

Study on Closed and Re-opened Tea Gardens In North Bengal

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Executive Summary

The tea industry in Doars went through a crisis during the period 2002 to 2004. A number of plantations were closed at that time. Reports of deaths due to starvation were also common. In January 2004, a report on the situation there was filed in the Supreme Court as part of Writ Petition 196/2001 (a case on the Right to Food and Work). This led to the Government taking specific measures to provide food and work to the workers in the closed plantations. In addition, special efforts were also made by the administration to find new employers or to persuade old employers to re-open plantations.

Repeated visits were made to the closed tea plantations on behalf of the Supreme Court to monitor whether the Government was actually implementing the schemes and programmes for the survival of the workers that it had promised to implement in the plantations. At the same time the IUF's All India Tea Workers Co-ordination Committee met in December 2004. It became obvious from the monitoring visits and the Co-ordination Committee's meeting that though a number of plantations were being reopened, not all was well in these plantations. Workers' conditions seemed far from satisfactory. Unions in the All India Tea Workers Co-ordination Committee also raised the issue of huge Provident Fund dues that were lying with the employers of the closed plantations. IUF, with a mandate from the members of the All India Tea Workers Co-ordination Committee, therefore decided to do a study on the closed and re-opened plantations.

The study covered 22 plantations in Jalpaiguri district that had been reported as being closed by the District Magistrate in October 2003. The areas on which the study focused were size of the plantations, and the work force; history of the plantation and process of closure and re-opening; agreements and negotiations for re-opening; role of the trade unions; functioning of joint management committees and operating and management committees in closed gardens; Provident Fund and other liabilities; and conditions of workers at present, especially with regard to the Plantation Labour Act and Supreme Court orders.

Information collection was done mainly by contacting union leaders in the plantations and through informal discussions with some of the workers. Problems in data collection occurred because of fear amongst workers, staff members and unions about giving us information in recently re-opened gardens. Also, information on some aspects was not available with the unions.

The unions that participated very actively and helped in the study were CBMU, NUPW DCBWU and WBTGEA. We are grateful to them for the help provided.

Major Findings

Re-opening, re-closure

68% or 15 of the closed gardens had been re-opened and were functioning in September 2005. 2 were being managed by OMCs (organisational and management committees), while one was under liquidation. 4 were still closed.

A general fear amongst workers and unions was that the gardens would start closing down again once the plucking season was over and the season to give the Puja (festival) bonus arrived in October. Re-opening meant that Government food and work programmes were put on hold. Re-closure would therefore mean a great deal of problems for the workers. This proved to be true in the case of Raipur TE, where after re-closure 14 persons died, 2 clearly of starvation.

At the time of re-opening, tripartite discussions were held. The unions did not allow for retrenchment in any of the gardens. However, in none of the gardens, was there any discussion on recovery of dues to the workers. *Badli* or replacement of retired or dead workers by family members was not allowed most gardens. Of the 7 gardens for which information on re-opening agreements on wages is available, 6 agreed to a cut in daily wages and rations.

Workers' Dues

Each of the gardens reported that liabilities to workers were huge in quantity. Thus in 18 gardens we found workers were owed Rs. 144,842,831.00 as Provident Fund (both employers and employees share), Rs. 46,206,762.91 as gratuity and Rs.175, 194,059.62 as salary, wages and other benefits .The total liabilities to workers was Rs.366,243,653.53, which amounts to Rs.21,340 per worker or about 17 months of wages .

Conditions in re-opened gardens

In re-opened gardens workers in at least 6 gardens were not receiving the industry wise negotiated wage of Rs.45.90 per day. Only 11 of the 15 reopened gardens were also getting full rations. None of the plantations had problems with hours of work, as all unions said the workers worked for 48 hours in a week and were given a weekly day off. They were also given rest every 5 hours.

In many other ways however, the Plantation Labour Act was not being followed. Workers' housing was in a totally dilapidated condition. House repair and compensation for house collapse were practically non-available in 12 of the 13 gardens for which information is available. Amongst these 13 gardens, in 6 of the plantations, medical facilities were said to be non-existent or almost non-existent. In 6 other plantations, the workers felt medical facilities were insufficient. Only one out of 13 re-opened plantations had a permanent crèche. Except for Kohinoor and Majherdabri, none of the other re-opened plantations receive fringe benefits. Latrines and Urinals have not been provided in the labour lines and factory in any of the gardens.

In none of the 13 re-opened plantations for which information is available was electricity provided in the labour lines. Of these 13 plantations, in 11 re-opened plantations no transport facilities are available for secondary and high school children to go to school, making it impossible or extremely expensive for these children to go to school.

Drinking water is an especially severe problem. Only in two of these plantations, Kohinoor and Rahimabad, was water available in sufficient supply. In Rahimabad, however, it was not the management but the Panchayat that was taking responsibility for the water supply. In all the other 11 plantations, workers had severe drinking water problems.

No measures were in place in any of the plantations for occupational health and safety.

Conditions in Closed and Abandoned Gardens

Two of the gardens have been abandoned and are being managed by OMCs or management committees that have been formed by the unions. One is under liquidation, while four were closed.

In the OMC managed gardens, daily wages are Rs.40 per day. Some workers complained that they do not get these wages because they are not politically affiliated to the ruling party union.

Due to their proximity with the State Government, the OMCs have managed to get certain other facilities for their workers from the State Government like AAY ration cards for subsidised rations and Rs.500 per month as family assistance under the FAWLOI scheme.

In the garden under liquidation, conditions were better than most of the other closed and re-opened gardens.

In the closed gardens, workers were receiving benefits from the Government but in an irregular manner. Food grains under the AAY were being supplied more or less regularly. Reports of large numbers being uncovered (222 in two gardens) by FAWLOI (under which each worker receives Rs.500 per month for his/her family's subsistence) were received. There was also a backlog of seven months or Rs.3500 for those who were to receive FAWLOI. Employment works were very minimal. Water was a very severe problem. Workers were however very keen that their gardens should re-open and saw this as the only viable long term solution.

Likely Non Viability of Plantations

Workers, many trade union leaders and even those in management felt that many of the re-opened plantations were tethering on the brink of closure again. The age of the plantations seemed to confirm this. Of the 20 gardens for which data is available, 8 or 40% are more than 100 years old. The “youngest “ gardens are Chinchula, Raimatang and Kalchini, all of which are 72 years old.

Other pointers towards non-viability were that only 5 gardens were using 70% or more of the land available to them for tea cultivation. The plantations generally had very old bushes that were not at their peak as far as production goes. It was thus only in the case of 3 plantations that the average age of bushes was less than 50 years. Investment in machinery and factories and replantation had been quite minimal or even zero in the past few decades in these gardens.

The gardens have heavy dues outside. The average dues were in the vicinity of Rs.75 lakhs for each garden. Dues to labour (an average of Rs.183.1 lakhs) were especially crippling. As data was largely unavailable with the unions on this point, it is likely that if all the figures had been available, the total amount of liabilities would have been even more. Frequent change in ownership of these gardens was another pointer towards the probable non-viability of these gardens.

Employment of excess labour and therefore rising labour costs are the most conveniently blamed factors by owners for non viability. In this case, we found that labour per hectare for the Doars as per the Tea Statistics 2000-01 is 2.35. The average labour land ratio for these 19 gardens is 2.27 per hectare.

Role of Unions

Almost all the gardens had a multiplicity of unions. Three unions were the largest - CBMU, NUPW and DCBWU. Two CBMU and DCBWU of these are affiliated to parties that are in power in the State Government, while NUPW one is affiliated to the INTUC, the trade union centre the political party that is currently is ruling at Delhi.

The unions have played a strong role on stopping retrenchment during re-opening . Other than this, unions seem to have been very much on the defensive when re-opening negotiations took place. Thus, the issue of workers’ dues was not addressed.

There were some other ways in which the role of the union leaders was not very democratic. Workers had very little knowledge about opening agreements. Women workers formed 52% of the work force for the 10 gardens for which we could get a break up. In the union leadership and the OMCs however, their presence is negligible. Workers also alleged lack of transparency in the accounts of the OMCs.

There was dissatisfaction amongst many of the workers about the role of the leadership during closure. One common complaint was that the unions had made no efforts to get relief to the workers during closure. They also took very little role in seeing that the Supreme Court orders to provide food and work to the workers were obeyed

Conclusions

In spite of the spate of re-openings, the 22 gardens seem to still be crisis ridden. Many may be on the verge of closing down once again. Huge amounts of money are owed to the workers. This is a criminal offence, but little action has been taken on this by the Government and union leaders against rogue employers. At the same time there has been little long term planning by any of the stakeholders to ensure that these gardens become viable in the long run.

Owners in the industry in general are taking advantage of the closed gardens and the defensiveness of the workers and the unions to gradually cut down on the workers’ benefits. Many benefits under the PLA are gradually being eroded. Recently, for example, after a 15 days-long strike, workers who started off by demanding a rise of almost Rs.30 had to be

satisfied with an increase of only Rs.2.50. Productivity linked wages are also being introduced slowly after this strike. The move seems to be towards the casualisation and informalisation of the work force and industry. The proliferation of small tea growers and bought leaf factories are only helping this process.

The need of the hour in the tea industry is for deep thinking by the unions about long term strategies. A strong movement by the unions to pressurise the Government and the owners to take responsibility for the development of the industry, and to behave in a responsible manner towards the workers is also needed.

A re-vitalisation of the trade union movement in the tea gardens is the need of the hour. The mood of the workers is that of great cynicism about the union leaders and their role. At the same time, there is a constant threat of violence in the air, which is preventing workers from challenging the present union structures. Women, who have been traditionally left out of union leadership, in spite of being the majority amongst the workers could perhaps provide the lead in this, as they have done so in many other people's movements all over the country.

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Introduction

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In 2004, repeated visits were made to the closed tea plantations to monitor whether the Government was actually implementing the schemes and programmes for the survival of the workers that it had promised to implement in the plantations. At the same time the IUF's All India Tea Workers Co-ordination Committee met in December 2004. It became obvious from the monitoring visits and the Co-ordination Committee's meeting that though a number of plantations were being reopened, not all was well in these plantations. Workers' conditions seemed far from happy. Unions in the All India Tea Workers Co-ordination Committee also raised the issue of huge Provident Fund dues that were lying with the employers of the closed plantations. IUF, with a mandate from the members of the All India Tea Workers Co-ordination Committee, therefore decided to do a study on the closed and re-opened plantations.

Methodology

According to a report of the District Magistrate, Jalpaiguri, at the end of 2003, there were 183 tea plantations in Jalpaiguri district. 22 of these were closed or abandoned or sick. The present study covers all these 22 plantations. The plantations covered by the study and their location are given in Table 1 below.

The areas on which the study focused were as follows:-

- Size of the plantation and workers employed
- History of the plantation and process of closure and re-opening
- Agreements and negotiations for re-opening
- Role of various trade unions before, during and after closure and during and after re-opening
- Functioning of joint management committees and operating and management committees
- Provident Fund and other dues to workers and other liabilities
- Conditions of workers at present
- Present status of implementation of the Plantation Labour Act
- In closed plantations , implementation of Supreme Court orders

Information collection was done mainly through the unions in the plantations and through informal discussions with some of the workers.

