WORKMEN OF MEENAKSHI MILLS LTD. ETC. ETC. A

v.

MEENAKSHI MILLS LTD. AND ANR. ETC. ETC.

MAY 15, 1992

[J.S.VERMA, K. JAYACHANDRA REDDY, S.C. AGRAWAL, G.N. RAY AND R.C. PATNAIK, JJ.] B

Industrial Disputes Act, 1947/Industrial Disputes (Central) Rules:

Section 25-N/Rule 76-A and Form P-A—Restriction imposed on employer's right to retrench workmen—Whether violative of Article 19(1)(g)—Whether provision saved by Article 19(6)—Conferment of power to grant or refuse permission to retrench workmen on appropriate Government—Whether valid—Delegation of power to appropriate Government to specify authority—Whether unreasonable or arbitrary—Power to refuse or grant permission—Whether administrative or judicial in nature—Whether non-prescription of principles or guidelines for exercise of power and absence of provision for appeal or judicial review render provision unconstitutional—Denial of right to employer to challenge order refusing permission to retrench while granting similar right to workmen to challenge order granting permission—Whether discriminatory and unreasonable. C D E

Constitution of India, 1950:

Articles 14, 19(1)(g), 19(6), 136 and 226—Restrictions imposed on the employer's right to retrench workmen—Constitutional validity of Section 25-N of the Industrial Disputes Act, 1947—Exercise of power to grant or refuse permission to retrench workmen—Non-prescription of guidelines—Whether a vitiating factor—Absence of appeal or revision or review against the order of authority—Whether arbitrary or unreasonable—Denial of right to employer to challenge order refusing permission to retrench, while granting a similar right to workmen to challenge order granting permission to retrench—Whether discriminatory. F G

The validity of Section 25-N in Chapter V-B of the Industrial Disputes Act, 1947, inserted by the Amendment Act, 1976, prescribing conditions precedent for retrenchment of workmen in an industrial establishment, was challenged before various High Courts. There was difference of opinion H

A amongst the High Courts. While one High Court upheld the validity of the Section, two other High Courts held the Section to be violative of the right guaranteed under Article 19(1) (g) of the Constitution imposing unreasonable restrictions on the right of the employer to retrench workmen, and invalid. The correctness of the decisions of these two High Court was challenged in the appeals and Writ Petitions filed before this Court.

B

On behalf of the workmen, it was contended that the right to retrench the workmen could only be regarded as a peripheral or concomitant right which facilitated the exercise of the right to carry on business but it could not be treated as an integral part of the right to carry on business; that the C employers in the instant cases were all companies registered under the Companies Act, 1956; and a company, being an artificial person, was not a citizen and it could not claim the fundamental rights guaranteed to citizens under Article 19 of the Constitution; that the shareholder of a limited company could not be permitted to challenge the validity of Section 25-N inasmuch as by the said provision none of the fundamental rights of the D shareholder is impaired; that in a modern public company, the shareholder, although a member, was in economic reality, a mere lender of capital on which he hoped for return but without any effective control over the borrower; that while considering the matter of grant or refusal of permission for retrenchment the appropriate Government or authority was required to exercise its power in a quasi-judicial manner, i.e., it must pass the order after E affording an opportunity to both the parties, (the employer and the workmen) to make their submissions; that reference of a dispute for adjudication to the Industrial Tribunal depended on the discretion of the appropriate Government and there was no right as such to approach the Industrial Tribunal; that the power that was exercised by the appropriate F Government or authority under sub- section (2) of section 25-N was similar to that exercised by the various authorities under section 33 of the Act while giving approval to the action taken by the management in discharging or punishing a workman whether by dismissal or otherwise or altering the conditions of service of the workman, that in cases where such approval was given to the action of the management, it was open to the workmen to raise a G dispute and have it referred for adjudication under section 10 of the Act but no similar right was available to the management.

On behalf of the employers it was submitted that the right of the employer to carry on any business guaranteed under Article 19(1)(g) H included the right to organise the business in a way that it was most

beneficial for him and, if necessary, this may be achieved by limiting the labour force employed in the establishment and, therefore, the right to retrench workmen was an integral part of the right to carry on the business, and stood on a higher footing than the right to close the business because in the case of retrenchment, the business was continuing and only a part of labour force was dispensed with; that the appropriate Government or authority, while exercising power to grant or refuse permission to retrench under sub-section (2) of Section 25-N acted purely in an administrative capacity; that while passing an order under sub-section (2), the appropriate Government or authority could either grant or refuse permission for the proposed retrenchment in its entirety and that it was not permissible for it to grant permission for retrenchment of some out of the workmen proposed to be retrenched and refuse such permission in respect of the rest; that since no indication about the factors which were to be taken into consideration by the appropriate Government or authority while exercising its power was given in sub-section (2), it should be held that Parliament did not intend to alter the existing law governing retrenchment and the principles of industrial law that were applied by Industrial Tribunals for examining the validity of retrenchment under Section 25-F would also be applicable in the matter of exercise of power under sub-section (2) of section 25-N and that the principle of statutory construction was that the legislature should not be considered to make radical changes in law without using explicit language which unmistakably pointed in that direction; that in sub-section (7) of section 25-N, an indication had been given by the legislature about the factors which may be taken into consideration by the appropriate Government or authority while exercising its power under sub-section (2), that the two circumstances referred to in sub-section (7), viz., retrenchment being by way of victimisation or the retrenchment not being in the interest of maintenance of industrial peace, could be treated as the factors which were required to be taken into account by the appropriate Government or authority while exercising its powers under sub-section (2); that if the appropriate Government or authority, while passing the order under sub-section (2) was held to be exercising functions which were judicial in nature, then it must be held to be functioning as a tribunal for the purpose of Article 136 of the Constitution and an appeal would lie to this Court against such an order; that prior to the enactment of S.25-N, the validity of retrenchment in all industrial establishments, big or small, was required to be judicially determined by

A industrial tribunals/labour courts by following the normal judicial procedure and as a result of the enactment of S.25-N retrenchment of workmen in industrial establishments to which the said provisions were applicable would be examined by the appropriate Government or the authority specified by the appropriate Government and the said authority could be B any officer who need not be trained in law; that S.25-N did not give any indication about the status and qualifications of the officer who would be entrusted with the power to grant or refuse permission for retrenchment of workmen under sub-section (2) and it was left to the unguided discretion of the appropriate Government to nominate any officer as the authority entitled to exercise this power; that sub-section (2) of section 25-N did not C prescribe any guidelines or principles to govern the exercise of the power that had been conferred on the appropriate government or the authority in the matter of grant or refusal of permission for retrenchment and in the absence of such guidelines or principles, it would be open to the appropriate Government or authority to take into account matters having D no bearing or relevance to the legitimate need of the employer to reorganise his business and which might even be opposed to such need and that it would be permissible to pass the order by taking into consideration the state of unemployment in the State; that the requirement that reasons should be recorded in the order that was passed by the appropriate E Government or authority would not provide any protection against arbitrary action because in the absence of principles governing the exercise of the power, there was no touchstone to assess the validity of those reasons; that the considerations referred to in sub-section (3) of Section 25-N, as substituted by Amending Act 49 of 1984, were declaratory in character and the same were also required to be taken into consideration F in the matter of exercise of power by the appropriate Government or the authority under sub-section (2) of Section 25-N as originally enacted, that the "interest of the workmen and all other relevant factors" would result in introducing impermissible elements in the matter of exercise of the power to grant or refuse permission for retrenchment inasmuch as the G order for grant or refusal of permission for retrenchment was only to be based on the relevant circumstances, namely, that the action of the employer was *bona fide* and was not actuated by victimisation or unfair labour practice, and that the retrenchment would always be prejudicial to the "interests of the workmen" and if the interests of workmen were to be H taken into consideration, permission for retrenchment would never be

granted; that no provisions had been made for an appeal or revision against the order passed by the appropriate Government or authority granting or refusing permission for retrenchment of workmen under sub-section (2) of section 25-N, nor was there any provision for review, that the remedy of judicial review under Article 226 of the Constitution was not an adequate remedy inasmuch as the scope of judicial review under Article 226 of the Constitution was very limited and did not enable challenge on the ground of an error of fact in the order; that the permission for retrenchment of workmen may be refused by the appropriate Government or authority under sub-section (2) of section 25-N on policy considerations and in that event relief under Article 226 of the Constitution may not be available, and that the provisions were *ex-facie* arbitrary and discriminatory inasmuch as while the workmen had a right to challenge on facts, the correctness of an order passed under sub-section (2) granting permission for retrenchment before the Industrial Tribunal by seeking a reference under Section 10 of the Act, the management did not have a similar right to challenge the validity of an order passed under sub-section (2) refusing or granting permission for retrenchment.

Upholding the validity of Section 25-N of the Industrial Disputes Act, 1947, as it stood prior to its amendment by Amendment Act of 1984, and directing the matters to be placed before a Division Bench for disposal, this Court,

HELD : 1. Section 25-N of the Industrial Disputes Act, 1947, did not suffer from the vice of unconstitutionality on the ground that it was violative of the fundamental rights guaranteed under Article 19(1)(g) of the Constitution and was not saved by Article 19(6) of the Constitution. [464 E]

Excel Wear etc. v. *Union of India and Ors.*, [1979] 1 SCR 1009 distinguished.

I.D.L. Chemicals Ltd. v. *T. Gattiah & Ors.*, D.B. Writ Appeal 16 of 1981, approved.

K.V. Rajendran v. *Dy. Commissioner of Labour, Madurai and others*, (1980) 2 LLJ 275 and *M/s J.K. Synthetics and Anr.* v. *Union of India and Ors.*, (1984) 48 FLR 125, overruled.

