



**NATURE OF STANDING ORDERS UNDER INDUSTRIAL EMPLOYMENT
(STANDING ORDERS) ACT, 1946***

I. INTRODUCTION

THE CONCEPT of "Standing Orders" in the labour-management relations of India is of recent growth.¹ Before 1946, the conditions of employment were chaotic. The workmen were hired on an individual basis, and the terms of employment were mostly oral, and at that were too vague.² The bargaining power of labour was weak due to age-old poverty, mass illiteracy, and ignorance.³ The unions were in a state of arrested growth due to many factors--social, economic and political. The Industrial Employment (Standing Orders) Act, 1946,⁴ was adopted as a "very simple measure"⁵ to remedy the situation. The Act seeks to bring

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1. Section 2(g) of the Industrial Employment (Standing Orders) Act, 1946, defines standing orders as follows :

"standing orders" means rules relating to matters set out in the Schedule.

The schedule to the Act mentions 11 items which relate to the following matters—

1. Classification of workmen, *e.g.*, whether permanent, temporary, temporary apprentices, probationers or *badlies*.
2. Manner of intimating to workmen periods and hours of work, holidays, pay-days and wage rates.
3. Shift working.
4. Attendance and late coming.
5. Conditions of, procedure in applying for, and the authority which may grant, leave and holidays.
6. Requirement to enter premises by certain gates, and liability to search.
7. Closing and reopening of sections of the industrial establishment, and temporary stoppages of work and rights and liabilities of the employer and workmen arising therefrom.
8. Termination of employment, and the notice thereof to be given by employer and workmen.
9. Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.
10. Means for redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.
11. Any other matter which may be prescribed.

2. *Bagalkot Cement Co. Ltd. v. Pathan (R.K.)* [1962] 1 L.L.J. 203, 206 (S.C.); *Rohtak and Hissar District Electric Supply Co. v. State of U.P.* [1966] 2 L.L.J. (S.C.); *Salem-Erode Elec. Distribution Company v. Their Employees' Union* [1966] 1 L.L.J. 443, 446 (S.C.); See also Labour Investigation Committee Report, 1946, chapter V, at 113.

3. Legislative Assembly Debates, 1946, vol. V No. 9, at 3914, 3924; Radhakamal Mukherjee, ed., *The Indian Working Class* (1945); See also *Report of The Royal Commission on Labour in India*, ch. XVII (1931).

4. Hereinafter referred to as "the Act."

5. Legislative Assembly Debates, 1946, vol. V, no. 9, p. 3914.



about uniformity in terms and conditions of employment in industrial establishment and thereby to minimize industrial conflicts.⁶

The Act makes it compulsory for employers engaging hundred or more workmen "to define with sufficient precision the conditions of employment" and to make those conditions known to workmen.⁷ The employer has to present draft standing orders to the certifying officer for certification. The draft should cover the matters enumerated in the schedule⁸ and should conform, so far as is practicable, to the model standing orders prescribed by the government.⁹ The certifying officer must "adjudicate upon the reasonableness and fairness" in certifying the draft standing orders.¹⁰ Before the draft is finally certified, the parties are heard and the officer may, if necessary, bring "any modification or addition to the draft submitted by the employer."¹¹ Any party aggrieved by the order of the certifying officer may appeal to the appellate authority, whose decision "shall be final."¹²

Section 10 of the Act is an enabling provision. Section 10(1) provides that employer and workmen may, on agreement, bring about modification in certified standing orders after the lapse of six months. Section 10(2), subject to section 10(1), enables individual workman or employee to have standing orders modified on an application to the certifying officer.

Further, the Act makes it a penal offence if an employer "fails to submit the draft standing orders as required by section 3 or . . . modifies his standing orders otherwise than in accordance with section 10."¹³ Section 13A of the Act provides a remedy to the parties as to "the application or interpretation of a standing order certified" under the Act. Sections 14A and 15 refer to a delegation of powers by the appropriate governments and other subordinate authorities and to framing of rules, respectively.