Table 1:- Location of The Tea Estates Studied

Sr. No.	Name of Tea Estate	Location (Block)
1	Looksan Tea Estate	Nagrakata
2	Carron Tea Estate	Nagrakata
3	Red Bank Tea Estate	Dhupguri
4	Surendranagar Tea Estate	Dhupguri
5	Dharanipur Tea Estate	Nagrakata
6	Raipur Tea Estate	Sadar
7	Kathalguri Tea Estate	Dhupguri
8	Chinchula Tea Estate	Kalchini
9	Ramjhora Tea Plantation	Madarihat-Birpara
10	Bamandanga & Tondoo Tea Estate	Nagrakata
11	Majherdabri Tea Estate	Alipur Doar 2
12	Chamurchi Tea Estate	Dhupguri
13	Samsing Tea Estate	Matiali
14	Raimatang Tea Estate	Kalchini
15	Dheklapara Tea Estate	Madarihat-Birpara
16	Kalchini Tea Estate	Kalchini
17	Kohinoor Tea Plantation	Alipur Doar 2
18	Mujnai Tea Estate	Madarihat-Birpara
19	Srinathpur Tea Plantation	Alipur Doar 2
20	Rahimabad Tea Estate	Kumargram
21	Jogesh Chandra Tea Estate	Mal
22	Toorsa Tea Estate	Kalchini

The data collection for the study was done in April, May and June 2005. The report was finalized by September 2005.

Problems in data collection occurred because the unions did not always have access to all the information that we required. In some places, we also found that in newly opened gardens, there was fear amongst workers and staff members and unions about giving us information. This happened in the Jogesh Chandra plantation. In Toorsa on the other hand, when we got information from the Assistant Manager and Head Clerk, the workers asked us to discard it, as it was all wrong information. We also doubted the veracity of the information as it was given to us without consulting any documents. However, ultimately, the workers in Toorsa were not able to provide us with any alternative information. Direct access to workers was sometimes difficult. Also data was collected over a short period of time, so the cross-checking of all data with all unions and many workers was not possible.

Major Findings

Definitions

The study has used the classification used by the District Magistrate to describe the status of various gardens in his report of October 2003. Closed gardens are therefore those that have been abandoned by the management after following due process of law, where the management had given a notice of lock out to the operating unions and the Labour Department. Abandoned gardens on the other hand are those where the management followed no such process, and where they cite law and order or financial problems for leaving the garden. Re-opened gardens are where the old management or a fresh set of employers have come forward to run the garden once again, after discussions with the Government and unions.

A spate of re-openings

Our study found that of the 22 plantations that were listed as being closed or sick in December 2003 in the District Magistrate's report, 15 or 68 % had re-opened. 3 plantations were still closed in September 2005, two were abandoned and managed by union-controlled operating and management committees and one was under liquidation. One plantation (Raipur) had closed down after re-opening for a brief period. Reports from the plantations also showed that a great deal of effort had been put in by the district administration to re-open these plantations.¹

¹ For the study we have taken Raipur TE as re-opened and Dheklapara TE as closed because that was their status when we were doing the survey. Subsequently, Dheklapara has opened and Raipur has closed down. **been abandoned.**

Table 2:- Present Status of Closed Tea Estates in Jalpaiguri District

Name of Tea Estate	Status on 15 September 2005	Date of Closure	Date of Re-opening	Period of closure
Looksan Tea Estate	Under Liquidation		Under Liquidation	
Red Bank Tea Estate	Abandoned	March 2003	Managed by OMC ²	
Surendranagar Tea Estate	Abandoned	March 2003	Managed by OMC	
Chamurchi Tea Estate	Closed	April 2004	Closed	Closed for 1 year and 5 months
Ramjhora Tea Plantation	Closed	10 August 2002	Closed	Closed for 3 years and 1 month
Kathalguri Tea Estate	Closed	22 July 2002	Closed	Closed for 3 years and 2 months
Dheklapara Tea Estate	Re-opened	22 August 2002	Closed	Closed for 3 years. Re-opened recently
Carron Tea Estate	Re-opened	August 2003	11 February 2004	6 months
Dharanipur Tea Estate	Re-opened	March 2003	February 2005	1 year and 11 months
Raipur Tea Estate	Re-opened	17 Oct 2003	10 March 2005	1 year and 5 months
Chinchula Tea Estate	Re-opened	20 November 2003	25 June 2004	7 months
Bamandanga Tondoo Tea Estate	Re-opened	16 September 2003	17 June 2004	9 months
Majherdabri Tea Estate	Re-opened	19 January 2003	16 January 2004	1 year
Samsing Tea Estate	Re-opened	25 November 2002	19 March 2004	1 year and 4 months
Raimatang Tea Estate	Re-opened	1 October 2003	3 March 2004	5 months
Kalchini Tea Estate	Re-opened	1 October 2003	3 March 2004	6 months
Kohinoor Tea Plantation	Re-opened	10 April 2003	7 January 2004	9 months
Mujnai Tea Estate	Re-opened	14 April 2004	11 October 2004	6 months
Srinathpur Tea Plantation	Re-opened	31 August 2002	11 January 2005	5 months
Rahimabad Tea Estate	Re-opened	17 April 2002	4 May 2004	2 years and 1 month
Jogesh Chandra Tea Estate	Re-opened	22 April 2003	8 May 2005	2 years and 1 month
Toorsa Tea Estate	Re-opened	October 2001	8.12.2003	15 days

Huge arrears and liabilities

Given below is a table of the arrears and liabilities for the plantations. Data for liabilities was available for 18 gardens. These would be underestimates in many cases, as the unions were not always able to give exact figures for smaller dues like overtime, maternity benefit etcetera.

² OMC stands for Operating and Management Committee that have been formed by all the unions together.

Table 4:- Liabilities towards Workers

Name Of The Garden	Provident Fund	Gratuity	Salary/Wages & Others	Total
Looksan TE	7,704,792.00	1,198,614.79	19,889,644.96	28,793,051.75
Carron TE	6,998,633.00	834,240.15	9,184,551.46	17,017,424.61
Red Bank TE	9,524,000.00	5,757,300.00	20,048,700.00	35,330,000.00
Surendranagar TE	3,250,400.00	2,359,700.00	6,977,700.00	12,587,800.00
Dharanipur TE	3,321,500.00	1,687,600.00	6,680,200.00	11,689,300.00
Raipur TE	4,500,000.00	3,300,000.00	7,610,000.00	15,410,000.00
Chinchula TE	10,595,111.00	2,219,629.00	10,388,981.92	23,203,721.92
Ramjhora TE	6,827,667.00	1,385,147.00	3,817,934.00	12,030,748.00
Bamandanga Tondoo TE	12,516,636.00	1,524,439.10	1,000,000.00	15,041,075.10
Chamurchi TE	9,214,317.00	4,234,260.06	24,729,215.30	38,177,792.36
Samsing TE	18,600,627.00	10,000,000.00	Not known	28,600,627.00
Raimatang TE	16,899,938.00	2,809,628.00	19,033,586.00	38,743,152.00
Dheklapara TE	8,100,000.00	1,100,000.00	1,455,000.00	10,655,000.00
Kalchini TE	15,616,564.00	2,685,093.25	31,249,112.21	49,550,769.46
Kohinoor TE	4,983,238.00	3,079,281.68	5,883,496.18	13,946,015.86
Mujnai TE	5,349,408.00	1,501,829.88	6,775,937.59	13,627,175.47
Srinathpur TE	800,000.00	500,000.00	320,000.00	1,620,000.00
Rahimabad TE	40,000.00	30,000.00	150,000.00	220,000.00
TOTAL	144,842,831.00	46,206,762.91	175,194,059.62	366,243,653.53
Dues per worker	8,439.74	2,692.39	10,208.25	21,340.38
No of Months of wages	6.56	2.09	7.93	16.58

The total liability towards workers is of Rs.366 million. The 18 gardens for which this data is available employ 17,162 permanent workers. The liability is therefore of Rs.21,340 per worker . If we take the industry's minimum wage of Rs.45.90, this amounts to about 17 months or more than a year and a half of wages.

It should be noted here that Provident Fund (PF) dues include money that the employers have deducted from the workers' wages as PF, but which they have not deposited with the PF Commissioner. PF to the extent of Rs.8440 is due to each worker. This amounts to almost 7 months of a worker's wages. Similarly, wages and other dues amounting to Rs.10,208 or 8 months of wages are due to the workers.

It is the Government's and union's responsibility to take action against defaulters. While the unions have to draw the Government's attention to the PF defaulters, the PF Commissioner has been given fairly strong powers by the Employees' Provident Funds and Miscellaneous Provisions Act 1952 for recovery of the due amounts. Thus under Section 8B of this Act, the authorised officer can

- attach and sell the moveable and immovable property of the establishment or employer;
- arrest and detain the employer in prison;
- appoint a receiver for the management of the movable and immovable property of the employer or establishment

The only positive example of action for recovery of PF that we found was in the case of Chinchula TE where a case has been filed by the PF Commissioner. The High Court had given an order in March 2005 for the owner to deposit the due amount of PF in 20 monthly instalments. At the time of data collection, 2 instalments had already been deposited.

Opening agreements

Opening agreements between the trade unions and the management were one of the most difficult documents to get copies of. We were able to get copies or verbal details of the opening agreement from union leaders and workers for 9 plantations. 6 plantations were closed or abandoned or under liquidation, while for 7 plantations, no details were available.

Table 6 :- Opening Agreements

Name of garden	Retrenchment of workers	Wages and rations	Dues
Majherdabri	No retrenchment, but no <i>badli</i> ³	Full wages and ration for 8-9 months; 75% of wages and rations for 3-4 months of lean period in the year . This is to continue indefinitely till the garden's situation improves.	Dues to be cleared in a year
Mujnai	No retrenchment, but no <i>badli</i>	Full wages and rations	No agreement on this issue
Raipur	No retrenchment , but no <i>badli</i>	Rs.120 per week and half rations for two months. After that, full wages and full rations will be given.	No agreement on this issue
Raimatang	No retrenchment, but no <i>badli</i>	Half wages ,half rations	No agreement on this issue
Kalchini	No retrenchment, but no <i>badli</i>	Half wages, half rations .	No agreement on this issue
Kohinoor	No retrenchment	Less than full wages for 3 months	No agreement on this issue
Chinchula	No retrenchment	Full wages and half rations	No agreement on this issue
Samsing	151 workers near retirement or sick to be retired, with no <i>badli</i> ; 531 “non-productive” daily rated workers (including the primary school teacher for workers’ children) to be employed in “productive” work. Management to take decisions about their change in work.	Not known	Management declined to clear workers’ dues on the pretext that they needed money to invest in development of plantation; workers who are retiring will get gratuity after 1 year
Dheklapara	No retrenchment, but no <i>badli</i>	Not known	Not known
Rahimabad	No retrenchment, but no <i>badli</i>	Not known	Not known

Conditions of Workers in Re-opened Gardens

Working and living conditions for workers in tea plantations are governed by the Plantation Labour Act 1951, amongst other pieces of legislation. Considered one of the finest pieces of legislations for ensuring good working conditions, the Plantation Labour Act was the result of a long drawn struggle by tea workers. At the time of data collection, workers were not getting all

³ *Badli* refers to a system in the tea gardens, where as per an industry wise agreement, the son or daughter of a worker who has retired has to be hired in the place of his/her father or mother. Through this families have assured jobs for at least one member of the family.

the facilities that are assured by the Plantation Labour Act (PLA) or the Minimum Wages Act. In the 15 re-opened plantations they were getting the following:-

Wages :- The wages for the tea industry in North Bengal are determined through an industry wise wage negotiation that takes place every few years. In 2005, till July, the industry wise agreed minimum wage was Rs.45.90. the Workers were not receiving Rs.45.90 per day as wages in many gardens. In Majherdabri, workers were receiving 70% of the wages in the lean season and full wages in the peak season. In Raipur, workers started with Rs.120 per week (Rs.20 per day) for two months with half rations when the garden first opened. After that they were paid Rs.180 per week (Rs.30 per day) with full rations for 1 week. For the week after that they received Rs. 240 (Rs. 40 per day) with full rations. The week after this, the employers abandoned the garden. In Kalchini and Raimatang, workers worked for half wages and half rations for over a year from March 2004 to April 2005. After a violent agitation in April 2005, tripartite negotiations took place again. It was agreed that the management would now pay half wages and half rations towards current dues and half wages and half rations towards past dues. They thus began receiving an amount equivalent to full wages and full rations from April 2005, though half of this was towards their past dues. In Mujnai, management introduced a production linked system for wages. The daily target for plucking was fixed at 25 kgs of green leaf per head. Any production less than this would entail a cut in wages. Plucking beyond the target would receive a bonus. However, workers felt that they would not be able to meet this target except at the peak of the plucking season , as there was not enough leaf on the bushes.

