages other than the wages for the months of June and December:

Provided further that, if through inadvertance or otherwise, no deduction has been made from the wages of an employee for the month's aforesaid, such deduction may be made from the Wages of such employee for any subsequent month or months with the permission in writing of the Inspector appointed under this Act.

(6) Notwithstanding any contract to the contrary no employer shall deduct the employee's contribution from any wages payable to an employee or otherwise recover it from the employee.

(7) Any sum duly deducted by an employer from the wages of an employee under this section shall be deemed to have been entrusted to him by the employee for the purpose of paying the contribution in respect of which it was deducted.

(8) An employer shall pay the employer's and the employee's contribution to the Board by cheque, money order or in cash, and he shall bear the expenses of remitting to the Board such contribution.

(9) The Welfare Commissioner shall submit to the State Government as soon as possible after the end of July and January every year in the prescribed form a statement showing the total amount of the employer's contribution in respect of his establishment for the period to which the statement relates and on receipt of the statement from the Welfare Commissioner, the State Government shall pay to the Board a contribution of an amount equal to the employer's contribution in respect of that establishment:

Provided that the statement in relation to the employee's contribution payable for the first time after the appointed date referred to in Sub-section (4) shall be submitted as soon as possible after the specified date in relation to that contribution.)

¹(Section 6-C. Interest on unpaid accumulations, fines and contributions after notice of demand .—

(1) Where an employer does not pay to the Board any amount of unpaid accumulations or fines realised from the employees or any amount of the employer's or, as the case may be, employee's contributions within the time he is required by or under the provisions of this Act to pay such amount, the Welfare Commissioner may cause to be served a notice on such employer to pay to the Board the amount within the period specified therein, which shall not be less than thirty days from the date of service of such notice.

¹ Section 6-C was inserted by Guj. Act No. 36 of 1980, Section 3.

(2) Where the employer on whom a notice is served under Sub-section (1) fails without sufficient cause to pay any such amount within the period specified in the notice, he shall without prejudice to any penalty which may be imposed on him under this Act be liable to pay to the Board simple interest on that amount for the period commencing on the date of expiry of the period specified in the notice and ending on date of the payment of that amount—

- (a) in respect of the period falling within the first three months after such expiry, at the rate of twelve percent per annum, and
- (b) in respect of the other period, at the rate of eighteen percent per annum.

(3) The amount of interest payable to the Board under Sub-section (2) shall be collected by the Welfare Commissioner in such manner as may be prescribed:

Provided that the Welfare Commissioner may, subject to such conditions as may be prescribed, remit the whole or any part of the amount of interest in respect of any period.)

Section 7. Vesting and application of Fund.—

(1) The fund shall vest in and be held and applied by the Board a Trustees subject to the provisions and for the purpose of this Act. The moneys therein shall be utilized by the Board to defray the cost of carrying out measures which may be specified by the State Government from time to time to promote the welfare of labour and of their dependents.

(2) Without prejudice to the generally of Sub-section (1) the money in the Fund may be utilized by the Board to defray expenditure on the following.—

- (a) community and social education centres including reading rooms and libraries;
- (b) community necessities;
- (c) games and sports;
- (d) excursions, tours and holiday homes;
- (e) entertainment and other forms of recreations;
- (f) home industries and subsidiary occupations for women and unemployed persons;
- (g) corporate activities of a social nature;
- (h) cost of administering the Act including the salaries and allowances of the staff appointed for the purposes of the Act; and
- (i) such other objects as would in the opinion of the State Government improve the standard of living and ameliorate the social conditions of labour;

Provided that the Fund shall not be utilized in financing any measure which the employer is required under any law for the time being in force to carry out:

Provided further that unpaid accumulations and fines shall be paid to the Board and be expended by it under this Act notwithstanding anything contained in the Payment of Wages Act, 1936, (IV of 1936) or any other law for the time being in force.

(3) The Board may, with the approval of the State Government, make a grant of the fund to any employer, any local authority or any other body in aid of any activity for the welfare of labour approved by the State Government.

(4) If any question arises whether any particular expenditure is or is not debitable to the Fund, the matter shall be referred to the State Government and the decision given, by the State Government shall be final.

(5) It shall be lawful for the Board to continue any activity financed from the labour welfare fund of any establishment, if the said fund is duly transferred to the Board.

Section 8. Power of Board to borrow.—

The Board may from time to time with the previous sanction of the State Government and subject to the provisions of this Act, and to such conditions as may be specified in this behalf borrow any sum required for the purpose of this Act.

Section 9. Investment of fund.—

Where the Fund or any portion thereof cannot be applied at any early date for fulfilling the objects of the Act, the Board shall invest the same in any of the securities specified in Clauses (a) to (d) and (f) of Section 20 of the Indian Trusts Act, 1882. (II of 1882)

Section 10. Directions by State Government to Board.—

The State Government may give the Board such directions as in its opinion are necessary or expedient in connection with expenditure from the Fund or for carrying out the other purposes of the Act. It shall be the duty of the Board to comply with such directions.

Section 11. Appointment and powers of Welfare Commissioner.—

(1) (i) The Welfare Commissioner shall be appointed by the Board with the previous approval of the State Government;

(ii) the Welfare Commissioner shall be the principal executive officer of the Board;

(iii) it shall be the duty of the Welfare Commissioner to ensure that the provisions of this Act and the rules made thereunder are duly carried out and for this purpose he shall have the power to issue such orders not inconsistent with the provisions of the Act and rules made hereunder as he deems fit including any order implementing decisions taken by the Board under the Act or rules made thereunder.

¹(x x x x x x x x x)

¹ Sub-section (2) was deleted by Guj. Act 47 of 1961, Section 10.

Section 12. Appointment of Inspectors.—

The State Government may appoint inspectors to inspect records in connection with the sums payable into the Fund, ¹(Inspector appointed, whether by a local authority or the State Government under the Bombay Shops and Establishments Act, 1948 (Born LXXIX of 1948.) in relation to any area, shall be deemed to be also Inspector for the purposes of this Act, in respect of establishments, to which this Act applies and the local limits within which such Inspector shall exercise his functions under this Act shall be the area for which he is appointed under the said Act.)

(2) any Inspector may —

(a) with such assistance, if any, as he thinks fit, enter at any reasonable time any premises for carrying out the purposes of this Act;

(b) exercise such other powers as may be prescribed.