2.1 The object underlying the enactment of section 25-N, by introducing prior scrutiny of the reasons for retrenchment is to prevent avoidable

A **hardship to the employees resulting from retrenchment by protecting existing employment and check the growth of unemployment which would otherwise be the consequence of retrenchment in industrial establishments employing large number of workmen. It is also intended to maintain higher tempo of production and productivity by preserving industrial peace and**
B **harmony. In that sense, Section 25-N seeks to give effect to the mandate contained in the Directive Principles of the Constitution. The restrictions imposed by Section 25-N on the right of the employer to retrench the workmen must, therefore, be regarded as having been imposed in the interest of general public. [440 G, 441 A-B]**

C **2.2 Ordinarily any restriction so imposed which has the effect of promoting or effectuating a directive principle can be presumed to be a reasonable restriction in public interest. A restriction imposed on the employer's right to terminate the service of an employee is not alien to the Constitutional scheme which indicates that the employer's right is not absolute. [441 C]**
D

The Indian Hume Pipe Co. Ltd. **v.** *The Workmen,* **[1960] 2 SCR 32, at pp. 36-37;** *Olga Tellis* **v.** *Bombay Municipal Corporation,* **[1985] Suppl 2 SCR 51;** *Barsky* **v.** *Board of Regents of New York,* **347 US 442 and** *The National Commission on Labour,* **report submitted in 1969, referred to.**

E **2.3 The appropriate Government or authority, before passing an order granting or refusing permission for retrenchment, is required to make an enquiry, though the precise nature of the enquiry that is to be made is left in the discretion of the appropriate Government or authority, and further that the order that is passed by the appropriate Government**
F **or authority must be a speaking order containing reasons. The requirement to make an enquiry postulates and enquiry into the correctness of the facts stated by the employer in the notice served under clause (c) of sub-section (1) of section 25-N for retrenchment of the workmen and other relevant facts and circumstances including the employer's *bona fides* in**
G **making such retrenchment and such an enquiry involving ascertainment of relevant facts will necessarily require affording an opportunity to the parties viz., the employer and the workmen, who have an interest in the matter, to make their submissions. [442 G-H, 443 A-B]**

2.4 Sub-rule (1) of Rule 76-A of the Industrial Disputes (Central)
H **Rules, 1957 framed by the Central Government under the Act, requires**

that the notice required to be given under clause (c) of sub-section (1) of section 25-N shall be served in Form P-A. Sub-rule (3) requires that the copy of the said notice or the application shall be served by the employer on the workmen concerned and a proof to that effect shall be submitted by the employer along with the notice or, as the case may be, the application. Sub-rule (4) lays down that the employer concerned shall furnish to the Central Government or the authority to whom the notice for retrenchment has been given or the application for permission for retrenchment has been made, such further information as the Central Government or, as the case may be, the authority considers necessary for arriving at a decision on the notice or, as the case may be, the application, as and when called for by such authority. Form P-A prescribes the various particulars in respect of which information has to be furnished by the employer in the notice served under clause (c) of sub-section (1) of Section 25-N. Thus, the employer is required to furnish detailed information in respect of the working of the industrial undertaking so as to enable the appropriate Government or authority to make up its mind whether to grant or refuse permission for retrenchment. Before passing such order, the appropriate Government or authority will have to ascertain whether the said information furnished by the employer is correct and the proposed action involving retrenchment of workmen is necessary and if so, to what extent and for that purpose it would be necessary for the appropriate Government or authority to make an enquiry after affording an opportunity to the employer as well as the workmen to represent their case and make a speaking order containing reasons. This necessarily envisages exercise of functions which are not purely administrative in character and are quasi-judicial in nature. [443 C-E, 444 E-F]

2.5 The words "as such government or authority thinks fit" do not mean that the government or authority may dispense with the enquiry at its discretion. These words only mean that the government or authority has the discretion about the nature of enquiry which it may make. Therefore, while exercising its powers under sub-section (2) of section 25-N in the matter of granting or refusing permission for retrenchment, the appropriate government or the authority does not exercise powers which are purely administrative but exercises powers which are quasi-judicial in nature. [444 G-H, 445 A]

2.6 No words of limitation are found in sub-section (2) of Section

A 25-N which preclude the appropriate government or authority to grant partial permission in respect of some of the workmen out of the workmen proposed to be retrenched and refuse the same in respect of the rest keeping in view the particular facts in relation to a particular establishment. Nor is there anything in sub-section (2) which requires the B appropriate Government or authority to either grant permission for retrenchment of the entire lot of the workmen proposed to be retrenched or refuse to grant permission in respect of the entire lot of workmen. It may be that the appropriate Government or authority may feel that the demand of the management for the proposed retrenchment is pitched too high and that in view of the facts and circumstances revealed as a result C of an enquiry it is found that the industrial establishment can be efficiently run after retrenching a few of the workmen proposed to be retrenched. In that event, it would be permissible for the appropriate Government or authority to grant permission for retrenchment of only some of the workmen proposed to be retrenched and to refuse such permission for the D rest of the workmen. [445 C-E]

3.1 Retrenchment, as defined in section 2(oo), means termination by the employer of the service of a workman for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action and those expressly excluded by clauses (a), (b) and (c) of the definition. E Therefore, it cannot be said that retrenchment means termination by the employer of the service of a workman as surplus labour. [447 B]

D. Macropollo & Co. (Pvt.) Ltd. v. *Their Employees' Union & Ors.*, (1958) 2 LLJ 492; *Workmen of Subong Tea Estate* v. *The Outgoing Management of Subong Tead Estate & Anr.*, [1964] 5 SCR 602; *Parry & Co. Ltd.* v. *P.C. Pal & Ors.*, [1969] 2 SCR 976 and *Byram Pestonji Gariwala* v. *Union Bank of India* AIR 1991 SC 2234, at p. 2242, distinguished.

State Bank of India v. *Shri N.Sundara Money*, [1976] 3 SCR 160; *Delhi Cloth & General Mills Ltd.* v. *Shambhu Nath Mukherjee & Ors.*, [1978] 1 SCR 591; *Hindustan Steel Ltd.* v. *The Presiding Officer, Labour Court*, [1977] 1 SCR 586; *Surendra Kumar Verma* v. *Central Government Industrial Tribunal-cum-Labour Court, New Delhi*, [1981] 1 SCR 789; *Mohanlal* v. *Management of M/s Bharat Electronics Ltd.*, [1981] 3 SCR 518; *Management of Karnataka State Road Transport Corporation* v. *M. Boraiah & Anr.*, [1984] H 1 SCC 244; *Gammon India Ltd.* v. *Niranjan Das*, [1984] 1 SCC 509 and

Punjab Land Development and Reclamation Corporation Ltd. Chandigarh etc. v. *Presiding Officer, Labour Court, Chandigarh, etc.,* [1990] 3 SCR 111, relied on.

3.2 In enacting Chapter V-B, the intention of Parliament was to alter the existing law relating to lay-off, retrenchment and closure in relation to larger industrial establishments falling within the ambit of Chapter V-B because it was felt that the existing law enabled large scale lay-offs, retrenchments and closures by large companies and undertakings and this had resulted in all-round demoralising effect on workmen. Therefore, it cannot be accepted that in enacting Section 25-N, Parliament did not intend to alter the existing industrial law governing retrenchment of workmen. [447 E-F]

4. Sub-section (2) deals with a stage prior to retrenchment whereas sub-section (7) deals with a stage after retrenchment. Sub-section (7) seeks to provide for disposal of industrial disputes arising due to retrenchment of workmen where either of the two conditions laid down in sub-section (7) is satisfied and which were pending at pre-reference stage on the date of commencement of the 1976 Act, by an authority specified by the appropriate Government instead of an Industrial Tribunal. Industrial disputes which do not fulfil either of these two conditions will have to be adjudicated by the Industrial Tribunal after reference. The two conditions laid down in sub-section (7) which govern the withdrawal of the disputes pending at pre-reference stage and transfer for adjudication to the specified authority, cannot be equated with the considerations which should weigh with the appropriate Government or authority while exercising its power to grant or refuse permission for retrenchment of workmen under sub-section (2). [448 D-F]

5. Although the appropriate Government or authority was required to act judicially while granting or refusing permission for retrenchment of workmen under sub-section (2) of Section 25-N, it is not vested with the judicial power of the State and it cannot be regarded as a Tribunal within the meaning of Article 136 of the Constitution and no appeal would, therefore, lie to the Supreme Court against an order passed under sub-section (2) of Section 25-N. [449 G, 450 A]

Associated Cement Companies Ltd. v. *P.N. Sharma & Anr.,* [1965] 2 SCR 366 and *Jaswant Sugar Mills Ltd.* v. *Lakshmichand,* [1963] Supp. 1

A SCR 242, referred to.

6.1 The power to grant or refuse permission for retrenchment of workmen that has been conferred under sub-section (2) has to be exercised on an objective consideration of the relevant facts after affording an opportunity to the parties having an interest in the matter and reasons B have to be recorded in the order that is passed. Rule 76-A of the Industrial Disputes (Central) Rules and Form P-A prescribed under the said rules for the notice to be served under Clause (c) of sub-section (1) of Section 25-N, and the particulars which are required to be supplied by the employer under the various heads in the said notice. The enquiry, which C has to be made under sub-section (2) before an order granting or refusing permission for retrenchment of workmen is passed, would require an examination of the said particulars and other material that is furnished by the employer as well as the workmen. In view of the time limit of three months prescribed in sub-section (3) there is need for expeditious disposal which may not be feasible if the proceedings are conducted before a judicial D officer accustomed to the judicial process. Moreover, during the course of such consideration it may become necessary to explore the steps that may have to be taken to remove the causes necessitating the proposed retrenchment which may involve interaction between the various departments of the Government. This can be better appreciated and achieved by an E executive officer rather than a judicial officer. The discretion conferred on the appropriate Government to specify the authority which may exercise the power under sub-section (2) is given to the Government itself and not to a subordinate officer. [451 E-H, 452 A, C]

6.2 Keeping in view the fact that the power to specify the authority F which can exercise the power conferred under sub-section (2) of Section 25-N has been conferred on the appropriate Government, it cannot be held that the delegation of the power to the appropriate Government to specify the authority renders the provisions of Section 25-N as arbitrary or unreasonable. [453 B]

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Virendra v. *State of Punjab & Anr.*, [1958] SCR 308 and *Dawarka Prasad Laxmi Narian* v. *The State of Uttar Pradesh*, [1984] SCR 803, referred to.

7.1 The power is not purely administrative in character but partakes H exercise of a function which is judicial in nature. The exercise of the said

power envisages passing of a speaking order on an objective consideration of relevant facts after affording an opportunity to the concerned parties. Principles or guidelines are insisted with a view to control the exercise of discretion conferred by the statute. There is need for such principles or guidelines when the discretionary power is purely administrative in character to be exercised on the subjective opinion of the authority. The same is, however, not true when the power is required to be exercised on objective considerations by a speaking order after affording the parties an opportunity to put forward their respective points of view. That apart, it cannot be said that no guidance is given in the Act in the matter of exercise of the power conferred by sub-section (2) of Section 25-N. [453 G, 454 A]

7.2 The power conferred under sub-section (2) of section 25-N has to be exercised keeping in view the provisions of the Act and the object underlying the 1976 Act whereby section 25-N was inserted in the Act. The basic idea underlying all the provisions of the Act is the settlement of industrial disputes and the promotion of industrial peace so that the production may not be interrupted and the community in general may be benefited. The object underlying the requirement of prior permission for retrenchment introduced by section 25-N as indicated in the Statement of Objects and Reasons for the 1976 Act, is to prevent avoidable hardship of unemployment to those already employed and maintain higher tempo of production and productivity. The said considerations coupled with the basic idea underlying the provisions of the Act, viz., settlement of industrial disputes and promotion of industrial peace, give a sufficient indication of the factors which have to be borne in mind by the appropriate Government or authority while exercising its power to grant or refuse permission for retrenchment under sub-section (2). [454 C, E-F]

Niemla Textile Finishing Mills Ltd. v. *The 2nd Punjab Industrial Tribunal*, [1957] SCR 335 at p. 352, relied on.