This paper will enquire into the nature of standing orders when certified under the Act. In other words, we will deal with the question whether certified standing orders are statutory or contractual in nature, or whether they can be assimilated under any other legal category.

6. *Rohtak and Hissar District Electric Supply Company Ltd. v. State of Uttar Pradesh* [1966] 2 L.L.J. 330, 334, 336, (S.C.); Legislative Assembly Debates, 1946, vol. V, no. 9, p. 3914.

7. The Preamble of the Act.

8. *Supra* note 1.

9. The Act, section 3; see also schedule I to the Industrial Employment (Standing Orders) Central Rules, 1946.

10. The Act, section 4.

11. The Act, section 5.

12. The Act, section 6.

13. The Act, section 13.



II. STANDING ORDERS : " STATUTORY ? "

The decision of the Supreme Court in *Bagalkot Cement Co. Ltd. v. Pathan (R.K.)*¹⁴ is our starting point. The company submitted draft standing orders, as required by section 3 of the Act, to the certifying officer. Paragraph 11 of the draft standing orders related to leave.¹⁵ The certifying officer made a minor change in clause (i) of paragraph 11 and added one new clause. The officer rejected the company's contention that it was outside his jurisdiction to deal with the topics covered by the new clause. On appeal, the Chief Labour Commissioner substantially agreed with the decision of the officer. The company went in appeal to the Supreme Court under article 136 of the Constitution, urging that the officer had gone beyond the relevant schedule of the Act in amending and adding to the draft standing orders. Mr. Justice Gajendragadkar, before dealing with the main issue, (which does not concern us here) considered the scheme and object of the Act generally, and observed :

[T]he Act has made relevant provisions for making standing orders, which after they are certified, constitute the *statutory terms of employment* between industrial establishments in question and their employees. That is the principal object of the Act.¹⁶

While construing the Act's schedule, the learned Justice said :

The object of the Act, as we have already seen, was to require the employers to make the conditions of employment precise and definite and the Act ultimately intended to prescribe these conditions in the form of standing orders so that what used to be governed by a contract heretofore would now be governed by the *statutory standing orders*....¹⁷

The High Court of Gujarat has relied on this observation to conclude that standing orders finally certified constitute "statutory rights and obligations and not contractual rights and obligations."¹⁸

The view that the certified standing orders are statutory in nature may be argued from another angle also. On the strength of sections 3,

14. [1962] 1 L.L.J. 203 (S.C.).

15. Matter relating to leave falls within the purview of clause (5) of the schedule to the Act. See *supra* note 1.

16. [1962] 1 L.L.J. 203, 206 (S.C.). (emphasis added).

17. *Id.* at 208 (emphasis added).

18. *Tata Chemicals v. Kailash C. Adhvaryu* [1965] 1 L.L.J. 54, 65 (H. C. Guj.). In this case the respondent's services were terminated in disregard of the provisions of the standing orders applicable to the concern. The sole point before the High Court was whether the civil court was competent under section 21(b) of the Specific Relief Act to order reinstatement to the dismissed employee. The management urged that the civil court could not grant that relief, as that would amount to specific enforcement of an agreement for personal service. But the learned judge, after distinguishing between a statutory obligation and a contractual one, came to the conclusion on principle as well on authority that standing orders finally certified under the Act create "statutory rights and obligations." Practically, this places the certified standing orders on the pedestal of a statute.



4 and 5 of the Act, it may be urged that the certifying officer in certifying the draft standing orders presented by the employer is engaged in a sort of rule-making process. Thus the final product is in substance a species of delegated legislation. The opportunities for a hearing may very well be thought of as constituting the "prior consultation of the affected interests" needed to validate such delegated legislation.¹⁹

The view that certified standing orders are statutory is open, however, to various objections :

First, the assumption that they have the effect of a statute lands us in a great constitutional difficulty. Statutory rights and obligations attract vigorously the constitutional provisions on fundamental rights.²⁰ Parties would be free to question their validity before the High Courts and the Supreme Court, under articles 226 and 32 of the Constitution respectively.²¹ This would involve delay and expense, which labour legislation as a whole strives to avoid. This point was not argued before the Court, and therefore not also taken into account by, Mr. Justice Bhagwati (speaking for the Court) in *Tata Chemicals Ltd. v. Kailash C. Adharyu*.²² It is easy to argue, on the basis of the equality clause, that different statutes (i.e., certified standing orders) in like industries and applicable to employees similarly circumstanced infringe article 14 of the Constitution.