Rations: - Wages for tea plantation workers consist of a cash component and subsidised food grains. Rations therefore form an important part of the wages of tea plantation workers. 11 plantations of the 15 re-opened plantations were getting full rations. Workers of Chinchula were getting only 50 % of rations, while unions from Bamandanga Tondoo and Srinathpur plantations said they were receiving rations irregularly. Information for Jogesh Chandra was not available. All the workers however complained about the quality of the rations.

Hours of work and Weekly Off Days: - We give below the relevant sections of the PLA.

“Section 19

Weekly hours : (1) *Save as otherwise expressly provided in this Act, no adult worker shall be required or allowed to work on any plantation in excess of [forty-eight hours] a week and no adolescent or child for more than [twenty seven hours] a week.*

(2) *Where an adult worker works in any plantation on any day in excess of the number of hours constituting a normal working day or for more that forty-eight hours in any week, he shall, in respect of such overtime work, be entitled to twice the rates of ordinary wages :*

Provided that no such worker shall be allowed to work for more than nine hours on any day and more than fifty-four hours in any week.

(3) *For any work done on any closed holiday in the plantation or on any day of rest, a worker shall be entitled to twice the rates of ordinary wages as in the case of overtime work]*

Section 20

Weekly holidays – (1) *The State Government may by rules made in this behalf–*

(a) *provide for a day of rest in every period of seven days which shall be allowed to all workers;*

(b) *provide for the conditions subject to which, and the circumstances in which, an adult worker may be required or allowed to work overtime.*

Section 21

Daily intervals for rest - *The period of work on each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest for at least half an hour.*

None of the plantations had problems with hours of work, as all unions said the workers worked for 48 hours in a week and were given a weekly off. They were also given rest every 5 hours. However, workers in Carron TE complained that they were getting only half wages for 4 hours of overtime, though under the Plantation Labour Act they are supposed to get double wages.

Occupational Health and Safety: - No measures for occupational health and safety were visible in any of the plantations.

Drinking Water: - The relevant section in the PLA is as follows:-

“Section 8

Drinking Water : *In every plantation effective arrangements shall be made by the employer to provide and maintain at convenient places in the plantation a sufficient supply of wholesome drinking water for all workers.”*

Table 7 :- Drinking Water Provisions

Name of plantation	Situation Of Drinking Water Supply
Majherdabri TE	Labourers are forced to depend on river water
Raipur Tea Estate	Company provides uncovered dug wells for the labour line, which are unhealthy
Carron Tea Estate	Workers complain of very poor provisions of water supply
Kalchini Tea Estate	7 tube wells are there for about 10,000 population
Mujnai Tea Estate	Company provides water tanker once in a day but it is insufficient
Raimatang Tea Estate	Company provides water tankers, but it is insufficient for all the labour families
Dharanipur Tea Estate	Company provides some tube wells. Supply is insufficient
Bamandanga Tondoo Tea Estate	Company provides some tube wells. Supply is insufficient
Chinchula Tea Estate	Workers complain of very poor provisions of water supply
Samsing Tea Estate	Workers complain of very poor provisions of water supply
Srinathpur Tea Estate	Insufficient supply of drinking water
Rahimabad Tea Estate	Company does not provide any water. Panchayat gives good supply.
Kohinoor Tea Estate	Sufficient supply of drinking water provided by company

Information on drinking water is available for 13 out of the 15 re-opened plantations. From the table above it is obvious that it is only in Kohinoor TE that the management is providing drinking water properly. In Rahimabad TE , it is the Panchayat that has taken over this role. In at least two of the other gardens (Majherdabri and Raipur) workers have to depend on visibly unsafe sources of drinking water. In the other 8 gardens, workers complain of insufficient and scanty supply of drinking water.

Electricity:- In none of the 13 re-opened plantations for which information is available was electricity provided free of cost in the labour lines. In fact this is true of almost the entire industry in the Doars.

Housing:- Under the PLA, the following provisions have been made for workers' housing :-

“Section 15

Housing facilities – *It shall be the duty of every employer to provide and maintain necessary housing accommodation-*

(a) *for every worker (including his family) residing in the plantation;*

(b) *for every worker (including his family) residing outside the plantation, who has put in six months of continuous service in such plantation and who has expressed a desire in writing to reside the plantation :*

Provided that the requirement of continuous service of six months under this clause shall not apply to a worker who is a member of the family of a deceased worker who, immediately before his death, was residing in the plantation.”

Workers' housing was in a totally dilapidated condition. In 13 re-opened plantations for which information is available, it was only in Kohinoor that housing was in a somewhat better condition. In the other estates, houses have not been repaired for years together. In Kalchini, houses are in a totally damaged condition. Compensation for house collapse is not provided in any of these plantations. In Carron for example, compensation for house collapse was provided last in 1996. Workers in Majherdabri said that they had last received compensation for house collapse 4 years ago in 2002.

Transport for school going children:- While the estates have primary schools, secondary schools and colleges are generally at least 15 -20 kilometres away. As public transport to and from the plantations is practically nil or very expensive, transport arrangements are generally made by the management to take children of the workers to school and back. However , in the re-opened gardens , this is practically absent. Mujnai TE provides a tractor for children to go to school. Majherdabri TE has provided a school van for the children. In the other 11 re-opened plantations, no facilities are available for secondary and high school children to come to school. This would mean that many children would be forced to stop their education.

Medical facilities:- According to the PLA,

“Section 10

Medical facilities – *(1) In every plantation there shall be provided and maintained so as to be readily available such medical facilities for the workers (and their families) as may be prescribed by the State Government.”*

Of the 13 plantations re-opened plantations for which information is available, in 6 of the plantations, medical facilities were said to be non-existent or almost non-existent. In 6 other plantations, the workers felt the facilities were insufficient i.e. medicines provided were insufficient and/or there were no indoor facilities. Qualified doctors were not available in most of the gardens. The medical reimbursements for the labourers and the members of staff have been pending for years together. Ambulance facilities were also not available in most of the gardens. An example from Toorsa TE would make this clearer. Lolit Koirala led us to the ward of the garden hospital. There we met a TB patient, who has been lying in the bed for three months. He was unable to walk and could not even speak properly. According to him, he had not been getting medicine for the last seven days. He had never been given food from the hospital. There was no attendant. His family members were attending to him after finishing the day's work in the garden. It was impossible for them to stop work as “no work means no pay”.

In Carron TE, the patients admitted to the plantation hospital were receiving a broth of rice (*phena bhat*) with salt or boiled potatoes as food.

In one plantation, Kohinoor, however, we found that the conditions were better than the others and the hospital seemed better equipped than the others.

Crèches: - According to the provisions of the PLA,

“Section 12

Creches : *(1) In every plantation wherein fifty or more women workers (including women workers employed by any contractor) are employed or were employed on any day of the preceding twelve months, or where the number of children of women workers (including women workers employed by any contractor) in twenty or more, there shall be provided and maintained by the employer suitable rooms for the use of children of such women workers.*

Explanation- For the purpose of this sub-section and sub-section (1A), "children" means persons who are below the age of six years)”

Only one (Kohinoor) out of 13 re-opened plantations had a permanent crèche. 10 of the others had temporary crèches. In Bamandanga Tondoo a roofless broken house is used as a crèche. In Samsing, crèche facilities are totally absent.

The workers felt that food supplied to the children at the crèche is insufficient, with children of all age groups receiving the same amount of food. The women engaged as crèche workers are temporary staff of the garden, who are only provided a daily wage with no other facilities.

Maternity benefits: - The provisions in the PLA are as follows

“Section 32

Sickness and maternity benefits – *(1) Subject to any rules that may be made in this behalf, every worker shall be entitled to obtain from his employer-*

(a) in the case of sickness certified by a qualified medical practitioner, sickness allowance, and

(b) if a woman, in case of confinement or expected confinement, maternity allowance, at such rate, for such period and at such intervals as may be prescribed.”

In at least one garden (Mujnai), we heard from some women that after re-opening pregnant mothers were receiving no wages during their maternity leave.

Fringe Benefits: - Except for Kohinoor where the management provides aprons, umbrellas and chappals, none of the other re-opened plantations receive fringe benefits. In Majherdabri, we were told that workers had been provided blankets recently.

Latrines and Urinals: - The relevant PLA section is as follows :-

“Section 9

Conservancy : *(1) There shall be provided separately for males and females in every plantation a sufficient number of latrines and urinals of prescribed types so situated as to be convenient and accessible to workers employed therein.*

(2) All latrines and urinals provided under sub-section (1) shall be maintained in a clean and sanitary condition”.

Latrines and Urinals have not been provided in the labour lines and factory. This is true for all re-opened plantations.

Conditions in Abandoned, Worker-Managed Gardens

Two of the plantations, Surendranagar and Red Bank, have been abandoned and are now being run by OMCs that are controlled by the Cha Bagan Majdoor Union and Tea Employees Association of West Bengal, both of which are affiliated to the CITU⁴ and an independent staff union (WBTGEA or West Bengal Tea Gardens Employees Association). The OMC members informed us that they were paying workers Rs.40 per day as wages. They also give leave to the workers with 10% wages. Some of the workers disputed this and said in private that they were being paid less than Rs.40 as daily wages because they were not politically with the CPI (M). As

⁴ CITU or Centre of Indian Trade Unions is the trade union wing of the CPI(M) the major Left Front partner.

far as problems of pregnant women go, we were told about an incident of one of the labourers giving birth to her child while plucking leaf.

According to the committee, the OMC is also able to provide bonus and plucking *roomals* for the workers. In addition they are providing facilities of tractors for school going children, ambulance services and medicines. In Red Bank, electricity for the labour and staff is available for 6 hours every day and drinking water has also been provided. However, in Surendranagar, drinking water is a problem and there is no electricity.

Due to their proximity with the State Government, the CBMU controlled OMCs have also managed to get certain other facilities for their workers from the State Government. For example, house repairing is being done with the help of the Panchayat. Also, the plantations have been able to get facilities under various poverty alleviation schemes meant for closed gardens like work under SGRY and AAY rations. Recently, the Government has also taken the decision to provide the workers with Rs. 500 every month from FAWLOI.