8.1 It is not correct to say that retrenchment would always be prejudicial to the "interests of the workmen" and if the interests of workmen were to be taken into consideration permission for retrenchment would never be granted. Assuming that the factors mentioned in sub-section (3) of Section 25-N, as substituted by Amending Act 49 of 1984, are declaratory in nature and are required to be taken into consideration by the appropriate Government or the authority while passing an order under

A **sub- section (2) of section 25-N, as originally enacted, it cannot be said that the interests of the workmen is not a relevant factor for exercising the said power. [455 C-D]**

Prof. Gower: Principles of Modern Company Law **4th Edn. p.10., referred to.**

B

8.2 The Indian Constitution recognises the role of workers in the management of the industries inasmuch as Article 43A requires that the State shall take steps by suitable legislation or in any other way to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry. [455 F]

C

8.3 The expression 'interests of workers', covers the interests of all the workers employed in the establishment, including not only the workers who are proposed to be retrenched but also the workers who are to be retained. It would be in the interests of the workers as a whole that the D **industrial establishment in which they are employed continues to run in good health because sickness leading to closure of the establishment would result in unemployment for all of them. It is, therefore, not correct to say that the interests of workmen would always be adverse to the interests of the industrial establishment and no order granting permission for the retrenchment would be passed if the interests of the workers is to be taken** E **into consideration. Since retrenchment of a large number of workmen would lead to worsening of the unemployment situation it cannot be said that the condition of unemployment in the particular industry or the condition of unemployment in the particular State have no relevance to the exercise of the power to grant or refuse permission for retrenchment** F **of workmen under sub-section (2) of Section 25-N. These factors cannot be treated as alien to the factors which are required to be considered for exercising the said power. It is, therefore, not correct to say that sub-section (2) of Section 25-N by enabling the appropriate Government or authority to take into consideration the condition of employment in the industry or the condition of employment in the State imposes an un-** G **reasonable restriction on the right of the employer under Article 19(1)(g). [457 D-G]**

National Textiles **v.** *P.R. Ramakishnan,* **[1983] 1 SCR 922, relied on.**

8.4 It is also not correct to say that the requirement of passing a H **speaking order containing reasons as laid down in sub-section (2) of Section**

25-N does not provide sufficient safeguard against arbitrary action. Irrespective of the fact whether the decision is subject to appeal, revision or judicial review, the recording of reasons by an administrative authority by itself, serves a salutary purpose, viz., it excludes chances of arbitrariness and ensures a degree of fairness in the process of decision-making. [457 H, 458 A] A

S.N. Mukherjee **v.** *Union of India,* **[1990] 4 SCC 594, relied on.** B

9.1 The order under sub-section (2) granting or refusing permission for retrenchment is to be passed either by the appropriate Government or authority specified by the appropriate Government, and the said order is required to be a speaking order based on objective consideration of relevant facts after following the principles of natural justice. In the circumstances the absence of a provision for appeal or revision is not of much consequence, especially when it is open to an aggrieved party to invoke the jurisdiction of the High Court under Article 226 of the Constitution. [460 C-D] C

D

State of Bihar **v.** *K.K.Misra & Ors.,* **[1970] 3 SCR 181 and** *Excel Wear etc.* **v.** *Union of India and Ors.,* **[1979] 1 SCR 1009, distinguished.**

Organo Chemical Industries **v.** *Union of India,* **[1980] 1 SCR 61 and** *Babubhai and Co. & Ors.* **v.** *State of Gujarat,* **[1985] 3 SCR 614, referred to.** E

9.2 The remedy of judicial review under Article 226 is an adequate protection against arbitrary action in the matter of exercise of power by the appropriate Government or authority under sub-section (2) of Section 25-N of the Act. [461 D]

F

Rama Sugar Industries Ltd. **v.** *State of A.P. & Ors.,* **[1974] 2 SCR 787 and** *G.B. Mahajan & Ors.* **v.** *Jalgaon Municipal Council & Ors.,* **[1991] 3 SCC 91, distinguished.**

Mohinder Singh Gill & Anr. **v.** *The Chief Election Commissioner, New Delhi & Ors.*, **[1978] 2 SCR 272, referred to.** G

10. In order to validly retrench the workmen under Section 25-N, apart from obtaining permission for such retrenchment under sub-section (2), an employer has also to fulfil other requirements, namely, to give three months, notice or pay wages in lieu of notice to the workmen proposed to H

A be retrenched under clause (a) of sub-section (1), pay retrenchment compensation to them under clause (b) of sub-section (1) and to comply with the requirement of section 25-G, which is applicable to retrenchment under section 25-N in view of section 25-S. An industrial dispute may arise on account of failure on the part of the employer to comply with these conditions and the same can be referred for adjudication under section 10. In addition, an industrial dispute could also be raised by the workmen in a case where retrenchment has been effected on the basis of permission deemed to have been granted under sub-section (3) of section 25-N on account of failure on the part of the appropriate Government or authority to communicate the order granting or refusing permission for retrenchment within a period of three months from the date of the service of notice under clause (c) of sub-section (1) because in such a case, there has been no consideration, on merits, of the reasons for proposed retrenchment by the appropriate Government or authority and reference of the dispute for adjudication would not be precluded. [462 G-H, 463 A-C]

D

10.2 Since there is no provision similar to that contained in sub-section (7) of section 25-N attaching finality to an order passed under sub-section (2) it would be permissible for the workmen aggrieved by retrenchment effected in pursuance of an order granting permission for such retrenchment to raise an industrial dispute claiming that the E retrenchment was not justified and it would be permissible for the appropriate Government to refer such dispute for adjudication though the likelihood of such a dispute being referred for adjudication would be extremely remote since the order granting permission for retrenchment would have been passed either by the appropriate Government or authority F specified by the appropriate Government and reference under s.10 of the Act is also to be made by the appropriate Government. Since the expression "industrial dispute" as defined in section 2(k) of the Act covers a dispute connected with non-employment of any person and section 10 of the Act empowers the appropriate Government to make a reference in a case where an industrial dispute is apprehended, an employer proposing G retrenchment of workmen, who feels aggrieved by an order refusing permission for retrenchment under sub-section (2) of Section 25-N, can also move for reference of such a dispute relating to proposed retrenchment for adjudication under Section 10 of the Act though the possibility of such a reference would be equally remote. The employer who feels aggrieved by H an order refusing permission for retrenchment thus stands on the same

footing as the workmen feeling aggrieved by an order granting permission for retrenchment under sub-section (2) of Section 25-N inasmuch as it is permissible for both to raise an industrial dispute which may be referred for adjudication by the appropriate Government and it cannot be said that, as compared to the workmen, the employer suffers from a disadvantage in the matter of raising an industrial dispute and having it referred for adjudication. [463 D-H, 464 A] A B

All Saints High School, Hyderabad etc. **v.** *Government of A.P. & Ors. etc.,* **[1980] 2 SCR 924, referred to.**

11. In view of the fact that some of the grounds for challenging the validity of Section 25-N on the ground of violation of Article 19 can also be made the basis for challenging the ground of violation of Article 14, it is not necessary to go into the question whether the right to retrench the workmen is an integral part of the right of the employer to carry on the business or it is only a peripheral or concomitant right which facilitates the exercise of the said fundamental right to carry on the business and it can be assumed that the right to retrench the workman is an integral part of the fundamental right of the employer to carry on the business under Article 19(1)(g). For the same reason, challenge to the validity of Section 25-N could not be ruled out on the ground that a company, incorporated under the Companies Act, being not a citizen, cannot invoke the fundamental right under Article 19 and the shareholders of the companies seeking to challenge the validity of Section 25-N in the instant cases cannot complain of infringement of their fundamental right under Article 19. C D E

[435 H, 436 A-C]

All India Bank Employees' Association **v.** *National Industrial Tribunal,* **[1962] 3 SCR 269;** *Maneka Gandhi* **v.** *Union of India,* **[1978] 2 SCR 621;** *Ch.Tika Ramji & Ors.* **v.** *State of U.P. & Ors.,* **[1956] SCR 393;** *State Trading Corporation of India Ltd. & Ors.* **v.** *Commercial Tax Officer, Visakhapatnam and Ors.,* **[1964] 4 SCR 99 and** *State of Madras* **v.** *V.G. Row,* **[1952] 3 SCR 597, referred to.** F G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 194 of 1983 etc. etc.

From the Judgment and Order dated 16.3.1982 of the Madras High Court in Writ Appeal No. 489 of 1978. H

M.K. Ramamurthy, Dr. Sankar Ghose, R.K. Garg, G.B. Pai, F.S. Nariman, Hardev Singh, M.A. Krishnamoorthy, C. Ramamurthy, M.A. Chinaswamy, H. Subramaniam, C.S. Vaidyanathan, T.Raju, Mrs. Smitha Singh, J. Ramamurthy, R. Vaigai, P.P. Singh, M.P. Jha, Jitendra Sharma, R.S. Hegde, K.R. Nagaraja, R. Mohan, Krishna Kumar, Ms. Poonam Madan, Ashok Kumar Gupta, V.D. Mehta, R.F. Nariman, R. Narain, Ashok Sagar, D.N. Mishra, Ms. Madhu Moolchandani, V. Krishnamurthy, Vimal Dave, W.C. Chopra, H.K. Puri, and Rajeshwar Rao for the appearing parties.

The Judgment of the Court was delivered by

S.C. AGRAWAL, J. These appeals and writ petitions have been placed before us on a reference by a Division Bench of this Court for the reason that they raise the question involving the constitutional validity of Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the act'). The validity of the said provision is assailed on the ground that it is violative of the right guaranteed under Article 19(1)(g) of the Constitution and is not saved by Clause (6) of Article 19.

Since the only question required to be considered by us is with regard to the validity of section 25-N of the Act and it can be decided on the basis of the relevant provisions of the Act without going into the facts of each case, we do not consider it necessary to set out the facts.

Section 25-N forms part of Chapter V-B which bears the heading "Special provisions relating to lay-off, retrenchment and closure in certain establishments". The said Chapter consists of Sections 25-K to 25-S and was inserted by the Industrial Disputes (Amendment) Act, 1976 (Act No. 32 of 1976), hereinafter referred to as 'the 1976 Act', with effect from March 5, 1976. Section 25-K, as originally enacted, confined the applicability of the provisions of Chapter V-B to industrial establishments in which not less than 300 workmen were employed on an average per working day for the preceding twelve months. Section 25-M makes provision for prohibition of lay-off. Section 25-N prescribes the conditions precedent to retrenchment of workmen. Section 25-O prescribes the procedure for closing down an undertaking. Sections 25-P contains special provision as to restarting of undertakings closed down before commencement of the 1976 Act. Section 25-Q imposes the penalty on the employee for contravention of the provisions of Sections 25-M or Section 25-N.

Section 25-R prescribes the penalty for closure of an undertaking without complying with the provisions of sub-section (1) of Section 25-O. Section 25-S makes the provisions of Sections 25-B, 25-D, 25-FF, 25-G, 25-H and 25-J in Chapter V-A applicable to industrial establishments to which the provisions of Chapter V-B apply.

The validity of Section 25-N was challenged before the various High Courts and there is a conflict of opinion amongst the High Courts. A division Bench of the Andhra Pradesh High Court in *I.D.L. Chemicals Ltd.* v. *T.Gattiah & Ors.*, (D.B. Writ Appeal 16 of 1981, decided on December 4, 1981) has upheld the validity of Section 25-N, while a Division Bench of the Madras High Court, in *K.V. Rajendran* v. *Dy. Commissioner of Labour, Madurai and others,* (1980) 2 LLJ 275, has taken a contrary view and has held Section 25-N to be violative of the right guaranteed under Article 19(1)(g) of the Constitution imposing unreasonable restrictions on the said right of the employer. A Full Bench of the Rajasthan High Court, by majority (G.M. Lodha and G.K. Sharma, JJ., Dr. K.S. Sidhu, J. dissenting) in *M/s. J.K. Synthetics and Anr.* v. *Union of India and Ors.*, (1984) 48 FLR 125 has agreed with the view of the Madras High Court in *K.V. Rajendran's* case (supra) and has held Section 25-N to be invalid. The Madras High Court and the Rajasthan High Court have placed reliance on the decision of this Court in *Excel Wear etc.* v. *Union of India and Ors.*, [1979] 1 SCR 1009 and have held that the reasons for which this Court has struck down Section 25-O are equally applicable for judging the validity of section 25-N.

