Act cannot legitimately be pressed into service for the purpose of construing the relevant provisions of the Act ; even so, incidentally it may be permissible to observe that the construction of r. 4(2) which we are inclined to adopt is consistent with the respondent's case that s.2 (1)(b)(i) includes agricultural produce utilised by the appellant for its own business.

In the result the appeal fails and is dismissed with costs.

Appeal dismissed.

SHRI AMBALAL M. SHAH AND ANOTHER

v.

HATHISINGH MANUFACTURING CO., LTD.

(K. N. WANCHOO, K. C. DAS GUPTA, J.C. SHAH and RAGHUBAR DAYAL, JJ.)

Industrial Undertaking—Investigation into its affairs by Central Government—Taking over of management by officer appointed by Government on the basis of report—Legality—Industries (Development and Regulation) Act. 1951 (65 of 1951), ss. 15, 18 A(1)(b).

Being of the opinion that there had been a substantial fall in the volume of production in respect of cotton textiles manufactured in the respondent company, an industrial undertaking, for which having regard to the economic conditions prevailing there was no justification, the Central Government made an order under s.15 of the Industries (Development and Regulation) Act, 1951, appointing a committee of three persons for the purpose of making a full and complete investigation into the circumstances of the case. After the committee madeits report, the Central Government being of the opinion thereupon that the company was being managed in a manner highly detrimental to public interest, made an order under s. 18 A of the Act authorising the first appellant to take over the management of the whole of the said undertaking. The respondents challenged the legality of the order on the ground, *inter alia*, that on the proper construction of s.18 A the Central Government had the right to make the order under that section on the ground

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that the company was being managed in a manner highly detrimental to public interest only where the investigation made under s.15 was initiated on the basis of the opinion as mentioned in s. 15(b), whereas in the present case, the investigation ordered by the Central Government was initiated on the formation of an opinion as mentioned in cl. (a)(i) of s. 15.

Held, that the order passed by the Central Government under s.18 A was valid and that the words used by the legislature in s. 18A (1)(b) "in respect of which an investigation has been made under s. 15" could not be cut down by the restricting phrase "based on an opinion that the industrial undertaking is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest."

Section 18A (1)(b) empowers the Central Government to authorise a person to take over the management of an industrial undertaking if the one condition of an investigation made under s. 15 had been fulfilled irrespective of on what opinion that investigation was initiated, and the further condition is fulfilled that the Central Government was of opinion that such undertaking was being managed in a manner highly detrimental to the scheduled industry concerned or to public interest.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 285 of 1961.

Appeal from the judgment and order dated December 6, 1960, of the Gujrat High Court in Special Civil Application No. 434 of 1960.

H. N. Sanyal, Additional Solicitor-General of India, R. H. Dhebar and *T. M. Sen*, for the appellants.

I. M. Nanavati, S. N. Andley, Rameshwar Nath and *P. L. Vohra*, for the respondents.

1961. August 21. The Judgment of the Court was delivered by

Das Gupta J.

DAS GUPTA, J.—This appeal by special leave raises a question of the correct interpretation of some words in s.18A(1)(b) of the Industries (Development and Regulation) Act, 1951. The Central Government made an order under s. 15 of that Act appointing a committee of three persons for the purpose of making full and complete investi-

gation into the circumstances of the case as it was of opinion that there had been or was likely to be a substantial fall in the volume of production in respect of cotton textiles manufactured in the industrial undertaking known as Hathisingh Manufacturing Company Ltd., Ahmedabad, for which having regard to the economic conditions prevailing there was no justification. After the committee made its report the Central Government being of opinion thereupon that this industrial undertaking was being managed in a manner highly detrimental to public interest made an order under s.18A of the Act authorising Ambalal Shah (the first appellant before us) to take over the management of the whole of the said undertaking.

Against this order the industrial undertaking and its proprietor—who are the two respondents before us—filed a petition in the Gujarat High Court under Art. 226 of the Constitution praying for issue of writs directing the authorised controller and the Union of India not to take over the management on the basis of the order under s.18A. The main ground on which the application was based was that on a proper construction of s.18A (1)(b) the Central Government has the right to make an order thereunder only where the investigation made under s. 15 was initiated on the basis of the opinion as mentioned in s.15(b)—that the industrial undertaking is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest. It was also urged that in fact the committee appointed to investigate had not directed its investigation into the question whether the industrial undertaking was being managed in the manner mentioned above. The other grounds mentioned in the petition which were however abandoned at the time of the hearing included one that the alleged opinion formed by the Government as mentioned in the order under s.18A was in the absence of any material for the same in the report

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of the investigating committee and therefore was arbitrary, capricious and malafide.