Section 13. Absorption of the existing staff under Commissioner of Labour.—

²((1) Any staff under the control of the Commissioner of Labour Bombay which was —

(i) take over by a Labour Welfare Board constituted under this Act and existing on the date of such taking over, and

(ii) allotted to the Gujarat Labour Welfare Board, established under the Bombay Welfare Board (Reorganisation) Order, 1960,

shall be subject to the provisions of this Act and the rules made thereunder):

Provided that—

(a) during the period of such employment all matters relating to pay, leave, retirement, allowances, pensions, provident fund and other conditions of service of the said staff shall be regulated by the Bombay Civil Services Rules or such other rules as may from time to time be made by the State Government;

(b) even such member shall have a right of appeal to the State Government against any order of reduction, dismissal or removed from service, fine or any other punishment.

Provided further that person so taken over may elect within the prescribed period that he desires to be governed by the rules made under this Act in respect of conditions of service of the staff appointed by the Board under this Act and on his electing to do so the provisions of the first proviso shall cease to apply to him.

³((2) On the coming into force of this Act in any area to which it is extended by the Bombay Labour Welfare Fund (Gujarat Extension and Amendment) Act, 1961, (Gujarat Act XLVII of 1961) the Board shall take over and employ such of the existing staff under the control of the

¹ This portion was added by Guj. Act No. 29 of 1973, Section 5.

² Substituted by Guj. Act No. 47 of 1961, Section 11(1).

³ Sub-section (2) was inserted by Guj. Act No. 47 of 1961, Section 11(2).

Commissioner of Labour, Ahmedabad as the State Government may direct, and every such person so taken over and employed shall be subject to like terms and conditions and to the same provisions as in Sub-section (1).)

Section 14. Appointment of clerical and other staff by Board.—

The Board shall have power to appoint the necessary clerical and executive staff to carry out and supervise the activities financed from the Fund:

Provided that the expenses of the staff thus appointed and other administrative expenses shall not exceed a prescribed percentage of the annual income of the Fund.

Section 15. Power of State Government to remove any person on staff of Board.—

The State Government shall have the power to remove any person whom it may deem unsuitable, from the service of the Board and to make an appointment in respect of whom more than one-third of the members of the Board have not agreed.

Section 16. Power of State Government or authorised officer to call for record etc.—

The State Government or any officer authorised by the State Government may call for the records of the Board, inspect the same and may supervise the working of the Board.

Section 17. Mode of recovery of sums payable ¹(to the Board) or into Fund, etc.

Any sum payable ²(to the Board or) into the Fund under this Act shall, without prejudice to any other mode of recovery, be recoverable on behalf of the Board as an arrear of land revenue.

³(Section 17-A. Penalty for failure to make payment of unpaid accumulations, etc.

Any employer who fails to pay amount of unpaid accumulations or fines realised from employees or any amount of the employer's or, as the case may be employee's contributions, within the period specified in a notice served on him under Sub-section (1) of section 6-C, shall, on conviction, be punishable with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

Section 17-B. Penalty for unlawful deduction.—

Any employer who deducts the whole or any part of the employer's contribution from the wages payable to an employee or otherwise recovers it from the employee shall, on conviction, be punishable with

¹ Inserted by Guj. Act No. 36 of 1980, Section 4(1).

² Inserted by Guj. Act No. 36 of 1980, Section 4(2).

³ Sections 17-A, 17-B, 17-C, 17-D and 17-E were inserted by Guj. Act No. 36 of 1980, Section 5.

imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

Section 17-C. Penalty for obstructing Inspectors exercising powers of discharging duties etc.—

Any person who wilfully obstructs an Inspector in the exercise of his powers or discharge of his duties under this Act or fails to produce for inspection on demand by an Inspector any document maintained in pursuance of the provision of this Act or the rules made thereunder or to supply to him on demand true copies of any such document, shall on conviction, be punishable—

- (a) for the first offence, with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both; and
- (b) for a second or subsequent offences, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both:

Provided that in the absence of special and adequate reason to the contrary to be mentioned in the judgment of the Court, in any case where the offender is sentenced to a fine only, the amount of fine shall not be less than fifty rupees.

Section 17-D. Offences by companies .—

(1) Where an offence under this Act is committed by a company every person who at the time when the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in Sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purpose of this section—

- (a) "Company" means any body corporate and includes a firm or other association of individuals. and
- (b) "director" in relation to a firm, means a partner in the firm.

Section 17-E. Provisions relating to jurisdiction.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)

(a) no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act; and

(b) no Court shall take cognizance of any offence punishable under this Act, unless a complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

(2) No prosecution for any offence under this Act shall be instituted, by any person except an Inspector and no prosecution shall be instituted by the Inspector except with the previous sanction of the Welfare Commissioner.)

Section 18. Supersessions of Board.—

(1) If the State Government is satisfied that the Board has made default in performing any duties imposed on it by or under this Act or has abused its power, the State Government may by notification in the Official Gazette supersede and reconstitute the Board ¹(in the manner specified in Sub-section (1) of Section 4 for Constitution of the Board:)

Provided that before issuing the notification under this sub-section, the State Government will give a reasonable opportunity to the Board to show prescribed why it should not be superseded and shall consider the explanations objections, if any, of the Board.

(2) After the supersession of the Board and until it is reconstituted the powers, duties and functions of the Board under this Act shall be exercised or performed by the Board or by such officer or officers, as the State Government may appoint for this purpose.

Section 19. Rules.—

(1) The State Government may by notification in the Official Gazette and subject to the condition of previous publication, make rules to carry out the purposes of this Act.

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

(a) the agency for and the manner of collection of sum specified in Sub-section (3) of Section 3; and the period within which the same shall be paid to the credit of the Fund;

(b) the manner in which the accounts of the Fund shall be maintained and audited under Sub-section (3) of Section 13;

²((bb) the manner in which the Welfare Commissioner shall collect under Sub-section (3) of Section 6-C the amount of interest payable under Sub-section (2) of that section to the Board, and the

¹ Substituted by Guj. Act No. 29 of 1973, Section 6.