Civil Appeal No. 4 of 1984 is directed against the said judgment of the Full Bench of the Rajasthan High Court. Civil Appeal No. 194 of 1983 is directed against the judgment of the Division Bench of the Madras High Court based on the decision in *K.V. Rajendran's* case (supra). The correctness of the decisions of the Rajasthan and Madras High Courts, referred to above, is under challenge in these matters before us.

After the decision of this Court in *Excel Wear* case (supra), Parliament enacted the Industrial Disputes (Amendment) Act, 1982 (Act No. 46 of 1982) whereby Section 25-O was substituted. By the said Act, amendments were also made in Sections 25-K and 25-R. As a result of the amendment made in Section 25-K, the number of workmen required for applicability of the provisions of Chapter V-B to an industrial establishment was reduced from 300 to 100. In 1984, Parliament enacted In-

A dustrial Disputes (Amendments) Act, 1984 (Act No. 49 of 1984) whereby Section 25-N was substituted and amendment was also made in Section 25-Q. In this group of cases, we are concerned with the validity of the provisions of Section 25-N, as originally enacted, i.e., before the same was substituted by Amendment Act of 1984.

B Since strong reliance has been placed by the Madras High Court and Rajasthan High Court on the decision of this Court in *Excel Wear* Case (supra), we consider it necessary to refer to the said decision before we proceed to deal with the submissions of the learned counsel. As indicated earlier, in *Excel Wear* case (supra), this Court was required to consider the C validity of Section 25-O, as originally enacted, i.e., prior to its substitution by Amendment Act of 1982, which read as under :

> "(1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall serve, for previous approval at least ninety days before D the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:
>
> E Provided that nothing in this Section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.
>
> (2) On receipt of a notice under sub-section (1) the appropriate Government may, if it is satisfied that the reasons for the F intended closure of the undertaking are not adequate and sufficient or such closure is prejudicial to the public interest, by order, direct the employer not to close down such undertaking.
>
> G (3) Where a notice has been served on the appropriate Government by an employer under sub-s. (1) of section 25FFA and the period of notice has not expired at at the commencement of the Industrial Disputes (Amendment) Act, 1976, such employer shall not close down the undertaking but shall, within a period of fifteen days from such commencement, apply to the H appropriate Government for permission to close down the

undertaking. A

(4) Where an application for permission has been made under sub-s. (3) and the appropriate Government does not communicate the permission of the refusal to grant the permission to the employer within a period of two months from the date on which the application is made, the permission applied for shall B be deemed to have been granted on the expiration of the said period of two months.

(5) Where no application for permission under sub-s. (1) is made, or where no application for permission under sub-section (3) is made within the period specified therein or where C the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him. D

(6) Notwithstanding anything contained in sub-section (1) and sub-section (3) the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is E necessary so to do, by order, direct that the provisions of sub-section (1) or sub-section (3) shall not apply in relation to such undertaking for such period as may be specified in the order.

(7) Where an undertaking is approved or permitted to be F closed down under sub-section (1) or sub-section (4), every workman in the said undertaking who has been in continuous service for not less than one year in that undertaking immediately before the date of application for permission under this section shall be entitled to notice and compensation as G specified in Section 25-N as if the said workman had been retrenched under that section.

On an analysis of the said provisions, this Court pointed out :

(i) Under sub-section (1), if in the opinion of the appropriate H

A Government, the reasons for the intended closure were not adequate and sufficient or if the closure was prejudicial to the public interest, permission to close down may be refused; and though the reasons given may be correct, yet permission could be refused if they were thought to be not adequate and sufficient by the State Government;

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(ii) No reason was to be given in the order granting the permission or refusing it;

(iii) The appropriate Government was not enjoined to pass the order in terms of sub-section (2) within 90 days of the period of notice, although under sub-section (4) in a case covered by sub-section (3) it was incumbent upon the Government to communicate the permission or refusal within a period of two months, otherwise the permission applied for shall be deemed to have been granted; and

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D

(iv) Sub-section (5) did not say as to whether the closure will be illegal or legal in case a notice under sub-section (1) had been given by the employer but in absence of any communication from the Government within a period of 90 days granting or refusing permission, the employer closes down the undertaking on the expiry of the said period.

E

While considering the question whether the right of the employer to close down a business was an integral part of the right to carry on any business guaranteed under Article 19(1)(g) of the Constitution, this Court made a distinction between a case where a person does not start a business at all and a case where a person has started a business and wants to close it. It was observed :

F

"It is not quite correct to say that a right to close down a business can be equated or placed at par as high as the right to start or carry on business at all. The extreme proposition urged on behalf of the employers by equating the two rights and then placing them at par is not quite apposite and sound. Equally so, or rather, more emphatically we do reject the extreme contention put forward on behalf of the Labour Unions that right to close down a business is not an integral

G

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part of the right to carry on a business, but it is a right appurtenant to the ownership of the property or that it is not a fundamental right at all. It is wrong to say that an employer has no right to close down a business once he starts it. If he has such a right, as obviously he has, it cannot but be a fundamental right embedded in the right to carry on any business guaranteed under Article 19(1)(g) of the Constitution." (pp.1027-28)

Having held that the employer had a fundamental right guaranteed under Article 19(1)(g) to close down the business, this Court proceeded to examine whether the restrictions imposed under the impuged provisions contained in Section 25-O were reasonable. The restrictions were held to be unreasonable for the following reasons :

(i) in contrast to the other provisions, Section 25-O (2) did not require the giving of reasons in the order and the authority could refuse permission to close down whimsically and capriciously;

(ii) if the Government order was not communicated to the employer within 90 days, strictly speaking, the criminal liability under section 25-F may not be attracted if on the expiry of that period he closes down the undertaking, but the civil liability under section 25-O(5) would come into play even after the passing of the order of refusal of permission to close down on the expiry of the period of 90 days; and

(iii) the order passed by the authority was not subject to any scrutiny by any higher authority or tribunal either in appeal or revision and the order could not be reviewed either.

The fact that Chapter V-B deals with certain comparatively bigger undertakings and of a few types only was, however, held to be a reasonable classification for the purpose of Article 14 of the Constitution.

At this stage, it would be convenient to set out the impugened provisions of Section 25-N which provided as under :

"25-N. Conditions precedent to retrenchment of workmen—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched

by that employer until –

(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

Provided that no such notice shall be necessary if the retrenchment is under an agreement, which specifies a date for termination of service;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months ; and

(c) notice in the prescribed manner is served on the appropriate Government by notification in the Official Gazette, and the permission of such Government or authority is obtained under sub-section (2).

(2) On receipt of a notice under clause (c) of sub-s. (1) the appropriate Government or authority may, after making such enquiry as such Government or authority thinks fit, grant or refuse, for reasons to be recorded in writing the permission for the retrenchment to which the notice relates.

(3) Where the Government or authority does not communicate the permission or the refusal to grant the permission to the employer within three months of the date of service of the notice under clause (c) of sub-s. (1), the Government or authority shall be deemed to have granted permission for such retrenchment on the expiration of the said period of three months.

(4) Where at the commencement of the Industrial Disputes (Amendment) Act, 1976, the period of notice given under clause (a) of Section 25-F for the retrenchment of any workman has not expired, the employer shall not retrench the workman but shall, within a period of fifteen days from such commencement, apply to the appropriate Government or to the authority

specified in sub-s. (2) for permission for retrenchment. A

(5) Where an application for permission has been made under sub-s. (4) and the appropriate Government or the authority, as the case may be, does not communicate the permission or the refusal to grant the permission to the employer within a period of two months from the date on which the application is made, B the permission applied for shall be deemed to have been granted on the expiration of the said period of two months.

(6) Where no application for permission under clause (c) of sub-s. (1) is made, or where no application for permission C under sub-s. (4) is made within the period specified therein or where the permission for the retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given D to him.

(7) Where at the commencement of the Industrial Disputes (Amendment) Act, 1976, a dispute relating, either solely or in addition to other matters, to the retrenchment of any workman E or workmen of an industrial establishment to which this Chapter applies is pending before a conciliation office or the Central Government or the State Government, as the case may be, and –

(a) there is an allegation that such retrenchment is by way of F victimisations; or

(b) the appropriate Government is of the opinion that such retrenchment is not in the interest of the maintenance of industrial peace, G

the appropriate Government, if satisfied that it is necessary so to do, may, by order, withdraw such dispute or, as the case may be, such dispute in so far as it relates to such retrenchment and transfer the same to an authority (being an authority specified by the appropriate Government by notification in the Official H

A Gazette) for consideration whether such retrenchment is justified and any order passed by such authority shall be final and binding on the employer and the workman or workmen".

A comparison of the aforesaid provisions of Section 25-N and Section 25-O, as originally enacted, which came up for consideration before B this Court in *Excel Wear* case (supra), reveals following distinguishing features :

(i) Under sub-s. (2) of Section 25-O, the appropriate Government could direct the employer not to close down the undertaking on receipt of C notice under clause (1) of sub-s. (1) if the appropriate Government was "satisfied that the reasons for the intended closure of the undertaking are not adequate and sufficient or such closure was prejudicial to public interest", whereas sub-section (2) of section 25-N, required that the appropriate Government or the authority may grant or refuse permission for retrenchment "after making enquiry as such Government or authority D thinks fit".

(ii) Under sub-s. (2) of Section 25-N the appropriate Government or the authority was required to record in writing the reasons for its order granting or refusing permission for retrenchment. There was no such requirement to record reasons for refusal to grant permission to close E down the undertaking in Section 25-O.

(iii) In sub-s. (3) of Section 25-N, it was provided that when the Government or authority does not communicate the permission or refusal to grant the permission to the employer within three months of the date of F service of the notice under clause (c) of sub-s. (1), the Government or authority shall be deemed to have granted permission for such retrenchment on the expiration of the said period of three months. In Section 25-O there was no such requirement except in respect of cases covered by sub-s. (3), viz., where a notice had been served on the appropriate Government by an employer under sub-s. (1) of S. 25FFA and the period of notice had G not expired at the commencement of the 1976 Act. In such cases, the employer was required to apply to the appropriate Government for permission to close down the undertaking within a period of fifteen days from commencement of the 1976 Act and in sub-s. (4) it was provided that where an application for permission had been made under sub-s. (3) and the H appropriate Government does not communicate the permission or the

refusal to grant the permission to the employer within a period of two months from the date on which the application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of two months. This provision was similar to that contained in sub-section (4) and (5) of Section 25-N. There was, however, no provision in section 25-O similar to that contained in sub-s. (3) of Section 25-N.