On bahalf of the Government and the authorised controller it was urged that the question which one of the five opinions mentioned in s.15 formed the basis of the investigation under that section was wholly immaterial. The allegation that the investigating committee had not directed its investigation into the question whether the undertaking was being managed in a manner highly detrimental to the scheduled industry concerned or to public interest was also denied.

The High Court however came to the conclusion that on a correct construction of s. 18A (1)(b) it was necessary before any order could be made thereunder that the investigation should have been initiated on the basis of the opinion mentioned in s.15(b) of the Act. It also accepted the petitioners' contention that no investigation had in fact been held into the question, whether the undertaking was being managed in a manner highly detrimental to public interest. Accordingly it made an order "setting aside the order of the Central Government dated 28th July, 1960, and directing the respondents not to interfere with or take over the management of the undertaking of the first petitioner, namely "Hathisingh Mills" by virtue of or in pursuance of the said order". It is against this decision that the present appeal is directed.

The principal question in appeal is whether the High Court is right in its view as regards the construction of section 18A. The relevant portion of s.18A(1) runs thus :—

"If the Central Government is of opinion that—

(a) x x x x

(b) an industrial undertaking in respect of which an investigation has been made under s. 15 (whether or not any directions

have been issued to the undertaking in pursuance of section 16), is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest, the Central Government may, by notified order, authorise any person or body of persons to take over the management of the whole or any part of the undertaking or to exercise in respect of the whole or any part of the undertaking such functions of control as may be specified in the order....."

The dispute is over the construction of the words "an investigation has been made under section 15". Section 15 is in these words :—

"Where the Central Government is of the opinion that—

(a) in respect of any scheduled industry or industrial undertaking or undertakings—

(i) there has been, or is likely to be a substantial fall in the volume of production in respect of any article or class of articles relatable to that industry or manufactured or produced in the industrial undertaking or undertakings, as the case may be, for which having regard to the economic conditions prevailing, there is no justification ; or

(ii) there has been or is likely to be a marked deterioration in the quality of any article or class of articles relatable to that industry or manufactured or produced in the industrial undertaking or undertakings, as the case may be, which could have been or can be avoided ; or

(iii) there has been or is likely to be a rise in the price of any article or class of articles relatable to that industry or manufactured or produced in the industrial undertaking or undertakings as the

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case may be, for which there is no justification ; or

(iv) it is necessary to take any such action as is provided in this Chapter for the purpose of conserving any resources of national importance which are utilized in the industry or, the industrial undertaking or undertakings, as the case may be ; or

(b) any industrial undertaking is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest, the Central Government may make or cause to be made a full and complete investigation into the circumstances of the case by such person or body of persons as it may appoint for the purpose."

It may be mentioned here that s.15(b) as it orginally stood was amended in 1955 and it was after the amendment that the words as mentioned above appear. Reference may also be made in passing to s.16 under which once an investigation under s.15 has been commenced or completed the Central Government if it considers desirable, may issue directions to the industrial undertaking or undertakings concerned in several matters. Section 17 of the original Act was repealed in 1953 by Act 26 of 1953. The same amending Act introduced into this Act two new chapters—Chapter IIIA and Chapter IIIB of which s.18A in Chapter IIIA makes provisions as set out above for an order by the Central Government authorising any person or body of persons to take over the management of the whole or any part of the undertaking.