In Looksan, which is under liquidation, workers were receiving the industry-wise agreed minimum wage of Rs.45.90, but were getting only 50 % of their rations. The workers receive a weekly off day on Sunday and are allowed rest every four hours. They were also getting medical facilities from the plantation hospital and a doctor was present. Of the fringe benefits available under the PLA, workers have only got plucking aprons and *roomals*. Workers also received benefits like a permanent set up for crèches, transport for children to school and drinking water. Workers pay their own electricity bills, while the estate provides free electricity only for the staff quarters. Housing is fairly good in the plantation, compared to other plantations. However, there is practically no compensation for house collapse. Looksan unions are also controlled by the CITU affiliated staff and workers unions.

Conditions in Closed Gardens

In the case of closed tea gardens, due to submission of a report in the Supreme Court by the West Bengal Advisor, the State Government began taking relief measures in closed gardens to provide people with food and work. The steps that they promised to take were as follows:-

1. All workers in the closed / abandoned tea plantations were declared as “Below Poverty Line” families (which would entitle them to avail benefits from several schemes applicable to rural poor);
2. All Tea worker families were issued AAY ration card and food grains were provided to them at highly subsidized rates;
3. Sampoorna Gramin Rojgar Yojna was implemented under which the workers were to get work for minimum of 15 days of work with a cash and food grain payment of Rs.62 per day;
4. Cooked mid day meals were to be provided to all primary schools in the plantations.
5. Supplementary nutrition was to be provided to all under 6 children and pregnant and lactating mother through the Integrated Child Development Scheme centres run by the government.
6. Workers from gardens that had been closed for over a year were to receive Rs.500 a month under the Family Assistance for Workers in Locked out Industries (FAWLOI).
7. The Government also promised to arrange drinking water and to send in mobile medical teams.

Two monitoring reports by the Advisor were formally submitted to the Supreme Court through the Commissioners and to the State Government in April 2004 and October 2004. Both reports showed that people were not getting all the benefits that the State Government had promised to give in its affidavit filed in the Supreme Court in January 2004. This issue was also brought up in the Fifth Report of the Commissioners. The Commissioners had suggested that regular Action Taken Reports be provided of such vulnerable areas. The State Government has begun to do this and certain positive developments have taken place, which are as follows:-

- Action Taken Reports are being sent from Jalpaiguri district to the Chief Secretary once in a week or once in a fortnight, requiring regular monitoring by the administration of the situation

- Subsidised food grains rations of 7 kgs per month for every adult card are being provided more or less regularly.

However, during the study we found that certain problems persist.

- A huge backlog in the payment of the unemployment allowance is there. Payments had been made only up to February 2005, which means that there is presently a backlog of Rs. 3500 for seven months.

- It also emerged that number of persons in closed gardens had not been enlisted for the unemployment allowance in spite of being permanent workers of the tea gardens. Discrepancies are also visible from the figures provided in the Jalpaiguri District Magistrate reports, as is obvious from the table below.

Table 8:- Coverage under FAWLOI

Tea Garden	Total families ⁵	Families receiving unemployment allowance ⁶	Discrepancy
Dheklapara	433	470	- 37
Ramjhora	1125	839	286
Kathalguri	1364	1271	93
Srinathpur	192	216	- 24
Mujnai	997	886	111
Rahimabad	748	680	68

- Figures provided by the Government’s Action Taken reports show that workers have been getting an average of 8 days or at the most 10 days in a month under the SGRY. The State Government had initially said it would provide 15 days of work in a month. As per our study, Kathalguri has received maximum relief under SGRY but here too the workers are getting 6-7 days of work per month on an average after December 2004. Workers in Ramjhora TE said that no work had been provided under SGRY in the month of April 2005. They had been told that as the plucking season had started SGRY would be stopped. However, no plucking is taking place. In Dheklapara, though plucking is taking place, workers complained that they earned very meagre amounts through plucking which was not sufficient for survival. They say they have time to do SGRY work alongside.

- Workers in Ramjhora TE have been complaining about water shortage for quite a few months. They have given written complaints at all levels (up to the DM) and have also given deputations, but this has had little impact.

The lacunae in the implementation of the Supreme Court orders can be blamed largely on the continuing negligence of the administration. There has also not been sufficient monitoring by the workers and the unions on the ground level or pressure built up to ensure proper implementation.

In all the closed gardens, Operating and Management Committees or OMCs are functioning. These committees consist of all the important garden level union leaders. Often the District Magistrate or his representatives have taken the initiative to form these committees. They are formed collectively by the unions and are responsible in closed and abandoned gardens for organizing plucking and sale of green leaf. They distribute the wages to the workers from the

⁵ Taken from the District Magistrate’s Report of October 2003

⁶ Taken from District Magistrate’s Action Taken Reports

sale proceeds. They generally function only during the plucking season. However, workers do not receive minimum wages from these OMCs (except in Chamurchi TE). Labourers at Dheklapara and Ramjhora were getting Rs.30-35 from the OMC. The working of the OMC was also not transparent. We did not come across any instances of OMCs producing their books of accounts before the labourers and or the Government.

Impact on Workers

Workers in the 22 gardens studied have been through a long and difficult period of closure. Many have lost loved ones to malnutrition and related diseases. The survivors consist of people and children like Jem's daughter, an eight year old girl in Ramjhora. A pale and thin girl, she has lost all her family members in the past few years to hunger related deaths. She is now being brought up by her maternal grandmother with help from some of the workers in the same garden.

The struggle against hunger and poverty is continuing for the workers in the two abandoned gardens and the four that are still closed, as the work of the OMCs and the Government food and work programmes still do not assure them a reasonable minimum income. Thus while the procession of deaths that was there in 2003 may have slowed down, conditions are still difficult for these workers.

In re-opened gardens, people who managed to stay alive in spite of hunger during closure are still suffering from the after effects of the closure period. For example in Mujnai TE, we met Murla, 42 years of age, but with a body weight of 29 kgs. He informed us that he is so weak that he has lost his ability to work properly. The management does not give him full wages or other benefits since he cannot meet the production requirement set by the management. The practice of *badli* or replacement has been stopped by the management. Ashish Biswas, the pharmacist of the garden, informed us that there were about 48 families in the garden who were in the same state as Murla, as the main earning member had died during closure or was too weak to work now. All these families were facing starvation even after re-opening as no *badli* was being allowed.

For the regular workers, benefits under the Plantation Labour Act are being curtailed. A wage of Rs.45.90 had been calculated assuming that workers will receive many benefits like free medical care, support (in the form of transportation) for children's education, subsidized rations, crèches, housing repair etcetera. When these benefits are curtailed, workers have to spend on all these things from their meagre wages or have to go without essential needs like medicines, education and housing. It should be remembered that in the case of agricultural workers (one of the worst paid profession), where workers receive no benefits besides their daily wage, the West Bengal Government's minimum wage is Rs.62.10. Thus tea workers in these re-opened gardens are probably earning less than even the statutory wage for agricultural workers. The effects on their lives and those of their families are sometimes quite frightening. For example, Asgar Ali of Chinchula TE, when talking about the wretched condition of the garden, said that he has had to send his daughter, who is only thirteen, to Delhi to work as a maid servant. Even after re-opening, wages and rations are not regularly provided. So he has not brought his child back, though he wants to do so very strongly.

The workers are totally dependent on the management for the essentials of life. Even for the very necessary service of drinking water, workers are entirely dependent on management which does not seem to see this as being an essential service. Hundreds of families of Bamandanga, Dheklapara and Carron TE have been facing the problem of erosion of their dwelling places by the river. Neither the government nor the management have taken steps in this matter. The condition of workers in re-opened gardens is therefore not very rosy.

We would also like to mention here that services that are considered necessary for women workers, like crèches, latrines and urinals, and maternity benefit are much neglected areas, in spite of women being 52% of the work force in these gardens.

On the other hand amongst these re-opened gardens we also came across Kohinoor, where it was visible that housing was better than on other gardens, drinking water was available in sufficient quantity, medical facilities were fairly good and a permanent crèche was available. This shows that it was not totally impossible to provide workers with some facilities even in re-opened gardens. We personally felt this also had to do with the report that we received that yields and management were considerably better in Kohinoor as compared to other gardens.

Likely Non Viability of Plantations

We were told that tea cultivation in the Doars had started off about 120 to 150 years ago. The gardens that we studied could be said to be the older ones. Of the 20 gardens for which data is available, 8 or 40% are more than 100 years old. The “youngest” gardens are Chinchula, Raimatang and Kalchini all of which are 72 years old.

As many of the bushes, the factories and the infrastructure also tend to be equally old, age of the gardens may sometimes cause non-viability.

The land for the plantations is Government land and is given in lease to the employers. Each lease has to be renewed after 30 years, and is subject to the condition that the land will be used for tea production alone. This is a condition which employers and the Government have been trying to dilute for sometime now, citing non-viability of the industry.

Data on size of the plantations and utilization of the land is available for 20 plantations. The average size of these plantations is 670 hectares, which is the usual size for a tea plantation of the Doars. 18 gardens are larger than 400 hectares. The largest garden was 1256.60 hectares (Samsing).

One of the pointers towards non-viability was the land use in these gardens. We were told that well run gardens generally use 75 to 80% of the land available on lease. However in these gardens we found that 12 gardens had between 30 to 50% of the land lying unused. 3 plantations were using less than 50 % of the land available for tea., while it was only 5 gardens that were using 70% or more of the land.

The age of the bushes is another factor that seems to play a role in non-viability. Out of 20 re-opened, abandoned and closed gardens, for 17 or 85% of the gardens, age of bushes was more than 50 years. In 3 plantations, average age of bushes was as much as 100 years or more. For 6 gardens it was between 70 and 100 years and for 8 gardens it was between 50 and 70 years. It was thus only in the case of 3 plantations that the average age of bushes was less than 50 years.

Peak production period is generally considered to be when the bushes are 35 to 50 years old. After this, bushes will give good yields even till a hundred years, but only with regular care and proper inputs. However these properties have been in and out of closure and have changed ownership many times. It is doubtful whether they have received this care or whether these gardens have had the surplus to invest in the care of the bushes. The plantations were also badly in need of new bushes, but re-plantation had not been done in many of them.

Investment in machinery and factories and re-plantation had also been quite minimal in the past decade in these gardens. This would mean that poor quality tea is produced, both because of the lack of care of the bushes and because of the lack of the latest machinery in the factories. Price realisation for the tea produced would therefore be lower than the good quality tea prices, by as much as Rs.30-35 per kg.

The gardens have heavy dues outside. Electricity dues on the average are Rs. 986,310.13. Dues for land revenue are Rs.1,413,415.00 and for other liabilities they are Rs. 5,076,195.04. The average dues according to the study are therefore in the vicinity of Rs.75 lakhs for each garden. As data is incomplete, this is likely to be much more. We were told that these dues were not very heavy by industry standards. However, when combined with the amount that is owed to workers (an average of Rs.183.1 lakhs), the liabilities for these gardens become very heavy. We were also told that the dues towards workers were on the high side by industry standards.

Another pointer to the non viability of these gardens is the frequent change in the owners in some gardens. As a tea plant needs at least 5 years to reach the plucking stage, the management

of the business has to be thought of in long term. Regular re-plantation is a necessary part of good management and has to be done by thinking in terms of 50-70 years. We were informed that the entire industry had seen a change in the ownership when the British, and later, the expatriates had handed over the gardens to Indian owners. After that many of the Indian owners had learnt how to manage tea plantations well and had shown a consistency in performance. On the other hand, people whom the local people derisively call “traders” (as against planters, who are considered good and knowledgeable managers) had entered the industry. These people did not learn about tea and did not learn how to manage the gardens. Instead they made quick profits, and when losses started they sold off the properties.