Some of these distinguishing features between Sections 25-M and 25-N on the one hand and Section 25-O, on the other hand, have been mentioned, by way of contrast, by this Court in *Excel Wear* case (supra) in the following observations :

> "Section 25M dealt with the imposition of further restrictions in the matter of lay-off. Section 25N provided for conditions precedent to retrenchment of workmen. In these cases the vires of neither of the two sections was attacked. Rather, a contrast was made between the said provisions with those of section 25-O to attack the latter. The main different pointed out was that in sub-s. (3) of S.25M the authority while granting or refusing permission to the employer to lay-off was required to record reasons in writing and in sub-s. (4) a provision was made that the permission applied for shall be deemed to have been granted on the expiration of the period of two months. The period provided in sub-s. (4) enjoins the authority to pass the order one way or the other within the said period. Similarly in sub-s. (2) of S.25N reasons are required to be recorded in writing for grant or refusal of the permission for retrenchment and the provision for deemed permission was made in sub-s. (3) on the failure of the governmental authority to communicate the permission or the refusal within a period of three months." (p. 1023)

It would thus appear that the considerations which weighed with this Court in *Excel Wear* case (supra) to strike down section 25-O cannot be applied for judging the validity of section 25-N and the validity of section 25-N will have to be considered in the light of the particular provisions contained therein.

We will now proceed to consider submissions that have been advanced by the learned Attorney General, appearing for the Union of India,

A and Shri M.K.Ramamurthi, Shri R.K.Garg, Shri C.S.Vaidyanathan, appearing for the workmen, in support of the validity of the provision and shri F.S.Nariman, Shri G.B. Pai, Dr. Shanker Ghosh, appearing for the employers, who have assailed the validity of Section 25-N.

Arguments have been advanced by learned counsel on the following
B two questions :

(1) Is the right to retrench his workmen an integral pat of the right of the employer to carry on his business guaranteed under Article 19(1)(g) of the Constitution ?

C

(2) Are the restrictions imposed by Section 25-N on the on the said right of the employer to retrench the workmen saved under clause (6) of Article 19 as reasonable restrictions in public interest ?

The learned counsel appearing for the employers have submitted that
D the right of the employer to carry on any business guaranteed under Article 19(1)(g) includes the right to organise the business in a way that it is most beneficial for him and, if necessary, this may be achieved by limiting the labour force employed in the establishment and, therefor, the right to retrench workmen is an integral part of the right to carry on the business. In support of this submission reliance is placed on the decision in *Excel*
E *Wear* Case (supra) where right to close the business has been held to be an integral part as the right to carry on business under Article 19(1)(g). It is submitted that the right to retrench the workmen stands on a higher footing than the right to close the business because in the case of retrenchment, the business is continuing and only a part of labour force is dispensed
F with. On behalf of the workmen, Shri Ramamurthi, on the basis of the decisions of this Court in *All India Bank Employees' Association* v. *National Industrial Tribunal,* [1962] 3 SCR 269 and *Maneka Gandhi* v. *Union of India,* [1978] 2 SCR 621, at p. 701, has drawn a distinction between a right which is an integral part of the right to carry on business and a peripheral
G or concomitant right which facilitates the exercise of a named fundamental right or gives it meaning and substance or makes its exercise effective, but is itself not a guaranteed right included within the named fundamental right. The submission Shri Ramamurthi is that the right to retrench the workmen can only be regarded as a peripheral or concomitant right which facilitates the exercise of the right to carry on business but it cannot be
H treated as an integral part of the right to carry on business.

Shri Garg has assailed the correctness of the view in *Excel Wear* case (supra) that right to close down the business is an integral part of the right to carry on business guaranteed under Article 19(1)(g) and has submitted that it is in clear conflict with the earlier decision of this Court in *Ch. Tika Ramji & Ors.* v. *State of U.P. & Ors.*, [1956] SCR 393, wherein it has been observed:

> "It is urged that, if the right to carry on business carries with it by necessary implication a right not to carry on business, if the right to speak freely carries with it by necessary implication the right to refrain from speaking at all, the right to form associations or unions also carries with it by necessary implication the right not to form associations or unions. In the first place, assuming that the right to form an association implies a right not to form an association, it does not follow that the negative right must also be regarded as a fundamental right. The citizens of India have many rights which have not been given the sanctity of fundamental rights and there is nothing absurd or uncommon if the positive right alone is made a fundamental right." (p. 443)

Shri Garg has further submitted that the employers in this group of cases are all companies registered under the Companies Act, 1956. A company, being an artificial person, is not a citizen and it cannot claim the fundamental rights guaranteed to citizens under Article 19 of the Constitution. Reliance has been placed on the decision of this Court in *State Trading Corporation of India Ltd. & Ors.* v. *Commercial Tax Officer, Visakhapatnam & Ors.*, [1964] 4 SCR 99 wherein it has been held that the rights under Article 19 are available to citizens who are natural persons and are not available to juristic persons as they are not citizens under the Constitution. It is also submitted that the a shareholder of a limited company cannot be permitted to challenge the validity of Section 25-N inasmuch as by the impugned provision none of the fundamental rights of the shareholder is impaired. Referring to the changed role of the shareholder in a modern public company, he has pointed out that shareholder, although a member, is in economic reality, a mere lender of capital on which he hopes for return but without any effective control over the borrower. (See : Gower's Principles of *Modern Company Law*, 4th Ed., p.9)

In view of the fact that some of the grounds for challenging the

validity of Section 25-N on the ground of violation of Article 19 can also be made the basis for challenging the ground of violation of Article 14, we do not consider it necessary to go into the question whether the right to retrench the workmen is an integral part of the right of the employer to carry on the business or it is only a peripheral or concomitant right which facilitates the exercise of the said fundamental right to carry on the business and we will proceed on the assumption that the right to retrench the workman is an integral part of the fundamental right of the employer to carry on the business under Article 19(1) (g). For the same reason we are not inclined to rule out the challenge to the validity of Section 25-N on the ground that a company, incorporated under the Companies Act, being not a citizen, cannot invoke the fundamental right under Article 19 and the shareholders of the companies seeking to challenge the validity of Section 25-N in this group of cases cannot complain of infringement of their fundamental right under Article 19. We are also of the view that since S.25-N has been held to be unconstitutional by two High Courts, it would be appropriate that the question with regard to the validity of the said provision is finally settled by this Court. We, therefore, propose to deal with the question whether the restrictions imposed by Section 25-N can be regarded as reasonable and in public interest and as such permissible under clause (6) of Article 19 of the Constitution. In our approach to this question we will be guided by the dictum of Patanjali Shastri, C.J., in *State of Madras* v. *V.G. Row,* [1952] 3 SCR 597 which is regarded as the classic exposition of the law on the subject :

> "It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and the limit to their interference with

legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all and that the majority of the elected representatives of the people have, in authorising the imposition of the restrictions, considered them to be reasonable". (p.607)

We would briefly refer to the circumstances which led to the enactment of S.25-N. In the Act, as orginally enacted, there was no specific provision dealing with retrenchment of workmen and the only remedy available to the workmen against retrenchment was to raise an industrial dispute and have it referred for adjudication under the provisions of the Act. In 1953 by Act No. 43 of 1953 clause (oo) in Section 2 defining the term retrenchment and Chapter V-A (containing Sections 25-A to 25-J) relating to lay-off and retrenchment were inserted in the Act. By Section 25-F it was prescribed that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until (a) the workman has been given one months' notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice; (b) the workman has been paid at the time of retrenchment compensation equivalent to 15 days' average pay for every completed year of service or any part thereof in excess of six months and (c) a notice in the prescribed manner is served on the appropriate Government. Section 25-G prescribed that the employer shall ordinarily retrench the workman who was the last person to be employed in that particular category to which he belongs unless for reasons to be recorded the employer retrenches any other workman. By Section 25-H it was required that where any workman are retrenched and the employer proposes to take into in his employment any persons, he shall, in such manner as may be prescribed give an opportunity to the retrenched workman to offer themselves for re-employment and the retrenched workmen who offer for re-employment shall have preference over other persons. It appears that the aforementioned provisions relating to retrenchment in the Act were not found adequate enough and there were cases of large-scale retrenchment time and again which was having demoralising effect on the workmen and to meet this situation further provision by way of insertion of S.25-N was made by the 1976 Act. In the Statement of

A Objects and Reasons for the said enactment, it was stated :

> "The Industrial Disputes Act, 1947 does not contain any provision for preventing lay-off and retrenchment. Though the Act provides for 60 days' notice by the employer prior to closing down an establishment employing 50 or more persons, it does
B not provide for any prior scrutiny of the reasons for such closure. The employers have an unfettered right to close down an establishment, subject to the provisions of 60 days' notice.
>
> 2. There have been many cases of large-scale lay-offs, particular
C by large companies and undertakings. Cases of large-scale retrenchment as well as closures have also been reported time and again. This action on the part of the management has resulted in all-round demoralising effect on the workmen. In order to prevent avoidable hardship to the employees and to maintain higher tempo of production and productivity, it has
D become now necessary to put some reasonable restrictions on the employer's right to lay-off retrenchment and closure. This need has also been felt by different State Governments.
>
> 3. This Bill, therefore, seeks to amend the Industrial Disputes
E Act to make prior approval of the appropriate Government necessary in the case of lay-off, retrenchment and closure in industrial establishments where 300 or more workmen are employed. This is sought to be achieved by inserting a new Chapter V-B in the Act".

F Till the insertion of S. 25-N, the employer was entitled to retrench the workmen by complying with the requirements of S.25-F and the only way in which the justification for the said action of the employer could be questioned was by raising an industrial dispute and having it referred for adjudication to the Industrial Tribunal/Labour Court which process took considerable time and during this period the affected workman was left
G without the source of livelihood. The problem was considerably aggravated in case of establishments having a large labour force wherein a large number of workmen could be retrenched involving hardship on a larger section of the labour force creating an industrial unrest and disharmony. By requiring prior scrutiny of the reasons for the proposed retrenchment
H in industrial establishments employing not less than 300 workers, section

25-N seeks to prevent the hardship that may be caused to the affected workmen as a result of retrenchment because, at the commencement of his employment, a workman naturally expects and looks forward to security of service spread over a long period and retrenchment destroy his hopes and expectations. The retrenched workmen is, suddenly and without his fault, thrown on the street and has to face the grim problem of unemployment. See *The Indian Hume Pipe Co. Ltd.* v. *The Workmen*, [1960] 2 SCR 32, at pp.36-37. Often the workman is retrenched when he is advanced in age and his energies are declining and it becomes difficult for him to compete in the employment market with younger people in securing employment. Retrenchment compensation payable under s. 25-F may be of some assistance but it cannot go far to help him tide over the hardship especially when the proceedings before the Industrial Tribunal/Labour Court get prolonged. The plight of the retrenched workmen has to be considered in the light of the prevailing conditions of unemployment and under employment in the country.