These provisions of s.18A it may be mentioned take the place of the provisions that previously appeared in s.17 (1). That section, now repealed, had empowered the Central Government to authorise any person, or development council or any other

body of persons to take over the management of an undertaking or to exercise with respect thereto such functions of control as might be provided by the order, in one class of cases only—*viz.*, where after a direction had been issued in pursuance of s. 16 the Central Government was of opinion that the directions had not been complied with and that the industrial undertaking in respect of which directions had been issued was being managed in a manner highly detrimental to the scheduled industry concerned or to public interest. The present s.18A empowers the Government to authorise any person or persons to take over the management or to excercise such functions of control as may be specified, in two classes of cases. The first of these classes is mentioned in cl. (a) of s.18A(1), *viz.*, where the Central Government is of opinion that directions issued in pursuance of s.16 have not been complied with by an industrial undertaking. The second class with which we are here directly concerned is mentioned in cl. (b)—*viz.*, where the Central Government is of the opinion that an industrial undertaking in respect of which an investigation has been made under s.15 is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest—irrespective of whether any directions had been issued in pursuance of s.16 or not. What is noticeable in the wording of this clause is that while an investigation under s.15 may be initiated in respect of an industrial undertaking where the Central Government is of any of the five opinions mentioned in s.15(a)(i), 15(a)(ii), 15(a)(iii), 15(a)(iv) and s.15(b), s.18A(1)(b) does not refer to any of these opinions. Indeed, it does not refer at all to the question of the initiation of the investigation and mentions only the making of the investigation under s.15. Read without the addition of anything more, the language of s.18 A (1) (b) empowers the Central Government to authorise a person or persons to take over the management of an industrial undertaking

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or to exercise specified functions of control in respect of that undertaking, if the one condition of an investigation made under s.15 has been fulfilled irrespective of on what opinion that investigation was initiated and the further condition is fufillled that the Central Government is of opinion that such undertaking is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest.

The contention made on behalf of the respondents before us which found favour with the High Court is that when the legislature used the words "an investigation has been made under s.15" it meant "an investigation has been made under s.15 based on an opinion of the Central Government that the industrial undertaking is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest." We should have thought that if the legislature wanted to express such an intention it would not have hesitated to use the additional words mentioned above. It was urged, however, on behalf of the respondents that these further words, *viz.*, "based on an opinion of the Central Government that the industrial undertaking is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest" are implicit in cl.(b) of s.18A. In his lengthy address to convince us of the correctness of this contention the learned counsel advanced in substance only two arguments. The first is that it is only where the investigation under s.15 is initiated on an opinion mentioned in s.15(b)—that the industrial undertaking is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest—that the report of the investigation can furnish the government with materials on which any opinion can be formed that an industrial undertaking is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest. For this argument we can find no basis. It appears to

us that where the investigation has been initiated, in respect of an industrial undertaking, on an opinion that there has been or is likely to be a fall in the volume of production for which having regard to the economic conditions there is no justification s.15(a)(i) or an opinion that there has been or is likely to be a marked deterioration in the quality of any article which could have been or can be avoided s.15(a)(ii); or an opinion that there has been or is likely to be a rise in the price of any article for which there is no justification s.15(a)(iii); or an opinion that it is necessary to take action for the purpose of conserving any resources of national importance s.15 (a)(iv), the investigation in order to be complete must also consider the quality of the management of the undertaking just as it would so consider the quality of management where the investigation is initiated on an opinion that the industrial undertaking is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest. For, even when the investigation has been initiated on the Government's forming any of the opinions mentioned in the four sub-clauses of cl. (a) of s.15, the investigator has necessarily to examine three matters : (1) whether the opinion formed by the Government is correct; secondly, what are the causes of this state of things, *viz.*, the unjustifiable fall in the volume of production or the deterioration in the quality of the article or the rise in the price of the articles or the necessity of an action for the purpose of conserving the resources ; and thirdly how this state of things, if it exists, can be remedied. In considering the second of these matters, *viz.*, the cause of this state of things the investigator must examine how far and in what manner the quality of management is responsible for it. He may come to the conclusion that the management is in no way responsible and that some other cause lies at the root of the difficulty. He may hold on the other hand, that the