² Clause (bb) was inserted by Guj. Act No. 36 of 1980, Section 6(1).

conditions subject to which the Welfare Commissioner may remit the whole or any part of the amount of interest under the proviso to Sub-section (3) of that section;)

- (c) the procedure for making grants from the Fund under Section 7;
- (d) the procedure for defraying the expenditure incurred in administering the Fund;
- (e) the number of representatives of employers and employees, independent members and representatives of women on the Board, and the allowance, if any, payable to them, under Sec. 4;
- (f) the manner in which the Board shall conduct their business;
- (g) the duties and powers of the Inspectors and the conditions of service of the Welfare Commissioner and Inspectors and other staff appointed under this Act;
- ¹((ga) the delegation of the powers, and functions of the Board to the Welfare Commissioner and the conditions and limitations subject to which the powers may be exercised or functions discharged;)
- (h) the percentage of the annual income of the Fund beyond which the Board may not spent on the staff and on other administrative measures;
- (i) the registers and records to be maintained under the Act;
- (j) the publication of the respect of the activities financed from the Fund together with a statement of receipts and expenditures of the Fund and statement of accounts;
- (k) any other matter which under this Act is or may be prescribed.

²((2-A) In making any rules under this section, the State Government may direct that a breach thereof shall be punishable with fine not exceeding two thousand rupees, and when the offence is a continuing one, with a daily fine not exceeding one hundred rupees during the continuance of the offence.)

³((3) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as may be after they are made, and shall be subject to such modifications as the State Legislature may make during the session in which they are so laid or the session immediately following.

(4) Any modification made by the State Legislature shall be notified in the Official Gazette and shall, thereupon take effect.)

Section 20. Members of Board, Welfare Commissioners, Inspectors and all officers and servants of Board to be public servants.—

The members of the Board, the Welfare Commissioner, Inspectors and all officers and servants of the Board shall be deemed to be public

¹ Clause (ga) was inserted by Guj. Act No. 47 of 1961.

² Sub-section (2-A) was inserted by Guj. Act No. 36 of 1980, Section 6(2).

³ Sub-sections (3) and (4) was added by Guj. Act No. 47 of 1961, Section 12.

servants within the meaning of Section 21 of the Indian Penal Code (XIV of 1960)

Section 21. Protection to persons acting in good faith.—

No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act,

Section 22. Exemption.—

The State Government may by notification in the Official Gazette exempt any class of establishment from all or any of the provisions of this Act subject to such conditions as may be specified in the notification.

Section 23. Amendment of Section 8 of Act IV of 1936.—

In Section 8 of the Payment of Wages Act, 1936, (IV of 1936) to Sub-section (8) the following shall be added, before the Explanation, namely.—

“but in the case of any factory or establishment to which the Bombay Labour Welfare Fund Act, 1953 (Bom XL of 1953) applies all, such realisations shall be paid into the Fund constituted under the said Act.”



GUJARAT NOTIFICATIONS UNDER BOMBAY LABOUR WELFARE FUND ACT, 1953

Section wise

Section 1

↳ **Notification No. GLW. 1162/20960-M dated 25.06.1962**

In exercise of the powers conferred by Sub-section (2) of Section 1 of the Bombay Labour Welfare Fund (Gujarat Extension and Amendment) Act, 1961 (Guj. XLVII of 1961), the Government of Gujarat hereby appoints 01.07.1962 as the date on which the said Act shall come into force.

(G.G.G. Part I-L (Extra-ordinary), dated 26.06.1962 pages 21-22.)

↳ **Notification No. KH/SH/72/GLW/1071-126018-T, dated 25.01.1974.—**

In exercise of the powers conferred by Sub-section (2) of Section 1 of the Bombay Labour Welfare Fund (Gujarat Amendment) Act, 1973 (Guj. 29 of 1973), the Government of Gujarat hereby appoints 30.01.1974 as the date on which the said Act shall come into force.

(G.G.G. Part I-L (Extra-ordinary), dated 25.01.1974, Page 15).

↳ **Notification No. 1313/45, dated 23.06.1953.—**

In exercise of the powers conferred by Sub-section (3) of Section 1 of the Bombay Labour Welfare Fund Act, 1953 (Bom. XL of 1953), the Government of Bombay is pleased to appoint 24.06.1953 as the date on which the said Act shall come into force in each of the areas specified in the Schedule appended hereto, namely:

↳ **Notification No. BW 1062/60978-I, dated 20th September, 1962.**

In exercise of the powers conferred by Sub-section (3) of Section 1 of the Bombay Labour Welfare Fund Act, 1953 (Bom. XL of 1953) the Government of Gujarat hereby appoints 01.10.1962 as the date on which the said Act shall come into force in the whole of the area of the State of Gujarat, except the area in which the said Act has already been brought into force before the publication of this notification in the Official Gazette.

(G.G.G. Part I-L (Extra-ordinary), dated 01.10.1962 page 30.)

Section 4

↳ **Notification No. KH-SH-4504 GLW-1672-34090 T. dated 20.05.1972**

In exercise of the powers conferred by Sub-section (1) of Section 4 of the Bombay Labour Welfare Fund Act, 1953 (Bom XL of 1953) read with Rule 10 of the Labour Welfare Fund (Gujarat) Rules, 1962, the Government of Gujarat hereby—

- (i) constitute with effect on and from the day of 1.06.1972 the Gujarat Labour Welfare Board for the State of Gujarat, and
- (ii) nominates the following persons to be members of the said Board, namely—

(A) Representative of employers.—

- (1) Shri H.G. Shah
- (2) ¹(Shri Babubhai Laxmichand Sheth)
- (3) Shri A.P. Shah
- (4) ²(Shri K.M. Swadia)

(B) Representatives of employees.—

- (1) Shri Manoharlal Shukla.
- (2) ³(Shri Natvalal C. Shah)
- (3) Shri Ratilal Chadulal Shah
- (4) Shri P.D. Gandhi

(C) Independent members.—

- (1) Shri Hakumat Desai
- (2) Shri Punjabhai Amrabhai
- (3) Shri Harendra Shivshankar Joshi
- (4) Shri Pravin Vasavada

(D) Members representing women;

- (1) Smt. Ahmediben Kadri
- (2) Smt. Jyotsanaben Jayantilal Shah

Section 6-B

↳ **Notification No. KH/SH/73/GLW-1071/126018, dated 25.01.1974. (ii)T.—**

In exercise of the powers conferred by Sub-section (4) of Section 6-B of the Bombay Labour Welfare Fund Act, 1953 (Bom XL of 1953), the Government of Gujarat hereby directs that the employer's contribution and the employee's contribution payable for the first time after the appointed date shall be payable before 15.07.1974, at the respective rates specified in Sub-section (2) of the said section 6-B for every employee whose name stands on the register of the establishment concerned on 30.06.1974.