Abysmal poverty has been the bane of Indian society and the root cause is large scale unemployment and underemployment. This thought was uppermost in the minds of the leaders of our freedom struggle. At the Karachi Session of the Indian National Congress in 1931, it was resolved that "in order to end the exploitation of the masses, political freedom must include the real economic freedom of the starving millions" and that the State has to safeguard "the interest of industrial workers", ensuring that suitable legislation should secure them a living wage, healthy conditions, limited hours of labour and protection from the "economic consequences of old age, sickness and unemployment". The Preamble to the Constitution declares the solemn resolve of the people of India to secure to all the citizens justice-social, economic and political. This resolve finds elaboration in Directive Principles of State Policy contained in Part IV. Article 38 directs that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. Clause (a) of article 39, requires the State to direct its policy towards securing that the citizens, men and women, equally have the right to an adequate means of livelihood. Article 41 direct that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and

A other cases of undeserved want. Article 43 lays down that the State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring decent standard of life and full enjoyment and leisure and social and cultural opportunities. Keeping the aforesaid provisions in view, this Court, in *Olga Tellis* v. *Bombay Municipal* B *Corporation*, [1985] Suppl. 2 SCR 51 has observed –

> "If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the C content of the right to life. The State may not, by affirmative action, be compellable to provide adequate means of livelihood or work to the citizens. But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21". (p.80)

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In this case, reference has been made to following observations of Douglas, J. in *Barsky* v. *Board of Regents of New York*, [347 US 442] :

> "The right to work, I had assumed was the most precious liberty E that man possesses. Man has indeed as much right to work as he has to live, to be free, to own property. .... Two work means to eat. It also means to live". (p.472)

The National Commission on Labour, in its report submitted in 1969, has observed :

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> "The development effort so far has not been adequate to contain within limits the volume of unemployment in the country. And what is more, if a view of the future is taken on the basis of past experience, the economy does not seem to hold out a brighter prospect in this regard". (para 6.20, p.50)

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As indicated in the Statement of Objects and Reasons for the 1976 Act, the object underlying the enactment of s.25-N, by introducing prior scrutiny of the reasons for retrenchment, is to prevent avoidable hardship to the employees resulting from retrenchment by protecting existing H employment and check the growth of unemployment which would other-

wise be the consequence of retrenchment in industrial establishments employing large number of workmen. It is also intended to maintain higher tempo of production and productivity by preserving industrial peace and harmony. In that sense, S.25-N seeks to give effect to the mandate contained in the Directive Principles of the Constitution referred to above. The restrictions imposed by S.25-N on the right of the employer to retrench the workmen must, therefore, be regarded as having been imposed in the interests of general public. The learned counsel appearing for the employers have also not contended to the contrary.

What remains to be considered is whether the said restrictions on the right of the employer can be held to be reasonable restrictions. Ordinarily any restriction so imposed which has the effect of promoting or effectuating a directive principle can be presumed to be a reasonable restriction in public interest. A restriction imposed on the employee's right to terminate the service of an employee is not alien to the Constitutional scheme which indicates that the employer's right is not absolute. Even the amendments introduced by 1953 Act were the first step in this direction in relation to industrial employees. For that purpose, it is necessary to first construe the provision of s.25-N to ascertain the mature and scope of the restrictions that have been imposed by the said provisions.

Sub-s. (1) of S.25-N contains provisions similar to those contained in S.25-F with one modification that the period of notice which is required to be given for retrenchment of a workmen in an industrial establishment covered by s.25-K and falling within Chapter V-B is three months instead of one months' notice required under S.25-F. The need for a period of notice is indicated by sub-s.3 of section 25-N because within a period of three months from the date of service of the said notice, the appropriate Government or authority is required to communicate the permission or refusal to grant the permission for retrenchment to the employer after making such enquiry as it thinks fit under sub-s.2. The consequence of failure to keep this time schedule is indicated in sub-s.3 wherein it is provided that in case the Government or authority does not communicate the permission or the refusal to grant the permission to the employer within three months of the date of service of the notice, the Government or the authority shall be deemed to have granted the permission for such retrenchment on the expiration of the said period of three months. The change which has been brought about by sub-s.2 of S.25-N is that instead

A of an adjudication by a judicial tribunal into the validity and justification of retrenchment after the order of the retrenchment has been passed under S.25-F, an enquiry is to be made after the service of notice of retrenchment and before the retrenchment comes into effect and said enquiry is to be made by the appropriate Government or authority
B specified by it, maintaining *status quo* in the meanwhile.

With regard to the nature of the power which is exercised by the appropriate Government or authority while granting or refusing permission for retrenchment under sub-section 2 of section 25-N of the Act, the learned counsel for the employers have urged that the appropriate Govern-
C ment or authority while exercising this power acts purely in an administrative capacity. Laying emphasis on the words "after making such enquiry as such government or the authority thinks fit" in sub-section 2, the learned counsel for the workmen have, on the other hand, urged that while considering the matter of grant or refusal of permission for retrenchment the
D appropriate Government or authority is required to exercise its power in a quasi-judicial manner, i.e., it must pass the order after affording an opportunity to both the parties, (the employer and the workmen), to make their submissions. We find merit in this contention urged on behalf of the workmen. In sub-section 2 of section 25-N, Parliament has used terminology which is different from that used in sub-s. 2 of section 25-O. In sub-s.
E 2 of section 25-O, Parliament had used the expression "the appropriate Government may, if it is satisfied that the reasons for intended closure of the undertaking are not adequate or sufficient or such closure is prejudicial to the public interest" which implied that the order refusing to grant permission to close down the undertaking was to be passed on a subjective
F satisfaction of the appropriate Government about the adequacy or the sufficiency of the reasons for the intended closure or the closure being prejudicial to the public interest. In sub-section (2) of section 25-N, the words used were "the appropriate Government or authority may, after making such enquiry as such Government or authority thinks fit, grant or refuse, for reasons to be recorded in writing" which indicates that the
G appropriate Government or authority, before passing an order granting or refusing permission for retrenchment, is required to make an enquiry though the precise nature of the enquiry that is to be made is left in the discretion of the appropriate Government or authority and further that the order that is passed by the appropriate Government or authority must be
H a speaking order containing reasons. The requirement to make an enquiry

postulates an enquiry into the correctness of the facts stated by the employer in the notice served under clause (c) of sub-section (1) of section 25-N for retrenchment of the workmen and other relevant facts and circumstances including the employer's *bona fides* in making such retrenchment and such an enquiry involving ascertainment of relevant facts will necessarily require affording an opportunity to the parties viz. the employer and the workmen, who have an interest in the matter, to make their submissions. In this context, reference may be made to Rule 76-A of the Industrial Disputes (Central) Rules, 1957 framed by the Central Government under the Act. Sub-rule (1) requires that the notice required to be given under clause (c) of sub-section (1) of section 25-N shall be served in Form P-A. Sub-rule (3) requires that the copy of the said notice or the application shall be served by the employer on the workmen concerned and a proof to that effect shall be submitted by the employer along with the notice or, as the case may be, the application. Sub-rule (4) lays down that the employer concerned shall furnish to the Central Government or the authority to whom the notice for retrenchment has been given or the application for permission for retrenchment has been made, such further information as the Central Government or, as the case may be, the authority considers necessary for arriving at a *decision* on the notice or, as the case may be, the application, as and when called for by such authority. Form P-A prescribes the various particulars in respect of which information has to be furnished by the employer in the notice served under clause (c) of sub-section (1) of section 25-N. The said matters, *inter alia,* cover nature of the duties of the workmen proposed to be retrenched, the units/sections/shops where they are working (Item No. 3); items of manufacture and scheduled industry/industries under which they fall (Item No. 4); details relating to installed capacity, licensed capacity and the utilised capacity (Item No. 5); annual production, itemwise for preceding three years and production figures month-wise for the proceeding twelve months (Item No. 6); work in progress – item-wise and value-wise (Item No. 7); and arrangement regarding off-loading or sub-contracting of products or any components thereof (Item No. 8); position of the order book – item-wise and value-wise for a period of six months and one year next following, and for the period after the expiry of the said one year (Item No. 9); number of working days in a week with number of shifts per day and strength of workmen per each shift (Item No. 10); balance sheet; profit and loss account and audit reports for the last three years (Item no. 11);

A B C D E F G H

financial position of the company (Item No. 12); names of the inter-connected companies or companies under the same management (Item No. 13); the total number of workmen (category-wise), and the number of employees other than workmen as defined in the Act employed in the undertaking and percentage of wages of workmen to the total costs of production (Item No. 14); administrative, general and selling cost in absolute terms per year for the last three years and percentage thereof to the total cost (Item No. 15); details of retrenchment resorted to in the last three years, including dates of retrenchment, the number of workmen involved in each case, and the reasons therefor (Item No. 16); anticipated savings due to the proposed retrenchment (Item No. 19); any proposal for effecting savings on account of reduction in managerial remuneration, sales promotion cost and general administration expenses (Item No. 20); position of stocks on the last day of each of the month in the preceding twelve months (Item No. 21); annual sales figures for the last three years and moth-wise sales figures – for the preceding twelve months both item-wise and value-wise (Item No. 22); and reasons for the proposed retrenchment (Item No. 23).

It would thus appear that the employer is required to furnish detailed information in respect of the working of the industrial undertaking so as to enable the appropriate Government or authority to make up its mind whether to grant or refuse permission for retrenchment. Before passing such order, the appropriate Government or authority will have to ascertain whether the said information furnished by the employer is correct and the proposed action involving retrenchment of workmen is necessary and if so, to what extend and for that purpose it would be necessary for the appropriate government or auhority to make an enquiry after affording an opportunity to the employer as well as the workmen to represent their case and make a speaking order containing reasons. This necessarily envisages exercise of functions which are not purely administrative in character and are quasi-judicial in nature. The words "as such government or authority thinks fit" do not mean that the government or authority may dispense with the enquiry at its discretion. These words only mean that the government or authority has the discretion about the nature of enquiry which it may make. In our opinion, therefore, while exercising its powers under sub-section (2) of section 25-N in the matter of granting or refusing permission for retrenchment, the appropriate government or the authority does not exercise powers which are purely administrative but exercises powers which

are quasi-judicial in nature. A

It was contended on behalf of the employers that while passing an order under sub-section (2), the appropriate government or authority can either grant or refuse permission for the proposed retrenchment in its entirety and that it is not permissible for the appropriate government or authority to grant permission for retrenchment of some of the workmen out of the workmen proposed to be retrenched and refuse such permission in respect of the rest. We do not find any words of limitation in sub-section (2) which preclude the appropriate government or authority to grant partial permission in respect of some of the workmen out of the workmen proposed to be retrenched and refuse the same in respect of the rest keeping in view the particular facts in relation to a particular establishment. Nor is there anything in sub-s. (2) which requires the appropriate Government or authority to either grant permission for retrenchment of the entire lot of the workmen proposed to be retrenched or refuse to grant permission in respect of the entire lot of workmen. It may be that the appropriate Government or authority may feel that the demand of the management for the proposed retrenchment is pitched too high and that in view of the facts and circumstances revealed as a result of an enquiry it is found that the industrial establishment can be efficiently run after retrenching a few of the workmen proposed to be retrenched. In that event, it would be permissible for the appropriate Government or authority to grant permission for retrenchment of only some of the workmen proposed to be retrenched and to refuse such permission for the rest of the workmen. B C D E