Second, to treat certified standing orders as statutory has a baneful effect upon industrial adjudication.²³ That certified standing orders should create statutory rights and obligations would risk crippling the inherent powers of tribunals to create new rights and obligations and to vary the terms of an agreement or contract. Tribunals can, by no stretch of the imagination be supposed to have power to override provisions having a statutory effect. A glance at the second schedule of the Industrial Disputes Act, 1947, shows that the appropriate government is competent to refer an industrial dispute relating to the first two items of the schedule, that is to say :

(1) The propriety or legality of an order passed by an employer under standing orders; and

19. The Indian Law Institute, *Delegated Legislation in India* 39 (1965).

20. Part III of the Constitution of India.

21. While article 32 provides access to the Supreme Court for the enforcement of fundamental rights, article 226 relates to "the enforcement of any of the rights conferred by Part III and for any other purpose." (Emphasis added).

22. See *supra* note 18.

23. In *W. I. Automobile Assn. v. The Industrial Tribunal, Bombay*, A.I.R. 1949 F.C. 111. Mr. Justice Mahajan observed at 120 :

Adjudication does not, in our opinion, mean adjudication according to strict law of master and servant. The award of the tribunal may contain provisions for settlement of a dispute which no Court could order if it was bound by ordinary law, but the tribunal is not fettered in any way by these limitations.

See also *Rohitas Industries Ltd. v. Brij Nandan Pandey & Others* [1956] 2 L.L.J. 44 (S.C.); *New Maneckchowk Spg. & Wvg. Co. Ltd. v. Textile Labour Assn.* [1961] 1 L.L.J. 521 (S.C.).



(2) The application and interpretation of standing orders.²⁴ But if certified standing orders have the effect of a statute, a reference of these items to a tribunal would be nugatory. The tribunal would be powerless to make any change. This would greatly hamper the cause of industrial justice. It would divest the industrial instruments of justice of their inherent capacity to modify contracts or agreements, adumbrated in the epoch-making case of *Western India Automobile Association v. The Industrial Tribunal, Bombay*,²⁵ and followed invariably since then by courts in India. Thus, the statutory theory fits neither the general industrial milieu of India, nor the particular framework of the functions of tribunals, which are intended to play a significant role in the welfare state by responding favourably to the "felt needs of time."

Third, section 10(1) of the Act itself militates against the proposition that certified standing orders are statutory in character. It says explicitly that even after certification standing orders are liable to change "on agreement between the employer and the workmen." But provisions having a true statutory effect are not amenable to modification by any agreement of the parties. Such a clause has no counterpart in the province of statutory prescriptions. The section is strongly persuasive that certified standing orders are not statutory in nature.²⁶ In short, it is hard to conceive of standing orders having the effect of a statute and at the same time being susceptible to modification by agreement between the parties.

Fourth, the proposition that certified standing orders amount to delegated legislation is not correct. Delegated legislation is the exercise of rule-making power conferred on authorities by the legislature under a statute.²⁷ Even a bare perusal of the preamble and sections 3, 4 and 5 of the Act shows that there is no conferring of power on any authority to legislate. Rather, there is an obligation imposed upon an individual employer to make rules relating to matters in the schedule. Evidently, the Act imposes restrictions on the bargaining power of

24. Recently the Supreme Court in *Salem-Erode Elec. Distribution Company v. Their Employees Union* [1966] 1 L.L.J. 443, 448, has expressed doubt as to the competency of government to refer the industrial disputes regarding these two items. But the question was left open.