Many of the gardens that we studied seem to have found their way into the hands of these traders at some stage of their life span. Many have changed owners frequently. For example, in the Red Bank group of gardens (Dharanipur, Red Bank and Surendranagar), owners have changed 6 times in the past 40 years, and twice within the last 10 years. In Dheklapara, change in ownership has taken place thrice in twenty years, and in Kohinoor, thrice in 25 years.

We also examined the employment of excess labour as a factor leading to non-productivity. This was especially because rising labour costs and excess labour are factors that are usually blamed by owners for closure and non-viability. According to Tea Statistics 2000-01⁷, labour per hectare for the Doars is 2.35. For the 19 gardens on which data is available, if we take land under tea (available for 20 gardens), the average land labour ratio is 2.27, which is well within the 2.35 ratio for Doars as a whole. According to people we met amongst the management, however, the labour land ratio of 2.35 for the Doars on the whole is on the higher side, as compared to Assam and would lead to non-viability.

The low land use, the age of the bushes and machinery, the lack of investment have all led to low yields for these gardens. The large amount of liability and frequent change of owners have added to the problems. The tea market is not really booming at the moment, and that there is considerable competition from small producers, bought leaf factories and imports of poor quality tea. The need of the hour for them is therefore a huge infusion of money and it is doubtful whether those who have stepped in as owners will make this investment. All indications are therefore that these gardens may not be viable and may close down again.

Workers, trade union leaders and members of the management whom we interviewed also felt that many of the re-opened plantations were tethering on the brink of closure again. This turned out to be true while the study was going. We found that Raipur TE that opened on 10 March 2005 was declared closed again on July 5th 2005. 10 people who were workers or their family members had died when we visited the garden after closure on September 10th 2005. 2 more died the week after.⁸ While we have been writing this report, Kalchini and Raimatang have been going through a very strong confrontation between workers and management, where the workers have not been paid wages for a week or two, and where they feel the managers want to sell off “made tea” and desert the garden once again.

The Unions

Out of 19 gardens in which information on unions was available, we found the unions given in Table 9 were the most significant important.

While 52% of the workforce in these gardens is female, we found that the presence of women in the union leadership or the OMCs⁹ was almost zero.

Most of the gardens have more than 1 major trade union. 21% of the gardens had 4 or more unions, while 32% had three unions. Only 42% had a single union. Multiplicity of unions has

⁷ “Tea Statistics 2000-01” issued by the Tea Board of India, Kolkata, December 2003.

⁸ A newspaper report dated 25th September 2005 in the Telegraph states that two more gardens, Raimatang and Kalchini are on the verge of closure, as the owner has run away.

⁹ OMCs are operating and management committees. These consist of all the important garden level union leaders. They are formed collectively by the unions and are responsible in closed and abandoned gardens for organizing plucking and sale of green leaf.

been blamed by some people in the management as one of the factors leading to non-viability of the gardens. They feel they have to negotiate and compromise with many different interest groups, some of whom may be pulling in opposite directions.

Table 9 :- Unions: Affiliations and Presence

Name of the union	Central trade union to which it is affiliated	Political party to which it owes allegiance	Number of gardens in which it is present	Percentage of gardens in which it is present
Cha Bagan Majdoor Union (CBMU)	CITU	CPI(M)- major partner in State Government	16	84%
Doars Cha Bagan Workers Union (DCBWU)	UTUC	RSP- one of the smaller partners in State Government	10	53%
National Union of Plantation Workers(NUPW)	INTUC	Congress- major partner in Central Government	12	63%
West Bengal Tea Gardens Employees Association (WBTGEA)	Independent	Independent	10	53%

In plantations which have been suffering from closure for a long period of time like Kathalguri and Ramjhora, some people felt that multiplicity of unions had worked against the interest of workers, with problems of coordination between unions at critical junctures.

It should be noted that 3 of the predominant unions have a strong presence (through their allegiance to various political parties) in the State Government and Central Government. In spite of this, during the process of closure and re-opening, unions found that they had to forego some key rights of the workers. The workers had won a number of rights through a long and hard struggle in the '50s and '60s. These rights are being gradually eroded by the owners. A prime example of this is the opening agreement in the Samsing garden, where not only was the right of *badli* lost by the workers, but over 500 workers were declared non-productive (including the teacher for the workers' children!). In a number of gardens, *badli* has been stopped in the re-opening agreement. Productivity linked wages have been introduced in at least one garden (Mujnai). The question of workers' dues was discussed only in one garden (Majherdabri). No discussion took place in the other gardens. In fact, in Samsing, the workers had to forego their dues as part of the opening agreement. A cut in wages was often accepted as a condition for re-opening. The recent strike has resulted (for the first time for the industry in Doars) in a productivity linked wage, showing that the union leaders feel they are in a weak bargaining position.

This feeling is strengthened by the fact that there was very little evidence of action taken by unions or workers on arrears in Provident Fund even though non-deposit of instalments is a criminal offence.

Workers seemed to expect union leaders to provide them information on opening agreements and on the OMC accounts. They had also wanted union leaders to help with food and relief during closure and with proper implementation of Government relief programmes, including the Supreme Court orders. The inability of unions to meet these expectations has led to cynicism amongst workers about the role of unions.

Role of the Government

In this entire fiasco, and the crisis that faces 22 gardens, 20000 workers and over a lakh people, the role of the Government (both State and Central) has left much to be desired. Its role as a regulator of industry and a watch dog over workers' rights has left much to be desired.

In spite of strong laws that are in place for recovery of Provident Fund dues, the Provident Fund Commissioner has taken very little action. Under the law, it is possible for the establishment's

property and the other property of the owner to be attached and criminal cases to be filed against employers. Except in one or two cases, this has not been done. The Labour Department has also allowed the provisions of the Plantation Labour Act to be gradually flouted. They have turned a blind eye to the open exploitation of the workers.

On the other hand, they have also allowed employers to behave with carelessness as far as investment in the tea land is concerned. This is in spite of the fact that the Government is the owner of this land and has leased it out to the owners. Arrears in land revenue have been ignored by the Government. The stripping of gardens has also been ignored. While it is possible for the Government (through the Tea Board) to encourage investment in re-plantation, it is alleged that huge amounts of money that were taken from the Tea Board for this purpose have been frittered away.

After the crisis in 2001, it was only after starvation deaths led to a directive from the Supreme Court in 2004 that concrete relief was provided to the workers by the State Government. Even now, when re-closure is taking place, the district administration took no steps to help workers in Raipur TE where 12 deaths took place until the matter was reported to the Chief Secretary..

In re-opening negotiations that seem to have picked up in 2004 and 2005, the district administration seems to have been preoccupied with opening the gardens at any cost. Long term thinking on the ways of making these gardens viable or about how and when workers' dues will be recovered does not seem to have been a part of these negotiations.

Conclusions

In spite of the spate of re-openings that have taken place in the past one year, the 22 gardens seem to still be crisis ridden. Many may be on the verge of closing down once again. Huge amounts of money are owed to the workers. This is a criminal offence, but action has not been taken on this by the Government and/or union leaders against the rogue employers. At the same time there has been little long term planning by any of the stakeholders to ensure that these gardens become viable in the long run.

Owners on the other hand in the closed gardens and in the industry in general are taking advantage of the closed gardens and the defensiveness of the workers and the unions to gradually cut down on the workers' benefits. Many benefits under the PLA are gradually being eroded. Recently, for example, after a 15 days-long strike, workers who started off by demanding a rise of almost Rs.30 had to be satisfied with an increase of only Rs.2.50. Productivity linked wages are also being introduced slowly after this strike. The move seems to be towards the casualisation and informalisation of the work force and industry. The proliferation of small tea growers and bought leaf factories are only helping this process.

The need of the hour in the tea industry is for deep thinking by the unions about long term strategies. A strong movement by the unions to pressurise the Government and the owners to take responsibility for the development of the industry, and to behave in a responsible manner towards the workers is also needed. This thinking has been absent amongst the union leaders who seem to be thinking in terms of short term gains for the workers and themselves.

A re-vitalisation of the trade union movement in the tea gardens is the need of the hour. The mood of the workers is that of great cynicism about the union leaders and their role. At the same time, there is a constant threat of violence in the air which is preventing workers from challenging the present union structures. Women, who have been traditionally left out of union leadership, in spite of being the majority amongst the workers could perhaps provide the lead in this, revitalisation as they have done so in many other people's movements all over the country.

Plantations Labour Act, 1951

[Act No. 69 of 1951 as amended by Acts Nos. 42 of 1953, 34 of 1960, 53 of 1961, 58 of 1981 and 61 of 1986]

CHAPTER I PRELIMINARY

1. Short title, extent, commencement and application-

(1) This Act may be called the Plantations Labour Act, 1951.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may by notification in the Official Gazette, appoint.

¹[(3) It applies to the following plantations, that is to say,-

(a) To any land used or intended to be used for growing tea, coffee, rubber [, cinchona or cardamom]² which admeasures [5]² hectares or more and in which [fifteen]² or more persons are employed or were employed on any day of the preceding twelve months,-

(b) To any land used or intended to be used for growing any other plant, which admeasures [5]^{2a} hectares or more and in which ^{2a}[fifteen] or more persons are employed or were employed on any day of the preceding twelve months, if after obtaining the approval of the Central Government, the State Government by notification in the Official Gazette, so directs.

³[**Explanation.** --- Where any piece of land used for growing, any plant referred to in clause (a) or clause (b) of this sub-section admeasures less than 5 hectares and is contiguous to any other piece of land not being so used, but capable of being so used, and both such pieces of land are under the management of the same employer. then, for the purposes of this subsection, the piece of land first mentioned shall be deemed to be a plantation, if the total area of both such pieces of land admeasures 5 hectares or more.]

(5) The State Government may, by notification in the Official Gazette declare that all or any of the provisions of this Act shall apply also to any land used or intended to be used for growing any plant referred to in clause (a) or clause (b) of sub-section (4), notwithstanding that ---

(a) It admeasures less than [5]^{2a} hectares, or

(b) The number of persons employed therein is less than [fifteen]^{2a}.

Provided that no such declaration shall be made in respect of such land which admeasured less than [5]^{2a} hectares or in which less than ^{2a}[fifteen] persons were employed, immediately before the commencement of this Act.]

1. Subs. by Act No. 34 of 1960.

2. Subs. by Act No. 58 of 1981 (w.e.f. 26-1-1982).

2a. Ibid.