As regards the factors which are to be taken into consideration by the appropriate government or authority while exercising its power under sub-section (2) of section 25-N, Shri Nariman has urged that since no indication about these factors is given in sub-section (2), it should be held that Parliament did not intend to alter the existing law governing retrenchment and the principles of industrial law that are applied by Industrial Tribunals for examining the validity of retrenchment under Section 25-F would also be applicable in the matter of exercise of power under sub-section (2) of section 25-N. In this context, Shri Nariman has submitted that the law governing retrenchment is well-settled by the decisions of this Court in *D. Macropollo & Co. (Pvt) Ltd* v. *Their Employees' Union & Ors.*, (1958) 2 LLJ 492; *Workmen of Subong Tea Estate* v. *The Outgoing Management of Subong Teas Estate & Anr.*, [1964] 5 SCR 602 and *Parry & Co. Ltd.* F G H

A v. *P.C. Pal, & Ors.*, [1969] 2 SCR 976. Wherein it has been laid down that (i) management can retrench its employees only for proper reasons which means that it must not be retrenched by any motive of victimisation or any unfair labour practice; (ii) it is for the management to decide the strength of its labour force; (iii) if the number of workmen exceeded the reasonable and legitimate needs of the undertaking, it is open to the management to retrench them; (iv) workmen have become surplus on the ground of rationalisation or economy, reasonably or *bona fide* adopted by the management or on the ground of any other industrial or trade reasons; and (v) the right to affect retrenchment cannot normally be challenged but when there is a dispute about the validity of retrenchment the impugned retrenchment must be shown as justified on proper reasons, i.e., that it was not capricious or without reason. Shri Nariman has invoked the principle of statutory construction that the legislature should not be considered to make radical changes in law without using explicit language which unmistakably points in that direction and has placed reliance on the decision of this Court in *Byram Pestonji Gariwala* v. *Union Bank of India,* AIR (1991) SC 2234, at p. 2242. We are unable to accept this contention of Shri Nariman for the reason that the principles aforementioned governing retrenchment were laid down by this Court at a time when retrenchment, as defined in section 2(oo) of the Act, was confined to mean discharge of surplus labour or staff. There has been a change in the law relating to retrenchment since the decision of this Court in *State Bank of India* v. *Shri N. Sundara Money* [1976] 3 SCR 160 wherein 'retrenchment', as defined in section 2(oo), was construed to mean termination howsoever produced and all terminations except those specified in clauses (a), (b) and (c) of section 2(oo) were held to be retrenchment. The said view in *State Bank of India* v. *Shri N. Sundara Money* (supra) was reiterated in the subsequent decisions of this Court in *Delhi Cloth & General Mills Ltd.* v. *Shambhu Nath Mukherjee & Ors.*, [1978] 1 SCR 591; *Santosh Gupta* v. *State Bank of Patiala,* [1980] 3 SCR 884; *Hindustan Steel Ltd.* v. *The Presiding Officer, Labour Court*, [1977] 1 SCR 586; *Surendra Kumar Verma* v. *Central Government Industrial Tribunal-cum-Labour Court, New Delhi*, [1981] 1 SCR 789 *Mohanlal* v. *Management of M/s Bharat Electronics Ltd.*, [1981] 3 SCR 518; *Management of Karnataka State Road Transport Corporation* v. *M. Boraiah & Anr.*, [1984] 1 SCC 244; and *Gammon India Ltd.* v. *Niranjan Das*, [1984] 1 SCC 509. The matter now stands concluded by the decision of the Constitution Bench of this Court in *Punjab Land Development and*

Reclamation Corporation Ltd., Chandigarh etc. v. *Presiding Officer, Labour Court, Chandigarh, etc.*, [1990] 3 SCR 111 wherein the decision in *State Bank of India* v. *N. Sundara Money* (supra) SCR and subsequent decisions have been approved and it has been held that retrenchment, as defined in section 2(oo), means termination by the employer of the service of a workman for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action and those expressly excluded by clauses (a), (b) and (c) of the definition. In view of these decisions, it cannot be said that retrenchment means termination by the employer of the service of a workman as surplus labour and, therefore, the law that was laid down by this Court in *D.Macropollo & Co.'s* case (supra), *Workmen of Subong Tea Estate's* case (supra) and *Parry & Co.'s* case (supra) on the basis of the said restricted meaning of retrenchment cannot be held to govern the exercise of the power by the appropriate government or the authority under sub-section (2) of section 25-N. It is significant that even according to these decisions existence of proper reasons was a restriction on the employer's right of retrenchment earlier also. It is only the scope of the reasons which has undergone a change with this alteration in the law.

We are also of the opinion that in enacting Chapter V-B the intention of Parliament was to alter the existing law relating to lay-off, retrenchment and closure in relation to lager industrial establishments falling within the ambit of Chapter V-B because it was felt that the existing law enabled large-scale lay-offs, retrenchments and closures by large companies and undertakings and this had resulted in all round demoralising effect on workmen. We are, therefore, unable to uphold the contention of Shri Nariman that in enacting section 25-N, Parliament did not intend to alter the existing industrial law governing retrenchment of workmen.

Another contention put forward on behalf of the employers was that in sub-s. (7) of section 25-N, an indication has been given by the legislature about the factors which may be taken into consideration by the appropriate Government or authority while exercising its power under sub-section (2). In sub-section (7), it is provided that where at the commencement of the 1976 Act, a dispute relating, either solely or in addition to other matters to the retrenchment of any workman or workmen of an industrial establishment to which Chapter V-B applies, is pending before a conciliation officer or the Central Government or the State Government, as the case may be, and (a) there is an allegation that such retrenchment is by way of

A victimisation; or (b) the appropriate Government is of the opinion that such retrenchment is not in the interest of the maintenance of industrial peace, the appropriate Government, if satisfied that it is necessary so to do, may, by order, withdraw such dispute or, as the case may be, such dispute insofar as it relates to such retrenchment and transfer the same to an authority (being an authority specified by the appropriate Government B by notification in the official Gazette) for consideration whether such retrenchment is justified. It is urged that the two circumstances referred to in sub-section (7), viz., retrenchment being by way of victimisation or the retrenchment not being in the interest of maintenance of industrial peace, can be treated as the factors which are required to be taken into account C by the appropriate Government or authority while exercising its powers under sub-section (2). This contention, in our opinion, proceeds on a misconception of the scope of the provisions contained in sub-section (2) and sub-section (7) of section 25-N. As noticed earlier, sub-section (2) deals with a stage prior to retrenchment whereas sub-section (7) deals with a stage after retrenchment. Sub-section (7) seeks to provide for disposal of D industrial disputes arising due to retrenchment of workmen either of the two conditions laid down in sub-section (7) is satisfied and which were pending at pre-reference stage on the date of commencement of the 1976 Act, by an authority specified by the appropriate Government instead of an Industrial Tribunal. Industrial disputes which do not fulfil either of these E two conditions will have to be adjudicated by the Industrial Tribunal after reference. The two conditions laid down in sub-section (7) which govern the withdrawal of the disputes pending at pre-reference stage and transfer for adjudication to the specified authority, cannot be equated with the considerations which should weigh with the appropriate Government or F authority while exercising its power to grant or refuse permission for retrenchment of workmen under sub-section (2).

A question has also arisen as to the status of the appropriate Government or authority while passing the order under sub-section (2) of section 25-N. It has been urged that if the appropriate government or the authority G is held to be exercising functions which are judicial in nature, then it must be held to be functioning as a tribunal for the purpose of Article 136 of the Constitution and an appeal would lie to this Court against such an order. Reliance has been placed on the decision of this Court in *Associated Cement Companies Ltd.* v. *P.N. Sharma & Anr.*, [1965] 2 SCR 366. In that H case, it was held that the State Government, while functioning as the

appellate authority under rule 6(5) and 6(6) of the Punjab Welfare Officers Recruitment and Conditions of Service Rules, 1952 and discharging the judicial functions of the State, was functioning as a tribunal under Article 136 of the Constitution for the reason that adjudicating power had been conferred on the State Government by a statutory rule, and it could be exercised in respect of disputes between the management and its welfare officers and in that sense there was a lis and that the order which was passed by the State Government, in appeal, was described as a decision and had been made final and binding under rule 6(5) and 6(6). The power exercised by the appropriate Government or authority under sub-section (2) cannot be equated with the power that was exercised by the State Government in *Associated Cement Company's* case (supra). The power exercised by the appropriate Government or authority under sub-section (2) of Section 25-N is similar to the power that was exercised by the Conciliation Officer in *Jaswant Sugar Mills Ltd.* v. *Lakshmichand,* [1963] Supp.1 SCR 242. In that case, a dispute between the management and the workmen relating to payment of bonus was pending before the Industrial Tribunal and the management had submitted an application to the Conciliation Officer for permission to dismiss 63 workmen on charges of misconduct. The Conciliation Officer, in exercise of powers conferred on him by clause 29 of the order issued in 1954 by the Governor of U.P. under the U.P. Industrial Disputes Act, 1947, granted permission in respect of only 11 workmen but refused such permission in respect of others and the question was whether the Conciliation Officer was a tribunal and an appeal lay in this Court against the order under Article 136 of the Constitution. This Court held that though the Conciliation Officer was required to act judicially in granting or refusing to grant permission to alter the terms of employment of workmen at the instance of the employer but he was not invested with the judicial power of the State and he could not be regarded as a tribunal within the meaning of Article 136 of the Constitution and, therefore, an appeal under that Article was not competent against the order passed by the Conciliation Officer. The position of the appropriate Government or authority functioning under sub-section (2) of section 25-N is not very different. We are, therefore, of the view that although the appropriate Government or authority is required to act judicially while granting or refusing permission for retrenchment of workmen under sub-section (2) of section 25-N, it is not invested with the judicial power of the State and it cannot be regarded as a tribunal within the meaning of Article

A 136 of the Constitution and no appeal would, therefore, lie to this Court against an order passed under sub-section (2) of section 25-N.

The learned counsel, appearing for the employers, have raised the following contentions to assail the reasonableness of the restrictions imposed by Section 25-N :

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(I) Adjudication by a judicial body available in the case of retrenchment under Section 25-F has been substituted by an administrative order passed by an executive authority in the case of retrenchment under Section 25-N and thereby a function which was traditionally performed by Industrial Tribunals/Labour Courts has been conferred on an executive authority.

C

(II) No guidelines have been prescribed for the exercise of the power by the appropriate Government or authority under sub-s. (2) of S.25-N and it would be permissible for the authority to pass its order on policy considerations which may have nothing to do with an individual employer's legitimate need to reorganise its business. The requirement that reasons must be recorded by the appropriate Government or authority for its order under sub-s. (2) of S.25-N is not a sufficient safeguard against arbitrary action since no yardstick is laid down for judging the validity of those reasons.

D

E

(III) There is no provision for appeal or revision against the order passed by the appropriate Government or authority refusing to grant permission to retrench under sub-s. (2) of S.25-N. Judicial review under Article 226 of the Constitution is not an adequate remedy.

F

(IV) The provisions are *ex-facie* arbitrary and discriminatory inasmuch as while the workmen have a right to challenge, on facts, the correctness of an order passed under sub-section (2) granting permission for retrenchment before the Industrial Tribunal by seeking a reference under Section 10 of the Act, the management does not have a similar right to challenge the validity of an order passed under sub-section (2) refusing to grant permission for retrenchment.