25. See *supra* note 23.

26. Recently, the their Lordships of Mysore High Court in *Surya Narayan v. Hindustan Machine Tools Ltd.* [1967] 1 L.L.J. 49 rejected the view that "standing orders are either legal provisions or that they have any force of law."

27. The Indian Law Institute, *Delegated Legislation in India*, chapter I (1965). The following observations at page 25 are apposite :

Normally, rule-making power is exercised by such agencies as the Central Government, the State Governments, central subordinate officials and authorities semi-governmental statutory bodies, and local authorities and the High Courts.



employers curtailing the freedom of contract so that employers must present draft standing orders in conformity with the statute.

The function of the certifying officer, furthermore, is adjudicatory rather than legislative in the proper sense of the term. The authority hears "objections" and gives "an opportunity of being heard"²⁸ to the parties concerned. Section 4(b) of the Act specifically lays down that :

it shall be the function²⁹ of the Certifying Officer... to adjudicate upon the fairness or reasonableness of the provisions of any standing orders.^{29a}

Thus the certifying officer is invested with limited judicial power.³⁰ These considerations show that the function is quasi-judicial.³¹ Hence to regard the whole process before the certifying officer consisting in a "prior consultation with affected interests," with delegated legislation, as is usual, as to ignore reality.

III. STANDING ORDERS : IN NATURE OF "AN AWARD?"

It is just possible to argue that standing orders, when finally certified, partake of the character of an "award"³² as the decision-maker adjudicates upon "the fairness or reasonableness"³³ of standing orders laying down the conditions of employment. But standing orders can obviously not be an award within the definition of "award" under the Industrial Disputes Act, 1947.³⁴ *First*, the certifying officer is not one of the decision-makers (viz. a Labour Court, Industrial Tribunal, or a National Industrial Tribunal), mentioned in the definition of an award contained in the Industrial Disputes Act. *Second*, though the certifying officer acts in a judicial manner when certifying a draft standing order, he does not, as required by the Industrial Disputes Act's definition of an award, adjudicate "any industrial dispute or any question relating thereto" referred by the government to industrial authorities under that Act.³⁵ The employer is required to define precisely the conditions of employment, and to present his draft to the certifying officer for action. There is in this no reference of an industrial dispute referred by an appropriate government. *Third*, if standing orders were viewed as an award, certain provisions of the

28. The Act, section 5.

29. Before the 1956 Amendment the expression was "it shall not be the function."

29a. Emphasis added.

30. *Bharat Bank Ltd., Delhi v. Employees of Bharat Bank Ltd.* [1950] 2 L.L.J. 921 (S.C.); *Jaswant Sugar Mills v. Lakshmi Chand* [1963] 1 L.L.J. 524 (S.C.); *Engineering Mazdoor Sabha v. Hind Cycles* [1962] 2 L.L.J. 760 (S.C.); *Associated Cement Companies Ltd. v. Sharma (P. N.)* [1965] 1 L.L.J. 433 (S.C.).

31. *Surya Narayan v. Hindustan Machine Tools Ltd.* [1967] 1 L.L.J. 49, 59 (H. C. Mys.).

32. Section 2(b) of the Industrial Disputes Act, 1947, defines award as follows : "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under section 10A.

33. The Act, section 4.

34. *Supra* note 32.

35. The Industrial Disputes Act, 1947, sections 7, 7-A, 7-B and 10.



Industrial Disputes Act would come into play.³⁶ In particular, its limitations on strikes and lock-outs would become applicable.³⁷ *Fourth*, the statutory penalties under the Act apply to the employer alone.³⁸ Section 13(2)³⁹ makes him liable for any contravention of the standing orders. This contrasts with the principle that an award is binding as much on one party as on the other.⁴⁰

As is evident from the foregoing discussion, certified standing orders are neither statutory in effect nor can they fall within the concept of an award. Further, they cannot be confined within the accepted notions of contract, as they transcend the limits of individual contracts. The question remains whether standing orders effectuated in accordance with the statutory provisions may be a special kind of contract.