3. Ins. by Act No. 58 of 1981 (w.e.f. 26-1-1982).

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

(a)“Adolescent” means a person who has completed his ^{1a}[fourteenth] year but has not completed his eighteenth year,

(b)“Adult” means a person who has completed his eighteenth year,

(c)“Child” means a person who has not completed his ^{1a}[fourteenth] year,

(d)“Day” means a period of twenty-four hours beginning at midnight;

(e)“Employer” when used in relation to a plantation, means the person who has the ultimate control over the affairs of the plantation, and where the affairs of any plantation are entrusted to any other person (whether called a managing agent, manager, superintendent or by any other name) such other person shall be deemed to be the employer in relation to that plantation;

²[(ee) “Family”, when used in relation to a worker means-

(i)His or her spouse, and

(ii)The legitimate and adopted children of the worker dependent upon him or, who have not completed their eighteenth year And includes, where the worker is a male, his parents dependent upon him;]

“Inspector” means an inspector of plantations appointed under subsection (1) of Section 4 and includes an additional inspector of plantations appointed under sub-section (I-A) of that section ;]

⁴[(f)“Plantation” means any plantation to which this Act, whether wholly or in part, applies and includes offices, hospitals, dispensaries, schools, and any other premises used for any purpose connected with such plantation, but does not include any factory on the premises to which the provisions of the Factories Act, 1948 (63 of 1948), apply]

(g)“Prescribed” means prescribed by rules under this Act,

⁴[(h)“Qualified medical practitioner” means a person holding a qualification granted by an authority specified or notified under Section 3 of the Indian Medical Degrees Act, 1916 (7 of 1916), or specified in the Schedules to the Indian Medical Council Act, 1956 (102 of 1956), and includes any person having, a certificate granted under any Provincial or State Medical Council Act;]

(i)“Wages” has the meaning assigned to it in clause (h) of Section 2 of the Minimum Wages Act, 1948 (11 of 1948)

(j)“Week” means a period of seven days beginning at midnight on Saturday night or such other night as may be fixed by the State Government in relation to plantations in any area after such consultation as may be prescribed with reference to the plantations concerned in that area

⁵[(k)“Worker” means a person employed in a plantation for hire or reward, whether directly or through any agency, to do any work skilled, unskilled, manual or clerical, but does not include-

(i)A medical officer employed in the plantation

(ii) Any person employed in the plantation (including any member of the medical staff) whose monthly wages exceed [rupees seven hundred and fifty]⁶ ;

(iii) Any person employed in the plantation primarily in a managerial capacity, notwithstanding that his monthly wages do not exceed [rupees seven hundred and fifty]⁶ ;

(iv) Any person temporarily employed in the plantation in any work relating to the construction, development or maintenance of buildings, roads, bridges, or canals ;]

(l) “Young person means a person who is either a child or an adolescent the extent of permanent partial disablement is expressed in percentages of loss of earning capacity. These percentages are percentages of the compensation which would be payable in the case of permanent total disablement.

1a Subs. by Act 61 of 1986.

2. Ins. by Act No. 34 of 1960.

3. Ins. by Act No. 58 of 1981 (w.e.f. 26-1-1982).

4. Subs. by Act No. 34 of 1960.

5. `Subs. by Act No. 34 of 1960.

6. Subs by Act No. 58 of 1981 (w.e.f. 26-1-1982).

3.Reference to time of day. -In this Act, references to time of day are references to Indian Standard Time being five and a half Hours ahead of Greenwich Mean Time: --

Provided that for any area in which the Indian Standard Time is not ordinarily observed, the State Government may make rules-

(a) Specifying the area

(b) Defining the local mean time ordinarily, observed therein; and

(c) Permitting such time to be observed in all or any of the plantations situated in that area.

REGISTRATION OF PLANTATIONS

1. Chap. I-A ins. by Act No. 58 of 1981 (w.e.f. 26-1-1982).

3-A.Appointment of registering officers. -The State Government may, by notification in the Official Gazette,-

(a) Appoint such persons, being Gazetted Officers of Government as it thinks fit, to be registering officers for the purposes of this Chapter, and

(b) Define the limits within which a registering office shall exercise the powers and discharge the functions conferred or imposed on him by or under this Chapter.

3-B. Registration of plantations. -

(1) Every employer of a plantation, existing at the commencement of the Plantations Labour (Amendment) Act. 1981 shall, within a period of sixty days of such commencement, and every

employer of any other plantation coming into existence after such commencement shall, within a period of sixty days of the coming into existence of such plantation, make an application to the registering officer for the registration of such plantation

Provided that the registering officer may entertain any such application after the expiry of the period aforesaid if he is satisfied that the applicant was prevented by sufficient cause from making the application within such period.

(2)Every application made under sub-section (1) shall be in such form and shall contain such particulars and shall be accompanied by such fees as may be prescribed.

(3)After the receipt of an application under sub-section (1), the registering officer shall register the plantation.

(4)Where a plantation is registered under this section, the registering officer shall issue a certificate of registration to the employer thereof in such form as may be prescribed.

(5)Where, after the registration of a plantation under this section, any change occurs in the ownership or management or in the extent of the area or other prescribed particulars in respect of such plantation, the particulars regarding such change be intimated by the employer to the registering officer within thirty days of such change in such form as may be prescribed.

(6)Where as a result of any intimation received under sub-section (5), the registering officer is satisfied that the plantation is no longer required to be registered under this section, he shall, by order in writing, cancel the registration thereof and shall as soon as practicable, cause such order to be published in any one newspaper in the language of, and having circulation in, the area where the plantation is situated.

3-C.Appeals against orders of registering officer. -

(1)Any person aggrieved by the order of a registering officer under sub-section (6) of Section 3-B may, within thirty days of the publication of such order in the newspaper under that sub-section, prefer an appeal to such authority as may be prescribed:

Provided that the appellate authority may entertain an appeal under this sub-section after the expiry of the aforesaid period if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within such period.

(2)After the receipt of an appeal under sub-section (1), the appellate authority may, after giving the appellant, the employer referred to in sub-section (5) of Section 3-B and the registering officer an opportunity of being heard in the matter, dispose of the appeal as expeditiously as possible.

3-D.Power to make rules. -

(1)The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Chapter.

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

(a)The form of application for the registration of a plantation, the particulars to be contained in such application and the fees to be accompanied along with such application;

(b)The form of the certificate of registration

(c)The particulars regarding any change in respect of which intimation shall be given by the employer to the registering officer under sub-section (5) of Section 3-B and the form in which such change shall be intimated

(d) The authority to which an appeal may be preferred under Section 3-C and the fees payable in respect of such appeal;

(e) The registers to be kept and maintained by a registering officer.]

INSPECTING STAFF

4. Chief inspector and inspectors-

(1) The State Government may, by notification in the Official Gazette, appoint for the State duly qualified person to be chief inspector of plantations, and so many duly qualified persons to be inspectors of plantations subordinate to the chief inspector as it thinks fit.

[(I-A) The State Government may also, by notification in the Official Gazette, appoint such officers of the State Government or of any local authority under its control as it thinks fit, to be additional inspectors of plantations for all or any of the purposes of this Act]

(2)Subject to such rules as may be made in this behalf by the State Government, the chief inspector may declare that local area or areas within which or the plantations with respect to which, inspectors shall exercise their powers under this Act, and may himself exercise the powers of an inspector within such limits as may be assigned to him by the State Government.

(3) The Chief Inspector and if inspectors shall be deemed to be public servants within the meaning of the Indian Penal Code (45 of 1860).

1. Ins. by Act No. 59 of 11, I (w.e.f. 26-1-1982)

5.Powers and functions of inspectors. - Subject to any rules made by the State Government in this behalf, an inspector may within the local limits for which he is appointed--

(a)Make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act and of the rules made thereunder are being observed in the case of any plantation;

(b) With such assistants, if any, as he thinks fit, enter, inspect and examine any plantation or part thereof at any reasonable time for the purpose of carrying out the objects of this Act;

(c)Examine the crops grown in any plantation or any worker employed therein or require the production of any register or other document maintained in pursuance of this Act and take on the spot or otherwise statements on any person which he may consider necessary for carrying out the purposes of this Act;

(d)Exercise such other powers as may be prescribed:

Provided that no person shall be compelled under this section to answer any question or make any statement tending to incriminate himself.

6. Facilities to be afforded to inspectors. - Every employer shall afford the inspector all reasonable facilities for making any entry, inspection, examination or inquiry under this Act.

7. Certifying surgeons. -

(1) The State Government may appoint qualified medical practitioners to be certifying surgeons for the purposes of this Act within such local limits or for such plantation or class of plantation as it may assign to them respectively.

(2) The certifying surgeon shall carry out such duties as may be prescribed in connection with-

(a) The examination and Certification of workers;

(b) The exercise of such medical supervision as may be prescribed where adolescents and children are, or are to be, employed in any work in any plantation which is likely to cause injury to their health.

PROVISIONS AS TO HEALTH

8. Drinking water. - In every plantation effective arrangements shall be made by the employer to provide and maintain at convenient places in the plantation a sufficient supply of wholesome drinking water for all workers.

9. Conservancy. -

(1) There shall be provided separately for males and females in every plantation a sufficient number of latrines and urinals of prescribed types so situated as to be convenient and accessible to workers employed therein.

(2) All latrines and urinals provided under sub-section (1) shall be maintained in a clean and sanitary condition.

10. Medical Facilities-

(1) In every plantation there shall be provided and maintained so as to be readily available such medical facilities for the workers [and their families]¹ as may be prescribed by the State Government.

(2) If in any plantation medical facilities are not provided and maintained as required by sub-section (1) the chief inspector may cause to be provided and maintained therein such medical facilities, and recover the cost thereof from the defaulting employer.

(3) For the purposes of such recovery the chief inspector may certify the costs to be recovered to the collector, who may recover the amount as an arrear of land revenue.

1. Ins. by Act No. 34 of 1960.

WELFARE

11. Canteens. —

(1) The State Government may make rules requiring that in every plantation wherein one hundred and fifty workers are ordinarily employed, one or more canteens shall be provided and maintained by the employer for the use of the workers.

(2) Without prejudice to the generality of the foregoing power such rules may provide for-

(a) The date by which the canteen shall be provided;

(b) The number of canteens that shall be provided and the standards in respect of construction, accommodation, furniture and other equipment of the canteen;

(c) The foodstuffs which may be served therein and the charges which may be made therefor;

(d) The constitution of a managing committee for the canteen and the representation of the workers in the management of the canteen;

(e) The delegation to the chief inspector, subject to such conditions as may be prescribed, of the power to make rules under clause (c).

12. Crèches. —

(1) In every plantation wherein fifty or more women workers (including women workers employed by any contractor) are employed or were employed on any day of the preceding twelve months, or where the number of children of women workers (including women workers employed by any contractor) is twenty or more, there shall be provided and maintained by the employer suitable rooms for the use of children of such women workers.

Explanation. - For the purposes of this sub-section and sub-section (1-A), “children” means persons who are below the age of six years.]

(1-A) Notwithstanding anything contained in sub-section (1), if, in respect of any plantation wherein less than fifty women workers (including women workers employed by any contractor) are employed or were employed on any day of the preceding twelve months, or where the number of children of such women workers is less than twenty, the State Government, having regard to the number of children of such women workers deems it necessary that suitable rooms for the use of such children should be provided and maintained by the employer, it may, by order, direct the employer to provide and maintain such rooms and thereupon the employer shall be bound to comply with such direction.

(2) [The rooms referred to in sub-section (1) or sub-section 1-A] shall-

(a) Provide adequate accommodation;

(b) Be adequately lighted and ventilated;

(c) Be maintained in a clean and sanitary condition; and

(d) Be under the charge of a woman trained in the care of children and infants.

(3) The State Government may make rules prescribing the location and the standards of ³[the rooms referred to in sub-section (1) or sub-section (1-A) in respect of their construction and accommodation and the equipment and amenities to be provided therein.

1. Subs. by Act No. 58 of 1981 w.e.f. 26-1-1982.

2. Ins. by Act No. 58 of 1981 w.e.f. 26-1-1982.

3. Subs. by Act No. 58 of 1981 w.e.f. 26-1-1982.

13. Recreational facilities. -The State Government may make rules requiring every employer to make provision in his plantation for such recreational facilities for the workers and children employed therein as may be prescribed.