(G.G.G.Part I-L (Extra-ordinary) dated. 25.01.1974, Page. 16/17)

↳ **Notification No. GLW.2262/1389 (i)M. Dated 25.06.1962**

Section 12

In exercise of the powers conferred by Sub-section (1) of Section 12 of the Bombay Labour Welfare Fund Act, 1953 (Bom. XL of 1953) and in supersession of the former Government of Bombay, Development Department. Notification No. 2471/48, dated 25.07.1953 the Government of Gujarat hereby appoints with effect on and from 1.07.1962 the Inspectors appointed under Sub-section (3) of Section 14 of the Payment of Wages Act, 1936 (IV of 1936) as Inspectors for the purposes of this Act.

¹ Notification E & LD No. KH/SH/1501-GLW-1672/63032-T, dated 06.09.1973.

² Notification E & LD No. KH/SH/356-GLW-1672-T, dated 18.03.1974.

³ Notification E & LD No. KH/SH/1079-GLW-1672/39356-T, dated 14.08.1974.

↳ **Notification No. GLW. 2262/1389 (ii)- M. dated 25.06.1962.**

In exercise of the powers conferred by Sub-section (1) of Section 12 of the Bombay Labour Welfare Fund Act, 1953 (Bom. XL of 1953) and in supersession of the former Government of Bombay. Development Department, Notification No. 1313/46 dated 24.06.1953 the Government of Gujarat hereby appointed under Sub-sections (1) and (2) of Section 8 of the Factories Act, 1948 (LXIII of 1948) as Inspectors for the purposes of this Act.

↳ **Notification No. KH-SH-1300-GLW-1085/59474-T. Dated 11.11.1965.**

In exercise of the powers conferred by Sub-section (1) of Section 12 of the Bombay Labour Welfare fund Act, 1953 (Bom XL of 1953), the Government of Gujarat hereby appoints all the Labour Officers appointed under Sub-section (1) of Section 8 of the Bombay Industrial Relations Act, 1946 (Bom XL of 1947), as Inspectors for the purposes of this Act for the areas within the limits of their respective jurisdictions.

↳ **Notification No. KH-SH-1514/BLW-1074. 34456-T dated the 10.12.1974.**

In exercise of the powers conferred by Sub-section (1) of Section 12 of the Bombay Labour Welfare Fund Act, 1953 (Bom XL of 1953), the Government of Gujarat hereby appoints the officer specified in column 2 of the Schedule appended hereto (being officer of the Board) to be Inspectors for the areas specified against them in column 3 thereof, to inspect records in connection with the sum payable into the Fund.

Schedule

Sr. No.	Officers	Areas
(1)	(2)	(3)
1.	Assistant Welfare Commissioner, Rajkot	District of Kutch, Junagadh, Rajkot, Bhavnagar, Surendranagar, Jamnagar and Amreli.
2.	Labour Welfare Officer, Rajkot	
3.	Lady Welfare Workers, Rajkot	Districts of Mehsana, Panchmahals, Ahmedabad City, Ahmedabad District, Kaira.
4.	Assistant Welfare Commissioner, Ahmedabad	
5.	Labour Welfare Officer, Ahmedabad	Baroda, Surat, Bulsar, Gandhinagar, Dangs.
6.	Lady Welfare Workers, Ahmedabad	Banaskantha, Broach and Sabarkantha.

Section 22

↳ **Notification No. BW. 1261/39946-I dated 15.12.1962.**

In exercise of the powers conferred by Section 22 of the Bombay Labour Welfare Fund Act, 1953 (Bombay XL of 1953), and in supersession of Government Notification, Development Department No. 2500/48-K, dated 17.01.1956 in so far as it relates to the Municipal Corporation for the

city of Ahmedabad, the Government of Gujarat hereby exempts on and from 24.06.1935, the said Municipal Corporation from all the provisions of the said Act, subject to the conditions.—

(a) that the Corporation shall submit to the State Government at the end of every year a statement —

(i) showing the amount which but for this exemption, would have paid in that years in the Bombay Labour Welfare Fund under Section 3 of the said Act, and

(ii) showing the amount utilised by it in that year to defray expenditure on objects falling under Section 7 of the said Act and;

(b) that the amount so utilised in such year is not less than the amount referred to in Sub-clause (i) of Clause (a).

(Published in G.G.G., Part I-L Extra-ordinary, dated 03.01.1963. at page 19).

SCHEDULE

Areas within the limits of .—

- (1) The Municipal Corporation of Greater Bombay.
- (2) The Municipal Corporation of Poona
- (3) The Municipal Corporation of Ahmedabad.
- (4) The Thana Municipal Borough.
- (5) The Ahmedabad Village in the Thana District.
- (6) The Surat Municipal Borough.
- (7) The Broach Municipal Borough.
- (8) The Broach Municipality
- (9) The Nadiad Municipality Borough.
- (10) The Viramgam Municipality.
- (11) The Sholapur Municipal Borough.
- (12) The Jalgaon Municipal Borough.
- (13) The Amalner Municipal Borough.
- (14) The Chalisgaon Municipal Borough.
- (15) The Dhulia Municipal Borough.
- (16) The Hubli Municipal Borough.
- (17) The Gadag Municipal Borough.
- (18) The Barsi Municipal Borough.



[THE] LABOUR WELFARE FUND (GUJARAT) RULES, 1962

CONTENTS

Rule	Page No.	Rule	Page No.
1. Short title and application.	34	16. All questions to be decided by majority.	39
2. Definitions.	34	17. Mode of exercising votes.	39
3. Collection and payment of fines and of unpaid Accumulations by employers.	34	18. Minutes of meetings.	39
3-A Particular to be contained in public notice under Section 6-A (3).	35	18-A. Delegations of powers to the Welfare Commissioner.	39
3-A A. Maintenance of registers etc. by Employers.	35	19. Additional power of Inspector.	40
3-B. Form of statement regarding contribution to be submitted by employer.	35	19-A. Duties of Inspector.	40
3-C Form of statement under Section 6-B (9).	35	19-B. Conditions of service of the Welfare Commissioner and other staff.	41
4. Notice for payment of fines and unpaid accumulations by Welfare Commissioner.	36	20. Publication of annual report of Board.	41
5. Maintenance and Audit of Accounts.	36	21. Maintenance of registers by certain employers.	41
6. Budget of Board.	36	22. Penalty for breach of the rule.	41
7. Additional Expenditure.	37	Form A. Register of wages.	42
8. Application for grant from Fund.	37	Form A-1 Statement of employee's and employer's contribution on 30 th June and 1 st December respectively.	42
9. Mode of payment.	37	Form A-2 Statement by Welfare Commissioner showing employer's contribution for 6 month ending on 30 th June and 31 st December respectively in the year.	43
10. Constitution of Board.	37	Form B. Register of fines realised and unpaid accumulations for the year.	44
11. Allowance of members.	38	Form C. Register of particulars of employees in whose respect the unpaid accumulations are held by the employer.	44
12. Meetings of Board.	38		
13. Quorum.	38		
14. Chairman to preside.	38		
15. Adjournment of meeting.	38		
15-A. Transaction of the business of the Board by circulation.	38		