IV. STANDING ORDERS : "A SPECIAL KIND OF CONTRACT?"

It is worthwhile to note two underlying features of the Act. The government, being welfare-oriented, is deeply interested in ensuring that the parties bargain with free will as far as possible, and that one party does not take undue advantage of the weak position of the other. Further, the interest of the community should also be safeguarded to the extent it affects the general social condition in the particular industrial area. We submit that the government's participation in the certification process does not alter the contractual nature of the standing orders which can be regarded as "a sort of register"⁴¹ containing the terms of employment agreed upon.

36. The Industrial Disputes Act, 1947, sections 17, 17A, 18, 19, 23, 24 and 36A.

37. Section 23 of the Industrial Disputes Act, 1947, relates to general prohibition of strikes and lock-outs. It says :

No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out—

(a)

(b)

(c) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

38. The Act, section 13.

39. Section 13(2) of the Act reads as follows :

An employer who does any act in contravention of the standing orders finally certified under this Act for his industrial establishment shall be punishable with fine which may extend to one hundred rupees, and in the case of a continuing offence with a further fine which may extend to twenty-five rupees for every day after the first during which the offence continues.

40. The Industrial Disputes Act, 1947, section 29.

41. Legislative Assembly Debates, Friday, 12th April, 1946, vol. V. No. 9. Dr. Ambedkar, who moved the Industrial Employment (Standing Orders) Bill observed at 3910 :

The object of the Bill is to have the terms and conditions of employment reduced to writing, that the text of the terms and conditions should be certified by a competent officer appointed for that purpose, and that it should form a sort of register of what the terms and conditions of employment are in any particular employment.



It is necessary to consider the intention of the legislature in order to appreciate the nature of the standing orders. When moving the Industrial Employment (Standing Orders) Bill, 1946, in the Legislative Assembly, Dr. Ambedkar said :

[T]he Bill is merely enacting what may be called a rule of evidence, so that if this Bill passes, if there is any dispute as to what the terms and conditions were with regard to any particular establishment as between the employer and the workmen, the evidence that the law will admit will be the documentary evidence, a certified copy furnished to the employer by the certifying officer, and that the oral evidence will not be permitted.⁴²

He explained the significance of certification as follows :

I believe the certification is intended to afford proof as to *what the agreement between the parties is*. The question of legality is not affected even by the order being certified as having been agreed to between the two parties.⁴³

Mr. Diwan Chaman Lal dwelt on the object of the standing orders :

The object of the standing orders is to help the workers in any legitimate *action of theirs in coming to an agreement*.⁴⁴

Moreover, the intention of the legislature, as late as 1964, was clear that standing orders (whether certified or not) are contractual in nature and effect. An amendment of that year⁴⁵ added to section 33⁴⁶ of the Industrial Disputes Act, 1947, the following words relating to management's prerogatives in certain circumstances specified,

or where there are no such standing orders, in accordance with the terms of contract, whether express or implied between him and the workman,...

This showed that the standing orders were designed to express the underlying contract (express or implied). The statutory direction to embody the agreements in a certain form does not alter the real character. The modes and attributes are entirely different things. The substance and the form are distinguishable. The substance is the quality of being binding in accordance, more or less, with the free will of the parties. The state desires to encourage such contracts to promote labour welfare. For this purpose, the statute lays down certain forms which have to be followed. Hence the standing orders, as formally brought into effect under the Act, do not lose their inherent contractual quality.

Judicial observations indicating that standing orders are statutory as well as contractual can best be understood and justified by recalling

42. Legislative Assembly Debates, 1946, vol. V. No. 9, at 3914.

43. *Id.* at 3918. (Emphasis added).

44. *Id.* at 3919. (Emphasis added).