14.Educational facilities. -Where the children between the ages of six and twelve of workers employed in any plantation exceed twenty-five in number, the State Government may make rules, requiring every employer to provide educational facilities for the children in such manner and of such standard as may be prescribed.

[15.Housing facilities. -- It shall be the duty of every employer to provide and maintain necessary housing accommodation-

(a)For every worker (including his family) residing in the plantation;

(b)For every worker (including his family) residing outside the plantation, who has put in six months of continuous service in such plantation and who has expressed a desire in writing to reside in the plantation:

Provided that the requirement of continuous service of six months under this clause shall not apply to a worker who is a member of the family, of a deceased worker who, immediately before his death, was residing in the plantation.]

1.Subs. by Act No. 58 of 1981 w.e.f. 26-1-1982.

16.Power to make rules relating to housing. -The State Government may make rule for the purposes of giving effect to the provisions of Section 15 and, in particular providing for--

(a)The standard and specification of the accommodation to be provided;

(b)The selection and preparation of sites for the construction of houses and the size of such plot;

(c)The constitution of advisory boards consisting of representatives of the State Government, the employer and the workers for consultation in regard to matters connected with housing and the exercise by them of such powers, functions and duties in relation thereto as may be specified ;

(d)The fixing of rent, if any, for the housing accommodation provided for workers;

(e)The allotment to workers and their families of housing accommodation and suitable strips of vacant land adjoining such accommodation for the purposes of maintaining kitchen gardens, [* * *]^{1a} and for the eviction of workers and their families from such accommodation;

(f)Access to the public to those parts of the plantation wherein the workers are housed.

1a.Omitted by Act No. 34 of 1960.

16-A. Liability of employer in respect of accidents resulting from collapse of houses provided by him. -

(1)If death or injury is caused to any worker or a member of his family as a result of the collapse of a house provided under Section 15, and the collapse is not solely and directly attributable to a fault on the part of any occupant of the house or to a natural, calamity, the employer shall be liable to pay compensation.

(2) The provisions of Section 4 of, and Schedule IV to, the Workmen's Compensation Act, 1923 (8 of 1923), as in force for the time being,, regarding the amount of compensation payable to a

workman under that Act shall, so far as may be, apply for the determination of the amount of compensation payable under sub-section (1).

1. Sections 16-A 16-G ins. by Act No. 58 of 1981 w.e.f. 26-1-1982.

16-B. Appointment of Commissioners. - The State Government may, by notification in the Official Gazette, appoint as many persons, possessing the prescribed qualifications, as it thinks fit, to be Commissioners to determine the amount of compensation payable under Section 16-A and may define the limits within which each such Commissioner shall exercise the powers and discharge the functions conferred or imposed on him by, or under this Act.

16-C. Application for compensation. -

(1) An application for payment of compensation under Section 16-A may be made to the Commissioner-

(a) By the person who has sustained the injury; or

(b) By any agent duly authorised by the person who has sustained the injury; or

(c) Where the person who has sustained the injury is a minor, by his guardian; or

(d) Where death has resulted out of the collapse of the house, by any dependant of the deceased or by any agent duly authorised by such dependent or, if such dependant is a minor, by his guardian.

(2) Every application under sub-section (1) shall be in such form and shall contain such particulars as may be prescribed.

(3) No application for compensation under this section shall be entertained unless it is made within six months of the collapse of the house:

Provided that the Commissioner may, if he is satisfied that the applicant was prevented by sufficient cause from making the application within the aforesaid period of six months, entertain such application within a further period of six months.

Explanation. - In this section, the expression “dependant” has the meaning assigned to it in clause (d) of Section 2 of the Workmen's Compensation Act, 1923 (8 of 1923).

16-D. Procedure and powers. -

(1) On receipt of an application under Section 16-C, the Commissioner may make an inquiry into the matter covered by the application.

(2) In determining the amount of compensation payable under Section 16-A, the Commissioner may, subject to any rules that may be-made in this behalf, follow such summary procedure as he thinks fit.

(3) The Commissioner shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely: -

(a) Summoning and enforcing the attendance of any person and examining him on oath;

- (b) Requiring the discovery and production of any document;
- (c) Receiving evidence on affidavits;
- (d) Requisitioning any public record or copy thereof from any court or officer;
- (e) Issuing commissions for the examination of witnesses or documents;
- (f) Any other matter which may be prescribed.

(4) Subject to any rules that may be made in this behalf, the Commissioner may, for the purpose of determining any claim or compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist him in holding the inquiry.

16-E. Liability to pay compensation, etc., to be decided by Commissioner. -

(1) Any question as to the liability of an employer to pay compensation under Section 16-A, or as to the amount thereof, or as to the person to whom such compensation is payable, shall be decided by the Commissioner.

(2) Any person aggrieved by a decision of the Commissioner refusing to grant compensation, or as to the amount compensation granted to him, or to the apportionment thereof, may prefer an appeal to the High Court having jurisdiction over the place where the collapse of the house has occurred, within ninety days of the communication of the order of the Commissioner to such person:

Provided that the High Court may entertain any such appeal after the expiry of the period aforesaid if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within such period:

Provided further that nothing in this sub-section shall be deemed to authorise the High Court to grant compensation in excess of the amount of Compensation payable under Section 16-A.

(3) Subject to the decision of the High Court in cases in which an appeal is preferred under sub-section (2), the decision of the Commissioner under sub-section (1) shall be final and shall not be called in question in any court.

16-F. Saving as to certain rights. -The right of any person to claim compensation under Section 16-A shall be without prejudice to the right of such person to recover compensation payable under any other law for the time being in force; but no person shall be entitled to claim compensation more than once in respect of the same collapse of the house.

16-G. Power to make rules. -

(1) The State Government may, by notification in the Official Gazette, make rules for giving effect to the provisions of Sections 16-A to 16-F (both inclusive).

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for-

- (i) The qualifications and conditions of service of Commissioners;

(ii) The manner in which claims for compensation may be inquired into and determined by the Commissioner;

(iii) The matters in respect of which any person may be chosen to assist the Commissioner under Section 16-D and the functions that may be performed by such person;

(iv) Generally for the effective exercise of any powers conferred on the Commissioner.]

17. Other facilities. -The State Government may make rules requiring that in every plantation the employer shall provide the workers with such number and type of umbrellas, blankets, rain coats or other like amenities for the protection of workers from rain or cold as may be prescribed.

18. Welfare officers. -

(1) In every plantation wherein three hundred or more workers are ordinarily employed the employer shall employ such number of welfare officers as may be prescribed.

(2) The State Government may prescribe the duties, qualifications and conditions of service of officers employed under sub-section (1).

STATE AMENDMENT

Kerala. - In Section 18, after sub-section (1) add the following:

(1-A) If in any plantation, welfare officers are not employed as required by the rules made under sub-section (1), the chief inspector may appoint the required number of welfare officers and thereupon such officers shall be deemed to have been employed by the employer under sub-section (1):

Provided that before appointing welfare officers under this sub-section the employer shall be given an opportunity of being heard. -Kerala Act 25 of 1969, S. 2 (1-12-1969).

SECTION 18-A

Kerala. -After Section 18, add the following section:

18-A. "Chief Inspector to provide facilities on default by employer. -

(1) If in any plantation, facilities are not provided or maintained by employer as required by Section 8 or Section 9 or Section 12 or Section 15 or the rules made under Section 11 or Section 14 or Section 17, the chief inspector may cause to be provided or maintained therein such facilities and recover the cost thereof from the defaulting employer:

Provided that before providing or maintaining such facilities the employer shall be given an opportunity of being heard.

(2) For the purpose of all recovery, of the cost under sub-section (1) the chief inspector may certify the amount to be recovered to the Collector, who may thereupon recover such amount as an arrear of land revenue. --Kerala Act 25 of 1969, S. 2(1-12-1969).

HOURS AND LIMITATION OF EMPLOYMENT

19. Weekly hours. -

^{1a}[(1)] Save as otherwise expressly provided in this Act, no adult worker shall be required or allowed to work on any plantation in excess of ² [forty-eight hours] a week and no adolescent or child for more than ²[twenty-seven hours] a week.

³[(2)]Where an adult worker works in any plantation on any day in excess of the number of hours constituting a normal working day or for more than forty-eight hours in any week, he shall, in respect of such overtime work, be entitled to twice the rates of ordinary wages:

Provided that no worker such shall be allowed to work for more than nine hours on any day and more than fifty-four hours in any week.

(3)For any work done on any closed holiday in the plantation or on any day of rest, a worker shall be entitled to twice the rates of ordinary wages as in the case of overtime work.]

1a. Renumbered by Act No. 58 of 1981 w.e.f. 26- 1-1982.

2. Subs. by Act No. 58 of 1981 w.e.f. 26-1-1982.

3. Ins. by Act No. 58 of 1981 w.e.f. 26-1-1982.

20. Weekly holidays. -

(1)The State Government may by rules made in this behalf -

(a)Provide for a day of rest, in every period of seven days which shall be allowed to all workers;

¹[(b)Provide for the conditions subject to which, and the circumstances in which, an adult worker may be required or allowed to work overtime.]

(2)Notwithstanding anything contained in clause (a) of subsection (1)where a worker is willing to work on any day of rest which is not a closed holiday in the plantation, nothing contained in this section shall prevent him from doing so:

Provided that in so doing a worker does not work for more than ten days consecutively without a holiday for a whole day intervening.

Explanation 1. -Where on any day a worker has been prevented from working in any plantation by reason of tempest, fire, rain or other natural causes, that day, may, if he so desires, be treated as his day of rest for the relevant period of seven days within the meaning of sub-section (1).

Explanation 2. -Nothing contained in this section shall apply to any worker whose total period of employment including any day spent on leave. is less than six days.

1. Subs. by Act No. 58 of 1981 w.e.f. 26-1-1982.

21. Daily intervals for rest. -The period of work on each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest for at least half an hour.

22. Spread-over. -The period of work of an adult worker in a plantation shall be so arranged that inclusive, of his interval for rest under Section ^{1a}[2I] it shall not spread over more than twelve hours including the time spent in waiting for work on any day.

1a. Subs. by Act No. 42 of 1953, S. 4 and Sch. 111, for “ 19”.

23. Notice of period of work. -

(1) There shall, be displayed and correctly maintained in every plantation a notice of periods of work in such form and manner as may be prescribed showing clearly for every day the periods during which the workers may be required to work.

(2) Subject to the other provisions contained in this Act, no worker shall be required or allowed to work in any plantation otherwise than in accordance with the notice of periods of work displayed in the plantation.

(3) An employer may refuse to employ a worker for any day if on that day he turns up for work more than half an hour after the time fixed for the commencement of the day's work.

24. ¹[*****].

1. Omitted by Act 61 of 1986.

25. Night work for women and children. - Except with the permission of the State Government, no woman or child worker shall, be employed in any plantation otherwise than between the hours of 6 a.m. and 7 p.m.

Provided that nothing in this section shall be deemed to apply to midwives and nurses employed as such in any plantation.

26. Non-adult workers to carry tokens. -No child ¹[* * * *] and no adolescent shall be required or allowed to work in any plantation unless-

(a) A certificate of fitness granted with the reference to him under Section 27 is in the custody of the employer; and

(b) Such child or adolescent carries with him while he is at work a token giving a reference to such certificate.