☆☆☆☆☆

(THE) LABOUR WELFARE FUND (GUJARAT) RULES, 1962

No. 13/3/46.—In exercise of the powers conferred by Section 19 of the Bombay Labour Welfare Fund Act, 1953 (Bom XL of 1953), the Government of Bombay is pleased to make the following rules, namely.—

Rule 1. Short title and application.—

(1) These rules may be called *The Labour Welfare Fund (Gujarat) Rules, 1962*.

(2) They shall apply to the areas of the State of Gujarat in which the Act is or comes into force.

Rule 2. Definitions.—

In these rules, unless there is anything repugnant in the subject or context.—

(i) "**Act**" means the Bombay Labour Welfare Fund Act, 1953;

(i-a) "**establishment register**" means in relation to—

(a) a factory, a register of audit workers or a register of child worker maintained under Section 62 or Section 73 respectively, of the Factories Act, 1948 (LXIII of 1948);

(b) a motor omnibus service, a register of Workers maintained under Rule 31 of the Gujarat Transport Workers Rules, 1965;

(c) any other establishment, a register of Employment maintained under Rule 31 of the Gujarat Shops and Establishment Rules, 1962;

Provided that where any establishment is not required to maintain such register, any other register in which names of workers of establishment employed every day or every month of the year are ordinary shown:

(ii) "**Form**" means a form appended to these rules;

(iii) "**Section**" means a section of the Act;

(iv) Words and expressions not defined in these rules shall have the meanings assigned to them under the Act.

Rule 3. Collection and payment of fines and of unpaid Accumulations by employers.—

(1) Within fifteen days from the date on which the Act shall come into force in any areas every employer in such area shall collect as agent of the Board and shall pay by cheque, money order or cash to the Welfare Commissioner.

(a) all fines realised from the employees before the said date and remaining unutilized on that date; and

(b) all unpaid accumulations held by the employer on the aforesaid date.

(2) The employer shall alongwith such payment submit a statement to the Welfare Commissioner giving full particulars of the amounts so paid.

(3) Therefor, all fines realised from the employees and all unpaid accumulations during the quarters ending 31st March, 30th June, 30th

September and 31st December shall be collected and paid by the employer in the manner aforesaid to the Welfare Commissioner on or before 15th of April, 15th of October and 15th January succeeding such quarter and a statement giving particulars of the amounts so paid shall be submitted by him alongwith such payment to the Welfare Commissioner.

Rule 3-A. Particulars to be contained in public notice under Section 6-A(3).

The public notice issued under Sub-section (3) of Section 6-A of the Act shall contain the following particulars, namely.—

- (1) the name and place of the establishments which has credited the unpaid accumulations;
- (2) the amount of unpaid accumulations credited by each establishment;
- (3) the place where the list containing the names of employees in respect of whom the unclaimed accumulations are so credited and the amount standing in the name of each employees shall be available for inspection.

¹(Rule 3-AA. Maintenance of registers etc, by Employers.—

(1) Every employers of an establishment shall maintain and preserve for a period of ten years.—

- (a) a register of wages in Form 'A', except in case where the employer maintain muster roll-cum Wages register under the Payment of Wages Act, 1936 and the rules made there under, and
- (b) a consolidated register in Form 'B' in respect of unclaimed wages and fine, and
- (c) a register in Form 'C' showing the particulars of employees in whose respect the unpaid accumulations are held by him.

(2) The employer shall forward to the Welfare Commissioner a copy of the extract from the register maintained in Forms 'B' and 'C' pertaining to the respective quarter with fifteen days at the end of every quarter.)

²(Rule 3-B. Form of statement regarding contribution to be submitted by employer.—

Every employer shall submit to the Welfare Commissioner every year on or before 31st day of July and 31st day of January a statement of employers contribution and employees contribution for six months in respect of employees whose names stand on establishment register on preceding 30th June and 31st December respectively, in Form A-I.

Rule 3-C. Form of statement under Section 6-B (9).—

The Welfare Commissioner shall submit to the State Government every year not later than 31st August and 28th February respectively a statement under Sub-section (9) of Section 6-B showing the total amount of

¹ Rule 3-AA Inserted by Notification No. GH-L 141-GLW/1084/28471-M(1), dated 08.07.1992 (w.e.f. 20.08.1992).

² Rules 3-B and 3-C Inserted by Notification, dated 02.05.1974.

employees contribution for six months ending on 30th June and 31st December respectively in Form A-2)

Rule 4. Notice for payment of fines and unpaid accumulations by Welfare Commissioner.—

(1) The Welfare Commissioner may, after making such enquiries as he may deem fit, and after calling for a report from the Inspector, if necessary, serve a notice on any employer to pay any notice of fines realised from the employees or unpaid accumulations held by him which the employer has not paid in accordance with Rule 3. The employer shall comply with the notice within ¹(thirty) days of the receipt thereof.

²(2) The Welfare Commissioner shall serve a notice to the employer liable to pay the amount of the interest due, and if the employer fails to the receipt of the notice, the same shall be recovered in the manner provided in Section 17 of the Act.

(3) Where the Welfare Commissioner on being application made to him is satisfied that interest imposed is likely to cause undue financial hardship to the employer either on account of riot, war or other natural calamities, or that delay caused in the payment of unpaid accumulation or fines realised from employees contribution was due to the circumstances beyond the control of employer he may after recording reason in writing remit whole or part of the amount of the interest payable under Sub-section (2) of Section 6-C:

Provided that no such application shall be entertained by the Welfare Commissioner unless the employer has already paid the amount of interest due and the application for remission is made within sixty days from the date of such payment stating the reasons in full for the grant of such remission:

Provided further that where the amount of interest to be remitted exceeds the amount of Rs. 1,000/- the remission shall not be made without the prior sanction of the Gujarat Labour Welfare Board.)