45. Industrial Disputes (Amendment) Act 36 of 1964, section 18.

46. Section 33 regulates the management's prerogatives during the pendency of proceedings before a conciliation officer or a Board or Labour Court or Tribunal or National Tribunal.



the concern of a welfare government for its workmen. In the process of collective bargaining the will of the parties is not everything. The government must see that the contracts are not too one-sided or too unjust.

This was acknowledged by, Mr. Justice Gajendragadkar in *Buckingham & Carnatic Co. v. Venkatayya*:⁴⁷

The certified standing orders represent the relevant terms and conditions of service in a statutory form and they are binding on the parties *as least as much*, if not more, as *private contracts embodying similar terms and conditions of service*.⁴⁸

The High Courts of Madras⁴⁹ and Assam⁵⁰ have also made similar observations. Thus it is clear that though the certified standing orders have the statutory flavour, the Act “is directed to getting the rights of an employee under a contract defined.”⁵¹ The Supreme Court through Mr. Justice Gajendragadkar recognized in *Guest, Keen, Williams Ltd. v. Sterling & Ors.*⁵² that

The standing orders certified under the Act no doubt become parts of the terms of employment by operation of S. 7; but if an industrial dispute arises in respect of such orders and it is referred to the tribunal by the appropriate Government, the tribunal has jurisdiction to deal with it on the merits. This position is not and cannot be, disputed.⁵³

This shows conclusively that standing orders are basically contractual in nature and as such are subject—as a statute could hardly be—to modification by a tribunal. Section 13A⁵⁴ of the Act read with the second schedule of the Industrial Disputes Act, 1947, leaves no doubt, furthermore, that the appropriate government under that Act can refer a matter relating to items number one or two of the schedule, viz. the propriety or legality of an order passed by an employer under the standing orders, and the application and interpretation of standing

47. [1963] 2 L.L.J. 638.

48. *Id.* at 642. (Emphasis added).

49. In *Mettur Industries v. Varma & Others*, [1958] 2 L.L.J. 326, 330. Mr. Justice Balakrishna Ayyar observed :

Reading the Act as a whole it is clear that *the standing orders form part of the contract between the management and everyone of its employees*. (Emphasis added).

50. In *Akhil Ranjan Das Gupta v. Assam Tribune*, [1965] 2 L.L.J. 614, 618, Mr. Chief Justice Mehrotra observed :

The purpose of the standing orders is to clarify the conditions of service and *they are in the nature of the contract on which openly the employee enters into the service, ...* (Emphasis added).

51. *C. P. Transport Services, Ltd. v. R. G. Patwardhan* [1957] 1 L.L.J. 27, 31 (S.C.).

52. [1959] 2 L.L.J. 405.

53. *Id.* at 411.

54. The section was enacted by Act 36 of 1956. It enables any employer or workman to refer the question of the “application or interpretation of a standing order certified under this Act” to the Labour Court. The jurisdiction of that court is limited to such interpretation or application. The government would probably be free to refer such a matter to a tribunal.



orders; and on reference the decision-maker "has jurisdiction to deal with it on the merits."⁵⁵

The view that standing orders are basically agreements chimes in well with the present emphasis on the process of collective bargaining.⁵⁶ The recent legislative⁵⁷ and policy⁵⁸ trends in favour of agreement and voluntary arbitration will be promoted by recognition of standing orders as essentially contractual.

Thus, the nature of certified standing orders is amorphous. The best supported and most satisfying view, however, is that they are contractual in nature, but promulgated in accordance with procedure laid down by the Act. To put it simply, they represent the will of the parties statutorily regulated.

*Yogendra Singh**

55. *Supra* note 53.

56. See Five Year Plans prepared by the Planning Commission, Government of India: *Second Five Year Plan*, chapter XXVII, at 574-77 (1956); *Third Five Year Plan*, chapter XV, at 253-54 (1961).

57. Section 10-A of the Industrial Disputes Act, 1947.

58. See *Third Five Year Plan*, chapter XV. at 250-52, discussing Code of Discipline in Industry, (1961).

*B.A. LL.M., Research Scholar, Faculty of Law, Banaras Hindu University, Varanasi.