1. Omitted by Act 61 of 1986.

27. Certificate of fitness. -

(1) A certifying surgeon shall, on the application of any young person or his parent or guardian accompanied by a document signed by the employer or any, other person on his behalf at such person will be employed in the plantation if certified to be fit for work, or on the application of the employer or any other person on his behalf with reference - to any young person intending to work, “amine such person and ascertain his fitness for work either as a child or as an adolescent.

(2) A certificate of fitness granted under this section shall be valid for a period of twelve months from the date thereof, but may be renewed.

(3) Any fee payable for a certificate under this section shall be paid by the employer and shall not be recoverable from the young person, his parents or guardian.

28. Power to require medical examination. -An inspector may if he thinks necessary so to do, cause any young person employed in, a plantation to be examined by a certifying surgeon.

LEAVE WITH WAGES

29. Application of chapter. -The provisions of this chapter shall not operate to the prejudice of any rights to which a worker may be entitled under any other law or under the terms of any award, agreement, or contract of service:

Provided that where such award, agreement or contract of service provides for a longer leave with wages than provided in this chapter the worker shall be entitled only to such longer leave.

Explanation. -For the purpose of this chapter leave shall not, except as provided in Section 30, include weekly holidays or holidays for festivals or other similar occasions.

30. Annual leave with wages. –

(1) Every worker shall be allowed leave with wages for a number of days calculated at the rate of.

(a) If an adult, one day for every twenty days of work performed by, him, and

(b) If a young person, one day for every fifteen days of work performed by him:¹[* * * *]

²[**Explanation**-(1)]³ for the purposes of calculating leave under this sub-section, -

(a) Any day on which no work or less than half a day's work is performed shall be counted, and

(b) Any day on which half or more than half a day's work is performed shall be counted as one day.]

³ [**Explanation.** -(2) The leave admissible under this subsection shall be exclusive of all holidays, whether occurring during, or at either end of, the period of leave.)

(2) If a worker does not in any one period of twelve months take the whole of the leave owed to him under sub-section (1), and leave not taken by him shall be added to the leave to be allowed to him under that subsection in the succeeding period of twelve months.'

(3) A worker shall cease to earn any leave under this section when the earned leave due to him amounts to thirty days.

²[(4) If the employment of a worker who is entitled to leave under this section is terminated by the employer before he, has taken the entire leave to which he is entitled, the Employer shall. Pay him the amount payable, under Section 31 in respect of the leave not taken, and such payment shall be made before the expiry of the second working day after-such termination.]

1. Proviso omitted by Act No. 58 of 1981 w.e.f. 26-01-1982.

2. Ins. by Act No. 34 of 1960.

3. Ins. by Act No. 58 of 1981 w.e.f. 26-01-1982.

31. Wages during leave period. –

¹(1) For the leave allowed to a worker under Section 30, he shall be paid, -

(a) If employed wholly on a time-rate basis, at a rate equal to the daily wage payable to him immediately before the commencement of such leave under any law or under the terms of any award, agreement or contract of service, and

(b) In other cases, including cases where he is, during the preceding twelve calendar months, paid partly on a time-rate basis and partly on a piece-rate basis, at the rate of the average daily wage calculated over the preceding twelve calendar months.

Explanation. - For the purposes of clause (b) of sub-section (1) the average daily wage shall be computed on the basis of his total full-time earnings during the preceding twelve calendar months, exclusive of any overtime earnings or bonus, if any, but inclusive dearness allowances.

(I-A) In addition to the wages for the leave period at the rates specified in sub-section (1), a worker shall also be paid the cash value of food and other concessions, if any, allowed to him by the employer in addition to his daily wages unless these concessions are continued during the leave period.]

(2) Worker who has been allowed leave for ²[any period not less than] four days in the case of an adult and five days in the case of a young person under Section 30 shall, before his leave begins, be paid his wages for the period of the leave allowed.

1. Subs. by Act No. 34 of 1960.

2. Subs. by Act No. 42 of 1953, S. 4 and Sch. III, for “any period less than”.

¹**[32. Sickness and maternity benefits. –**

(1) Subject to any rules that may be made in this behalf, every worker shall be entitled to obtain from his employer-

(a) In the case of sickness certified by a qualified medical practitioner, sickness allowance, and

(b) If a woman, in the case of confinement or expected confinement, maternity allowance,

At such rate, for such period and at such intervals as--may be prescribed.

(2) The State Government may make rules regulating the payment of sickness or maternity allowance and any such rules may specify the circumstances in which such allowance shall not be payable or shall cease to be payable and in framing any rules under this section the State Government shall have due regard to the medical facilities that may be provided by the employer in any plantation.]

1. On the enforcement of the Maternity Benefit Act, 1961 (53 of 1961) in a State in relation to establishment, in that State referred to in S. 1(3) thereof, S. 32 will stand amended as follow

(a) In sub-section (1), the letter and brackets, “(a)” before the words “in the case of sickness”, the word “and” after the words “sickness allowance” and clause (b) shall be omitted,

(b) In sub-section (2), the words “for maternity” shall be omitted.

ACCIDENTS

1.Ins. by Act No. 58 of 1981 w.e.f. 26-1-1982.

32-A. Notice of accident. -Where in occurs which causes death or which causes any reason of which the worker injured is prevented from working for a period of forty-eight hours or more immediately following the accident, or which is of such a nature as may be prescribed in this behalf, the employer thereof shall send notice thereof to such authorities, in such form, and within such time, as may be prescribed.

32-B. Register of accidents. -The employer shall maintain a register of all accidents, which occur in, the plantation in such form and in such manner as may be prescribed.

PENALTIES AND PROCEDURE

33.Obstruction. –

(1) Whoever obstructs and inspector in the discharge of his duties under this Act or refuses or wilfully neglects to afford the inspector any reasonable facility for making any inspection, examination or inquiry authorized by or under this Act in relation to any, plantation, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees, or with both.

(2)Whoever wilfully refuses to produce on the demand of an inspector any register or other document kept in pursuance of this Act, or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before or being examined by an inspector acting in pursuance of his duties under this Act shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

34.Use of false certificate of fitness. -Whoever knowingly uses or attempts to use as a certificate of fitness granted to himself under Section 27 a certificate granted to another person under that section, or having been granted a certificate of fitness to himself, knowingly allows it to be used, or allows an attempt to use it to be made by another person, shall be punishable with imprisonment which may extend to one month, or with fine which i-nay extend to fifty rupees, or with both.

35.Contravention of provisions regarding employment of labour. -Whoever, except as otherwise permitted any or under this Act, contravenes any provision of this Act or of any rules made thereunder, prohibiting, restrict in or regulating the employment of persons in a plantation, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

36.Other offences. -Whoever contravenes any of the provisions of this Act or of any rules made thereunder for which no other penalty is elsewhere provided by or under this Act shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

37. Enhanced penalty after previous conviction. -If any person who has, been convicted of any offence punishable under this Act is again guilty of an offence involved a Contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both:

Provided that for the purposes of this section no cognizance taken of any conviction made more than two years before the commission of the offence which is being punished.

¹[37A. Power of court to make orders. –

(1) Where an employer is convicted of an offence punishable under Section 36, the court may, in addition to awarding any punishment by order in writing, require him within such period as may be specified in the order (which the court may, if it thinks fit and on an application made in this behalf by the employer, from time to time, extend to take such measures as may be so specified for remedying the matters in respect of which the offence was committed.

(2) Where an order is made under sub-section (1), the employer shall not be liable under this Act in respect of the continuation of the offence during the period or extended period, as the case may be, specified by the court, but if, on the expiry of such period or extended period, the order of the court has not been fully complied with, the employer shall be deemed to have committed a further offence and he shall, on conviction, be punishable with imprisonment for a term which may extend to six months and with fine which may extend to three hundred rupees for every day after such expiry.]

1. Ins. by Act. No. 58 of 1981 w.e.f. 26-1-1982.

38. Exemption of employer from liability in certain cases. -- Where an employer charged with an offence under this Act alleges that another person is the actual offender, he shall be entitled upon complaint made by him in this behalf to have, on giving to the prosecutor in this behalf three clear days' notice in writing of his intention so to do, that other person brought before the Court on the day appointed for the hearing of the case and if, after the commission, of the offence has been proved, the employer proves to the satisfaction of the Court that-

- (a) He has used due diligence to enforce the execution of the relevant provisions of this Act; and
- (b) That the other person committed the offence in question without his knowledge, consent or connivance,

The said other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be acquitted:

Provided that-

- (a) The employer may be examined on oath and his evidence and that of any witness whom he calls in his support shall be subject to cross-examination on behalf of the person he charges to be the actual offender and by the prosecutor, and
- (b) If, in spite of due diligence, the person alleged as the actual offender cannot be brought before the Court on the day appointed for the hearing of the case, the Court shall adjourn the hearing thereof from time to time so, however, that the total period of such adjournment does not exceed three Months, and if, by the end of the said period, the person alleged as the actual offender cannot still be brought before the Court, the Court shall proceed to hear the case against the employer.. 431

39. Cognizance of, offences. -No. Court shall take cognizance of any offence under this Act except on complaint made by, or with the previous sanction in writing of, the chief inspector and

no Court inferior to that of a Presidency Magistrate or a Magistrate of the second class shall try any offence punishable under this Act.

40. Limitation of prosecutions. - No Court shall take cognizance of an offence punishable under this Act unless the complaint thereof has been made or is made within three months from the date on which the alleged Commission of the offence came to the knowledge of an inspector:

Provided that where the offence consists of disobeying a written order made by an inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.

MISCELLANEOUS

41. Power to give directions. -The Central Government may give directions to the Government of any State as to the carrying into execution in the State of the provisions contained in this Act.

42. Power to exempt. -The State Government may, by order in writing, exempt, subject to such conditions and restrictions as it may think fit to impose, any employer or class of employers from all or any of the provisions of this Act:

Provided that no such exemption [other than an exemption from Section 19]¹ shall be granted except with the previous approval of the Central Government.

1. Ins. by Act No. 34 of 1960.

43.General power to make rules. -

(1)The State Government may, subject to the condition of previous publication, make rules to carry out the purposes of this Act:

Provided that the date to be specified under clause (3) of Section 23 of the General Clauses Act, 1897 (10 of 1897), shall not be less than six weeks from the date on which the draft of the proposed rules was published.

(2)In particular, and without prejudice to the generality of the foregoing power, any such rules may provide for-

(a)The qualifications required in respect of the chief inspector and inspector;

(b)The powers which may be exercised by inspectors and the areas in which and the manner in which such powers may be exercised;

(c)The medical supervision which may be exercised by certifying surgeons;

(d)The examination by inspector or other persons of the supply and distribution of drinking water in plantations;

(e)Appeals from any order of the chief inspector or inspector and the form in which, the time within which and the authorities to which, such appeals may be preferred;

(f)The time within which housing, recreational, educational or other facilities required by this Act to be provided and maintained may be so provided;

(g)The types of latrines and urinals that should be maintained in plantations;

(h)The medical, recreational and educational facilities that should be provided in plantations;

(i)The form and manner in which notices of period of work shall be displayed and maintained;

(j) The registers which should be maintained by employers and the returns, whether occasional or periodical, as in the opinion of the State Government may be required for the purposes of this Act;[* * *]¹

(k)The hours of work for a normal working day for the purposes of wages and overtime.

²[(1) Any other matter which is required to be, or may be, prescribed.]

(3) All rules made under this Act shall, if made by any Government, other than the Central Government, be subject to the previous approval of the Central Government.

1. Omitted by Act No. 58 of 1981 w.e.f. 26-1-1982.

2. Added by *ibid.*