Rule 5. Maintenance and Audit of accounts.—

The accounts of the Fund shall be prepared and maintained by the Accounts Officer of the Board in such manner as may be prescribed by the Board with the approval of the State Government and shall be audited by the examiner of Local Fund Accounts, Ahmedabad, once a year. The Welfare Commissioner shall be responsible for the disposal of the Audit note.

Rule 6. Budget of Board .—

(1) The budget estimates for each financial year shall be prepared and laid before the Board on or before the 1st day of December of the

¹ Substituted by Notification No. GH-L 141-GLW/1084/28471-M(1), dated 08.07.1992 (w.e.f. 20.08.1992).

² Rules 4(2) and 4 (3) Inserted by Notification No. GH-L 141-GLW/1084/28471-M(1), dated 08.07.1992 (w.e.f. 20.08.1992).

previous financial year and after it is approved by the Board, shall be forwarded to the State Government for approval on or before the 15th December. The State Government shall approve the budget before the 15th January after making such amendments and alteration as it considers necessary.

(2) The budget thus amended or altered and approved shall constitute the budget of the Board for the ensuing financial year and shall be issued under the seal of the Board and signed by the Officer or officers of the Board duly authorised in this behalf. An authenticated copy of the budget shall be forwarded to the State Government before the 28th February.

Rule 7. Additional Expenditure.—

If during the course of the financial year it becomes necessary to incur expenditure over and above the provisions made in the budget. The Board shall immediately submit to the State Government the details of the proposed expenditure and specify the manner in which it is proposed to meet the additional expenditure. The State Government may either approve the proposed expenditure after making such modification, as it considers necessary or reject it. A copy of the order passed by the State Government on every such proposal to incur additional expenditure shall be communicated to the Board and the Auditor. If any appointed by the State Government.

Rule 8. Application for grant from fund.—

Any employer, local authority or any other body, may make an application to the Welfare Commissioner for a grant under Section 7 (3) of the Act. Such application shall be placed by the Welfare Commissioner before the Board within a month of its receipt with the remarks and recommendations of the Board shall be forwarded to the State Government by the Welfare Commissioner for obtaining the approval of the State Government.

Rule 9. Mode of payment.—

All payments from the fund amounting to —

- (a) less than Rs. 50 may be made in cash.
- (b) Rs. 50 or more shall be made by cheque issued by the Welfare Commissioner; provided that the Board may in any particular case for special reasons authorise such payment also in cash.

Rule 10. Constitution of Board.—

(1) The Board shall consist of fourteen members including the Chairman, out of which four shall be the representatives of employers and employees. Four Independent members and two representatives of women.

(2) The Board shall elect a vice-Chairman to perform the duties of the chairman in his absence.

¹(Rule 11. Allowance of Members.—

The members shall hold their offices in an honorary capacity provided the each member shall be eligible to an honorarium of Rs. 50/ for attending each meeting of the Board and to draw travelling and daily allowance or conveyance allowance, as the case may be, for the journey performed by him in connection with the work of the Board at such rate and on the same terms and conditions as admissible to the pay scale of the post of the Deputy Secretary to the Government of Gujarat, fixed by the Government from time to time.)

Rule 12. Meetings of Board.—

(1) The Board shall meet at least once every quarter and as often as may be necessary.

(2) All members of the Board shall be given seven clear day's notice of a meeting specifying the date, time and place of the meeting and business to be transacted thereat:

Provided that no such notice shall be necessary where in the opinion of the Chairman business of an emergent nature has to be transacted.

Rule 13. Quorum.—

The number of members necessary to constitute a quorum at a meeting of the Board shall be five including the Chairman.

Rule 14. Chairman to Preside.—

Every meeting of the Board shall be presided over by the Chairman or if the Chairman is, for any reason, unable to attend it, by the Vice Chairman is, for any reason, unable to attend it, by the Vice-Chairman and if both the Chairman and Vice-chairman are, for any reason, unable to attend it, by such one of the members present as may be chosen by the meeting to be Chairman for the occasion.

Rule 15. Adjournment of meeting.—

If there is no quorum as laid down in Rule 13, the Chairman shall, after waiting for thirty minutes after the expiration of the appointed hour, adjourn the meetings to such hour on the same or some other future day as he may reasonably fix. A notice of such adjourned meeting shall, unless it is fixed on the same day be sent to every member of the Board and the business which would have been brought before the original meeting, had there been a quorum thereat, shall be brought before the adjourned meeting and may be disposed of at such meeting whether there be a quorum or not.

Rule 15-A. Transaction of the business of the Board by circulation.—

The Chairman may direct that any proposition may, instead of being brought up for discussion at a meeting of the Board, be circulated to the members for opinion. The proposition if circulated shall be replied by each member within seven days from the date of its receipt by him and shall be

¹ Substituted by Notification No. GH-L141-GLW/1084/28471-M(1), dated 08.07.1992 (w.e.f. 20.08.1992).

decided by a majority of votes of the members from whom the replies have been received in time, the Chairman having a second or casting vote in each case of equality of votes.

Rule 16. All questions to be decided by majority.—

All questions coming before the meetings of the Board shall be decided by a majority of the members present and voting at the meetings, the Chairman having a second or casting vote in all case of equality of votes.

Rule 17. Mode of exercising votes.—

Votes shall be taken by show of hands and the names of person voting in favour and against any proposition shall be recorded only if any member requests the Chairman to do so.

Rule 18. Minutes of meetings.—

The Board shall keep minutes of the proceedings of each meetings of the Board, and shall include therein the names of the members present. A copy of such minutes shall be submitted by the Board to the State Government as soon as they are confirmed by the Board.

Rule 18-A. Delegations of powers to the Welfare Commissioner.—

The Board may delegate its powers and functions to the Welfare Commissioner in relation to the following matters, subject to the conditions and limitations specified below, namely.—

(1) Under Section 7, subject to the provisions of any rule made in this behalf—

(a) to sanction expenditure within the budget grants approved by the State Government;

(b) to transfer funds among the following detailed heads of accounts namely,—

(i) Community and Social education centres;	(ii) Reading rooms at centres;
(iii) Libraries at centres;	(iv) Circulating Libraries;
(v) Community necessities;	(vi) Games and sports;
(vii) Excursions, tours and holidays homes;	(viii) Entertainment and other forms of recreation;
(ix) Home industries;	(x) Subsidiary occupations for women and unemployment persons;
(xi) Remunerative employment.	