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management is solely responsible; or he may hold that while other causes also play their part the defect in the quality of management is also in part responsible. Indeed, we find it difficult to understand how an investigator having embarked on an investigation ordered by the Government in respect of an industrial undertaking on the basis of one or more of the opinions mentioned in s.15 (a) can avoid an inquiry into the quality of the management of the industrial undertaking. It is said that the use of the words "for which having regard to the economic conditions prevailing there is no justification" in cl. (a)(i) indicate and circumscribe the scope of the enquiry and that the investigator would only try to ascertain whether or not the economic conditions are such that do or do not justify the fall in the volume of production and then to see, where necessary, how these economic conditions can be altered. To say so is however to miss the entire scheme of the legislation providing for the investigation and for action following the same. Clearly, the purpose of this legislation is to enable the Central Government to take suitable action to remedy the undesirable state of things mentioned in the different clauses of s.15. In order that Government may have proper materials to know what action is necessary the legislature empowered the Government to make or cause to be made "a full and complete investigation". In s.18, it empowered the person or body of persons appointed to make investigation to choose one or more persons possessing special knowledge to assist in the investigation and further vested the investigating committee with all the powers of the Civil Court under the Code of Civil Procedure for the purpose of taking evidence on oath and for enforcing the attendance of witnesses and compelling the production of documents and material objects. The whole purpose of the legislation would be frustrated unless the investigation could be "full and complete." No

investigation which has not examined the quality of management of the industrial undertaking could be said to be full or complete.

It was next contended that the use of the words "circumstances of the case" shows that the investigation had to be made only into the matter in respect of which the government has formed an opinion and not into anything else. Assuming that it is so and that the investigator has primarily to conduct his investigation where the investigation has been initiated on the basis of an opinion as regards fall in production, into questions as regards such fall ; and similarly, where the investigation has been initiated on an opinion as regards the deterioration in quality, into the question of such deterioration, that does not alter the fact that the investigator would have to try to ascertain the causes of the fall in production or the deterioration in quality and this part of the investigation would necessarily include an investigation into the quality of the management.

Learned Counsel contended that if an investigation made on the basis of one or more of the opinions mentioned in cl. (a) of s.15 was sufficient to furnish the materials on which the Government could form an opinion whether or not an industrial undertaking was being managed in a manner highly detrimental to the scheduled industry concerned or to public interest, cl. (b) would be wholly unnecessary. With this we are unable to agree. There may be many cases where there may be information justifying the formation of opinion that the industrial undertaking was being managed in a manner highly detrimental to the scheduled industry concerned or to public interest, even though there are no materials for an opinion that there has been or is likely to be an unjustifiable fall in production or an avoidable deterioration in quality or an unjustifiable rise in prices or the necessity of taking action for the purpose of conserving resources as

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mentioned in the four sub-clauses of cl. (a) of s. 15.

It was also urged that it would be unfair to expect the management, where the investigation has been initiated on the formation of an opinion as mentioned in cl. 15(a), to lead any evidence as regards the quality of its management and so there is risk of the investigator being misled. We can see no reason however for any management to have any doubt on the question that investigation would be directed among other things to the question of quality of management. We believe that one of the first things that any management would do when an investigation is initiated on the basis of any such opinion would be to try to show how efficient it was and how in spite of the high quality of its management the misdeeds of labour or the unsympathetic attitude of Government or the difficulties of transport or some other cause beyond their control was responsible for the undesirable state of things into which the investigation was being held.

The argument that except where the investigation has been initiated on the basis of an opinion mentioned in s. 15(b) there would be no material for the Government to form an opinion that the industrial undertaking was being managed in a manner highly detrimental to the scheduled industry concerned or to public interest, therefore fails.

Equally untenable is the second argument advanced by the learned counsel that absurd results would follow if the words "investigation has been made under section 15" are held to include investigations based on any of the opinions mentioned in s.15(a). Asked to mention what the absurd results would be the learned counsel could only say that an order under s. 18A(1)(b) would be unfair in such cases, as the owner of an industrial undertaking would have no notice that the quality of management was being investigated. That will be, says

the learned counsel, condemning a person unheard. This argument is really based on the assumption that when the investigation has been initiated on the basis of any of the opinions mentioned in cl. (a), the quality of the management will not be investigated. As we have stated earlier, there is no basis for this assumption.

We have therefore come to the conclusion that the plain words used by the legislature "in respect of which an investigation has been made under section 15" cannot be cut down by the restricting phrase "based on an opinion that the industrial undertaking is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest." We must therefore hold that the construction placed by the High Court on these words in s.18A(1)(b) is not correct.