(c) To write off any loss when its value is not more than Rs. 250

(2) Under Section 14

(a) to appoint the necessary clerical and executive staff to carry out and supervise the activities financed from the Fund ¹(on all the posts of the Board except the post of Welfare Commissioner):

¹ Substituted by Notification No. GH-L 141-GLW/1084/28471-M(1), dated 08.07.1992 (w.e.f. 20.08.1992).

(b) to exercise powers of administration and taking disciplinary action against such staff as stated below.—

(i) Power to transfer, sanction increment, fix pay, grant joining time depute on foreign service, sanction leave, relax qualifications.

(ii) Powers of discharging a person—

(a) on probation, during the period of such probation;

(b) appointed, otherwise then under contract to hold a temporary appointment, on the expiration of the period of that appointment or for any other reason;

(c) engaged under contract in accordance with the terms of his contract;

(d) appointed otherwise than under a contract to hold a permanent appointment, on the abolition of that post or for any other reasons;

(iii) Powers of imposing any of the following penalties.—

(a) censure;

(b) with-holding of increments or promotion, including stoppage at an efficiency bar;

(c) reduction to a lower post or time scale or to a lower stage in a time scale;

(d) recovery from pay of the whole or part of any loss caused to the Board by negligence or breach of orders;

(e) fine;

(f) suspension;

(g) removal from the service of the Board which does not disqualify from the future employment;

(h) dismissal from the service of the Board which ordinary disqualifies from future employment;

(i) any other punishment with the approval of the Board:

Provided that every member of such staff shall have a right to appeal to the Board against any order of reduction, dismissal or removal from service, fine or any other punishment, within a period of sixty days from the receipt of such order.

Rule 19 Additional powers of Inspector.—

Every Inspector shall, for carrying out the purposes of the Act, also have the powers to require any employer to produce any document for his inspection to supply him a true copy of any such documents and to give him a statement in writing.

Rule 19-A. Duties of Inspector.—

(1) Every Inspector shall visit at least once in every six months, all establishments to verify whether the statements required to be submitted by the employer under the rules have been submitted and if so whether the information submitted is complete and correct.

(2) Every Inspector shall send intimation to the Welfare Commissioner about every new establishments as soon as it is established in the area within his jurisdiction.

Rule 19-B. Conditions of service of the Welfare Commissioner and other staff.—

The provisions of the Bombay Civil Services Rules (except Chapter XI thereof) as amended from time to time by the Government of Gujarat ¹(as well as the Gujarat Civil Services (Conduct) Rules, 1971 as the Gujarat Civil Services (Discipline and Appeal) Rules) shall be applicable to the Welfare Commissioner and other staff appointed under the Act.

²(Provided that the terms and conditions of the services of the officers and staff on deputation to the Board shall be as fixed by the Government from time to time.)

Rule 20 Publication of annual report of Board.—

The Board shall within six months of the date of the closing of each financial year, submit to the State Government for approval an audited statement of receipt and expenditure together with an annual report giving its activities in the year. After the statement and report are approved by the State Government the Board shall, cause the same to be published in such manner as it may deem fit. Every such statement and report shall be laid before the State Legislature as soon as may be after they are published.

³(Rule 21. Maintenance of registers by certain employers.—x x x)

⁴(Rule 22. Penalty for breach of the rule .—

Any breach of the rules made under the Act shall be punishable with a fine of exceeding two thousand rupees and when the offence is a continuing one, with daily fine not exceeding one thousand rupees during the continuance of the offence).

¹ Inserted by Notification No. GH-L141-GLW/1084/28471-M(1), dated 08.07.1992 (w.e.f. 20.08.1992).

² Inserted by Notification No. GH-L141-GLW/1084/28471-M(1), dated 08.07.1992 (w.e.f. 20.08.1992).

³ Deleted by Notification No. SH-L141-GLW/1084/28471-M(1), dated 08.07.1992 (w.e.f. 20.08.1992). Prior to Amendment it was as followings:—

Rule 21. Maintenance of registers by certain employers.—

(1) Every Employer of an establishment to which the Payment of Wages Act, 1936 does not apply shall maintain—

(a) a register of wages in Form A; and

(b) consolidated register of unclaimed wages and fines in Form B

(2) Such Employer shall by 31st January every year forward to the Welfare Commissioner a copy of the extract from the register in Form B pertaining to the previous year.

⁴ Inserted by Notification No. GH-L141-GLW/1084/28471-M(1), dated 08.07.1992 (w.e.f. 20.08.1992).

FORM-A
(Rule 21)
REGISTER OF WAGES

Serial No.	Name of the employee	Ticket and badge No.	Occupation	Basic Wages	Overtime	Amount payable during the month		Bonus
						Dearness allowance and other		
1	2	3	4	5	6	7		8

Total

Amounts deducted during the month		Amount actually paid during the month				Balance due to the Employee			
Fines	Other deductions	Basic wages	Overtime	Dearness allowance and other allowances	Bonus	Basic wages	Overtime	Dearness allowance and other allowances	Bonus
9	10	11	12	13	14	15	16	17	18

Total

FORM-A-1

(See : Rule 3-B)

Statement of Employees' and employers' contribution on 30th June and 31st December, respectively

1.	Name of the establishment.
2.	Name of the employer.

3.	Class of establishment (i.e. whether a factory or a motor omnibus service a shop, commercial establishment, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment).	
4.	Address of the establishment.	
5.	Total number of employees whose names stand on the establishment register on 30 th June/31 st December.	
6.	(a) Employees' contribution payable at the rate of 25 paise per employee in terms of entry No. 5Rs.
	(b) Employers' contribution payable at the rate of 50 paise per employee in terms of entry No. 5Rs.
7.	(i) contribution already paid to the Welfare Commissioner.	
	(a) Employees Contribution	No. of Employees' Amount Rs.
	(b) Employer's contribution	
	(ii) Date of payment.	
	(iii) Mode of Payment.	
	(i.e. Cash/Money-order/Cheque/Demand Draft)	
8.	In case of non-payment or less payment of contribution the reasons thereof.	
Date :		Signature of the Employer.

✂

FORM-A-2

(See : Rule 3-C)

Statement by Welfare Commissioner, showing Employees' contribution for six months ending on 30th June and 31st December respectively in the Year

Class of Establishment	No. of establishments	Amount of Employers contribution received by the Welfare Commissioner
(1)	(2)	(3)
1.	Factories.	
2.	Motor Omnibus Services.	
3.	Shops.	
4.	Commercial establishments.	
5.	Residential Hotels.	
6.	Restaurants.	
7.	Eating house.	
8.	Theatres.	
9.	other places of public amusement or entertainment.	
10.	Any other establishments:—	
Total		
Date :	Signature of the Welfare Commissioner.	

✂

FORM-B

(See : Rule 21)

Register of fines realised and unpaid accumulation for the Year**DURING**

Quarter ending	Quarter ending	Quarter ending	Quarter ending
31 st March	30 th June	30 th September	31 st December

1. Total realizations under fines.
2. Total amount becoming unpaid accumulations of
 - (i) basic wage.
 - (ii) overtime.
 - (iii) Dearness Allowance and other allowances.

Total of (1) (2)

Note : See definition of "Unpaid accumulations" under Section 2(10) of the Bombay Labour Welfare Fund Act, 1953. For example in the column for the quarter ending June 1953 should be shown the payments which became due to the employees' during the quarter January, March, 1959 and which have since remained unpaid.

FORM-C

(See : Rule 22)

Register of particulars of employees' in whose respect the unpaid accumulations are held by the employer

Sr. No.	Name and permanent address of the employee	Department	Amount of unpaid accumulation	Remarks
(1)	(2)	(3)	(4)	(5)



APPENDIX

[The] Bombay Labour Welfare Fund (Gujarat Amendment) Act, 2005¹

(Gujarat Act No. 5 of 2005)

(31st December, 2004)

(First published after having received the assent of the Governor in the "Gujarat Government Gazette", on 25.02.2005).

An Act further to amend the Bombay Labour Welfare Fund Act, 1953.

It is hereby enacted in the Fifty-sixth Year of the Republic of India as follows:—

Section 1. Short title and commencement.—This Act may be called *The Bombay Labour Welfare Fund (Gujarat Amendment) Act, 2005*.

(2) It shall be deemed to have come into force on 31.12.2004.

²(STATEMENT OF OBJECTS AND REASONS

With the increased industrialisation in the State of Gujarat and in order to give benefit of the activities to the employees working in the various factories and establishments and their dependents, it is considered necessary to enlarge the coverage with effective implementation of the Bombay Labour Welfare Fund Act, 1953 and to provide more finance to the Gujarat Labour Welfare Board so as to enable the Board to fulfill the objects of the Act.

The following notes explain the important provisions of the Bill:—

Clause 2.—Under the existing definition of 'employee' as defined in Clause (2) of Section 2, a person in a supervisory capacity drawing wages exceeding rupees seven hundred and fifty per month is not covered. It is proposed to increase the said wage limit from rupees seven hundred fifty to rupees three thousand five hundred per month so as to cover more persons within the purview of the Act.

Clause 3.—Under the existing provision of Sub-section (5) of Section 6-A, the public notice in respect of unpaid accumulation is required to be published in two news papers at every six months for a period of three years. In order to reduce the expenditure on this account, it is proposed to publish such notice in two local news papers for a period of one year only;

(ii) under the existing provision of Sub-section (7) of Section 6-A, claim of unpaid amount is allowed to be paid within four years. In order to shorten the period, it is proposed to reduce the period from four years to two years for making claim in respect of unpaid accumulation.

¹ Published in the Gujarat Government Gazette, Extraordinary, Part IV No. 5., dated 25.02.2005 at page 5.

² Published in the Gujarat Government Gazette, Extraordinary, Part V No. 4., dated 09.02.2005, at pages 4-3.

Clause 4.—Under the existing provision of Sub-section (2) of Section 6-B,—

- (i) the contribution is payable by the employee only if his name stands on the register of the establishment concerned on 30th June or 31st December. It is proposed to delete the date of the month and to provide that the employees whose names appear on the register or muster roll of the establishment during the month of June or December;
- (ii) The amount of contribution payable by the employees is fifty paise and by employers is rupee one for every six month. It is proposed to increase such amount from fifty paise to rupees three and from rupee one to six rupees.)

As the Gujarat Legislature Assembly was not in session, the Bombay Labour Welfare Fund (Gujarat Amendment) Ordinance, 2004 was promulgated to amend the said Act to achieve the aforesaid object.

This Bill seeks to replace the said Ordinance by an Act of the State Legislature).

Section 2. Amendment of Section 2 of Bom. XL of 1953.—In the Bombay Labour Welfare Fund Act, 1953 (Bom XL of 1953) (hereinafter referred to as "the principal Act"), in Section 2,—

(1) in Clause(2), in Sub-clause (b), for the words "seven hundred and fifty rupees", the words "three thousand and five hundred rupees" shall be substituted;

(2) in Clause (10), for the words "three years" the words "one year" shall be substituted.

Section 3. Amendment of Section 6-A of Bom. XL of 1953.—In the principal Act, in Section 6-A,—

(1) in Sub-section(5),

(i) for the words "three years" the words "one year" shall be substituted;

(ii) the words "each year" shall be deleted;

(2) in Sub-section (7) for the words "four years," the words "two years" shall be substituted.

Section 4. Amendment of Section 6-B of Bom. XL of 1953.—In the principal Act, in Section 6-B, for Sub-section (2) and provisions thereunder, the following shall be substituted, namely:—

"(2) The amount of employee's contribution shall be payable every six months in respect of every employee whose name stands on the register of the establishment concerned in the month of June, or as the case may be, in the month of December, at the rate of three rupees for each such employee and the amount of employer's contribution shall be payable at every six months at the rate of six rupees for each such employee:

Provided that the State Government may, by notification in the Official Gazette, increase the said rate of employee's contribution to such

amount not exceeding six rupees if it considers necessary so to do to enable the Board to fulfill the objects of this Act;

Provided further that where the rate of employee's contribution is so increased by the State Government, the rate of employer's contribution shall be twice the rate of employee's contribution as so increased."

Section 5. Repeal and Savings.—The Bombay Labour Welfare fund (Gujarat Amendment) Ordinance, 2004 (Guj. Ord. 3 of 2004) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the Principal Act, as amended by this Act.