This brings us to the consideration of the other question raised, *viz.*, whether in fact the investigation had been held into the question whether the industrial undertaking was being managed in a manner highly detrimental to the scheduled industry concerned or to public interest. On this question the High Court came to a conclusion adverse to the appellants. It is not clear how the respondents though abandoning the ground that Government had no material before it for forming the opinion that the undertaking was being managed in a manner highly detrimental to the scheduled industry concerned or to public interest, could still urge that no investigation had been actually held into the question whether the industrial undertaking was being managed in a manner highly detrimental to the scheduled industry concerned or to public interest. The question whether investigation had in fact been held or not into the question whether the industrial undertaking was being managed in a manner highly detrimental to the scheduled industry concerned or to public interest, would be relevant only to show that the Government

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acted without any material before it or acted *mala fide*. If the allegation of *mala fide* or the allegation that there was no material before the Government for forming its opinion is abandoned, the question whether an investigation had in fact been held into the question whether the industrial undertaking was being managed in a manner highly detrimental to the scheduled industry concerned or to public interest, becomes irrelevant.

We are satisfied however that the High Court was wrong in its view that it was not established that investigation had in fact been held into this question. We find that the assertion in the petition under Art. 226 that the investigation had not been directed "towards any alleged mis-management of the mills" was denied in the affidavit sworn on behalf of the Union of India. When thereafter on October 10, 1960, affidavits in rejoinder filed on behalf of the petitioners affirmed that "no question was put which would suggest that the committee was investigating into any mismanagement of the mills," an affidavit of Mr. Thomas de Sa, who was a member of the investigating committee was filed on behalf of the Union of India. This affidavit made the categorical assertion that the "committee investigated not only into the question relating to the fall in the volume of production in respect of cotton textiles manufactured in the said industrial undertaking but also made a full and complete investigation into the circumstances of the working of the said industrial undertaking including the management thereof and as to whether the said undertaking was being managed in a manner detrimental to the industry concerned or to public interest." The High Court has thought it fit to reject this testimony of Mr. De Sa for reasons which appear to us to be wholly insufficient. It appears that during the hearing the Advocate-General asked for time to file an affidavit preferably of Mr. P. H. Bhuta who was the non-official member of the committee of investigation but ultimately filed the

affidavit of Mr. De Sa and not the affidavit of Mr. Bhuta. The High Court seems to think that as Mr. Bhuta was an independent member of the investigation committee while Mr. De Sa was in the service of the Government Mr. De Sa's statement is open to suspicion. In our view such suspicion of high public officials is not ordinarily justified. Mr. De Sa was as much a member of the investigating committee as Mr. Bhuta and so no less competent than Mr. Bhuta to testify as regards the matter in issue. We do not think it right to suspect his honesty merely because he is an officer of the Union of India. The learned judges of the High Court appear also to have lost sight of the fact that the questionnaire which annexed as annexure X to the affidavit of the second respondent Rajendra Prosad Manek Lal itself includes a number of questions which show unmistakably that the quality of management was being enquired into.

A circumstance which appears to have weighed with the High Court is that the report of the committee which as the learned judges rightly say would be the best evidence to show "that there was in fact an investigation into the question of the management of the said undertaking" was not produced by the Union of India when called upon to do so by Mr. Nanavati on behalf of the petitioners. It is proper to mention that it does not appear that the learned judges themselves directed or desired the Advocate-General to produce the report for their inspection. It further appears that no written application for the production of the document was made on behalf of the petitioners. It does not seem to us to be fair to draw an inference against the Union of India merely because an informal request by the petitioners' advocate was not acceded to. In view of what happened in the court below we asked the appellants' counsel whether he was prepared to produce the report before us. The learned counsel readily produced the report and after examining the relevant portion

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where the report deals with the question of management, we read it out in Court so that the respondents' counsel could know the exact situation. This portion of the report says :—"that the management is in the hands of a young and inexperienced person.....; and the committee is of the opinion that the present manager is incapable of handling the affairs of the mills.....; the present managing agents are incapable of investing any further.....". The fact that the report does contain such an opinion is sufficient to show that an investigation was actually held into the question of the quality of the management as affirmed by Mr. De Sa. The High Court's view therefore that no investigation was held into the question of the management of the undertaking was wrong.

We have therefore come to the conclusion that the respondents were not entitled to any writ directing these appellants not to give effect to the Government's order under s.18A(1)(b). We therefore allow the appeal, set aside the order of the High Court directing the issue of the writ and order that the application under Art. 226 of the Constitution be dismissed. The appellants will get their costs both here and below.

Appeal allowed.