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Re : CONTENTION I

On behalf of the employers, it was submitted that prior to the enactment of S.25-N, the validity of retrenchment in all industrial estab-

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lishments, big or small, was required to be judicially determined by industrial tribunals/labour courts by following the normal judicial procedure and that as a result of the enactment of S.25-N retrenchment of workmen in industrial establishments to which the said provisions are applicable will be examined by the appropriate Government or authority specified by the appropriate Government and the said authority can be any officer who need not be trained in law. It was pointed out that S.25-N does not give any indication about the status and qualifications of the officer who would be entrusted with the power to grant or refuse permission for retrenchment of workmen under sub-s. (2) and it is left to the unguided discretion of the appropriate Government to nominate any officer as the authority entitled to exercise this power.

This contention may be divided into two parts. The first part relates to conferment of the power to grant or refuse permission for retrenchment of workmen under sub-s.(2) of S.25-N on the executive instead of the industrial tribunals/labour courts who were earlier exercising the power to examine the validity of such retrenchment. The second part relates to the power conferred by sub-s. (1) on the appropriate Government to specify the authority which can exercise the said power under sub-section (2).

Insofar as the first part of the contention is concerned, it may be stated that, while construing the provisions of sub-s.(2), we have held that the power to grant or refuse permission for retrenchment of workmen that has been conferred under sub-s. (2), has to be exercised on an objective consideration of the relevant facts after affording an opportunity to the parties having an interest in the matter and reasons have to be recorded in the order that is passed. We have referred to Rule 76-A of the Industrial Disputes (Central) Rules and Form-PA prescribed under the said rules for the notice to be served under Clause (c) of sub-s. (1) of S.25-N, and the particulars which are required to be supplied by the employer under the various heads in the said notice. The enquiry, which has to be made under sub-s. (2) before an order granting or refusing permission for retrenchment of workmen is passed, would require an examination of the said particulars and other material that is furnished by the employer as well as the workmen. In view of the time limit of three months prescribed in sub-section (3) there is need for expeditious disposal which may not be feasible if the proceedings are conducted before a judicial officer accustomed to the judicial process. Moreover during the course of such consideration it may

become necessary to explore the steps that may have to be taken to remove the causes necessitating the proposed retrenchment which may involve interaction between the various departments of the Government. This can be better appreciated and achieved by an executive officer rather than a judicial officer. We are, therefore, unable to uphold the first part of the contention relating to conferment of the power to grant or refuse the permission for retrenchment on the appropriate Government.

As regards the second part of the contention relating to the discreation conferred on the appropriate Government to specify the authority which may exercise the power under sub-section (2), it may be stated that the said discretion is given to the Government itself and not to a subordinate officer. In *Virendra* v. *State of Punjab & Anr.*, [1958] SCR 308, this Court was dealing with S.2(1)(a) of the Punjab Special Powers (Press) Act, 1956, which used the expression "the State Government or any authority so specified in this behalf". The validity of the said provision was assailed on the ground that it gave unfettered and uncontrolled discretion to the State Government or to the officer authroised by it and reliance was placed on the earlier decision of this Court in *Dawarka Prasad Laxmi Narian* v. *The State of Uttar Pradesh,* [1954] SCR 803. Rejecting the said contention, this Court held :

> "In the first place, the discretion is given in the first instance to the State Government itself and not to a very subordinate officer like the licensing officer as was done in *Dwaraka Prasad's* case (supra). It is true that the State Government may delegate the power to any officer or person but the fact that the power of delegation is to be exercised by the State Government itself is some safeguard against the abuse of this power of delegation." (p.321)

It has, however, been submitted that in *Virendra's* case (supra), this Court struck down S.3(1) of the said Act which also used the same expression, viz., "the State Government or any authority authorised by it in this behalf". But on a perusal of the judgment, we find that S.3(1) was not struck down on the ground that the power could be delegated by the State Government to any authority. It was held to be bad on the ground that there was no time limit for operation of the order made under S.3(1) and no provision was made for any representation being made to the State

Government and in this regard the provisions contained in S.3 were contrasted with those contained in S.2(1)(a) wherein a time limit of two months had been prescribed for operation of the order and a right to make a representation to the State Government had also been conferred. Keeping in view the fact that the power to specify the authority which can exercise the power conferred under sub-s. (2) of S.25-N has been conferred on the appropriate Government, we are unable to held that the delegation of the power to the appropriate Government to specify the authority renders the provisions of Section 25-N as arbitrary or unreasonable. The first contention is, therefore, rejected.

Re : CONTENTION II

It has been urged on behalf on the employers that sub-section (2) of section 25N does not prescribe any guidelines or principles to govern the exercise of the power that has been conferred on the appropriate government or the authority in the matter of grant or refusal of permission for retrenchment and in the absence of such guidelines or principles, it will be open to the appropriate government or authority to take into account matters having no bearing or relevance to the legitimate need of the employer to reorganise his business and which may even be opposed to such need and it has been pointed that it would be permissible to pass the order by taking into consideration the state of unemployment in the industry or the state of unemployment in the State. It has also been submitted that the requirement that reasons should be recorded in the order that is passed by the appropriate government or authority would not provide any protection against arbitrary action because in the absence of principles governing the exercise of the power, there is no touch-stone to assess the validity of those reasons. We find no substance in this contention. We have already dealt with the nature of the power that is exercised by the appropriate government or the authority while refusing or granting permission under sub-section (2) and have found that the said power is not purely administrative in character but partakes exercise of a function which is judicial in nature. The exercise of the said power envisages passing of a speaking order on an objective consideration of relevant facts after affording an opportunity to the concerned parties. Principles or guidelines are insisted with a view to control the exercise of discretion conferred by the statute. There is need for such principles or guidelines when the discretionary power is purely administrative in character to be exercised on the

A subjective opinion of the authority. The same is, however, not true when the power is required to be exercised on objective considerations by a speaking order after affording the parties on opportunity to put forward their respective points of view. That apart, it cannot be said that no guidance is given in the Act in the matter of exercise of the power conferred by sub-section (2) of Section 25-N.

B

The said power conferred under sub-section (2) of section 25N has to be exercised keeping in view the provisions of the Act and the object underlying the 1976 Act whereby section 25N was inserted in the Act. The basic idea underlying all the provisions of the Act is the settlement of C industrial disputes and the promotion of industrial peace so that the production may not be interrupted and the community in general may be benefited See : *Niemla Textile Finishing Mills Ltd.* v. *The 2nd Punjab Industrial Tribunal,* [1957] SCR 335, at p. 352. In that case, this Court held that this is the end which has got to be kept in view by the appropriate D government when exercising the discretion which is vested in it in the matter of making the reference to one or the other of the authorities under the Act and also in the matter of carrying out the various provisions contained in the other sections of the Act including the curtailment or extension of the period of operation of the award of the Industrial Tribunal. The object underlying the requirement of prior permission for retrench- E ment introduced by section 25N, as indicated in the Statement of Objects & Reasons for the 1976 Act, is to prevent avoidable hardship of unemployment to those already employed and maintain higher tempo of production and productivity. The said considerations coupled with the basic idea underlying the provisions of the Act, viz., settlement of industrial disputes F and promotion of industrial peace, give a sufficient indication of the factors which have to be borne in mind by the appropriate Government or authority while exercising its power to grant or refuse permission for retrenchment under sub-section (2).

G Shri Nariman has invited our attention to sub-s. (3) of S.25-N, as substituted by the Amending Act No. 49 of 1984, wherein it has been prescribed that the appropriate Government or the specified authority could grant or refuse to grant permission to retrench 'having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors'. Shri Nariman has H urged that the considerations referred to in sub-s. (3) are declaratory in

character and the same are also required to be taken into consideration in the matter of exercise of power by the appropriate Government or the authority under sub-s.(2) of S.25-N as originally enacted. According to Sri Nariman "the interest of the workmen and all other relevant factors" would result in introducing impermissible elements in the matter of exercise of the power to grant or refuse permission for retrenchment inasmuch as the order for grant or refusal of permission for retrenchment is only to be based on the relevant circumstances as laid down by this Court, namely, that the action of the employer is *bona fide* and is not actuated by victimisation or unfair labour practice. The submission is that retrenchment would always be prejudicial to the "interests of the workmen" and if the interests of workmen are to be taken into consideration permission for retrenchment will never be granted. We are unable to agree. Assuming that the factors mentioned in sub-s.(3) S.25-N as substituted by Amending Act 49 of 1984, are declaratory in nature and are required to be taken into consideration by the appropriate Government or the authority while passing an order under sub-s.(2) of S.25-N, as originally enacted, it is not possible to hold that the interests of the workmen is not a relevant factor for exercising the said power. As pointed out by Prof. Gower in his treatise on Principles of *Modern Company Law:*

> "In so far as there is any true association in the modern public company it is between management and workers rather than between shareholders *inter se* or between them and the management. But the fact that the workers form an integral part of the company is ignored by the law". (4th Edn., p.10)

The Indian Constitution recognises the role of workers in the management of the industries inasmuch as Article 43A requires that the State shall take steps by suitable legislation or in any other way to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry. While holding that the workers have the *locus standi* to appear and be heard in a petition for winding up of the company both before the petition is admitted and also after the admission until an order is made for winding up of the company, Bhagwati, J., (as the learned Chief Justice then was), in *National Textiles* v. *P.R. Ramakrishnan,* [1983] 1 SCR 922, has thus elaborated this idea:

A "It is clear form what we have stated above that it is not only the shareholders who have supplied capital who are interested in the enterprise which is being run by a company but the workers who supply labour are also equally interested because what is produced by the enterprise is the result of labour as well as capital. In fact, the owners of capital bear only limited financial risk and otherwise contribute noting to production while labour contributes a major share of the product. While the former invest only a part of their moneys, the latter invest their sweat and toil, in fact their life itself. The workers therefore have a special place in a socialist pattern of society. They are no more vendors of toil, they are not a marketable commodity to be purchased by the owners of capital. They are producers of wealth as much as capital. They supply labour without which capital would be impotent and they are, at least, equal partners with capital in the enterprise. Our constitution has shown profound concern for the workers and given them a pride of place in the new socio-economic order envisaged in the Preamble and the Directive Principles of State Policy. The Preamble contains the profound declaration pregnant with meaning and hope for millions of peasant and workers that India shall be a socialist democratic republic where social and economic justice will inform all institutions of national life and there will be equality of status and opportunity for all and every endeavour shall be made to promote fraternity ensuring the dignity of the individual".(p.945-946)

F In the same case, Chinnappa Reddy, J., in his concurring judgment, has stated:

"The movement is now towards socialism. The working classes, all the world over, are demanding 'workers' control and 'Industrial Democracy'. They want security and the right to work to be secured. They want the control and direction of their lives in their own hands and not in the hands of the industrialists, bankers and brokers. Our Constitution has accepted the workers' entitlement to control and it is one of the Directive Principles of State Policy that the State shall take steps, by suitable legislation or in any other way, to secure the participa-

tion of workers in the management of undertakings, establishments or other organisations engaged in any industry. It is in this context of changing norms and waxing values that one has to judge the workers' demand to be heard". (p.958)

Similarly, Baharul Islam, J. has observed:

"Our 'Democratic Republic' is no longer merely 'Sovereign' but is also 'Socialist' and 'Secular'. A Democratic Republic is not Socialist if in such a Republic the workers have no voice at all. Our Constitution has expressly rejected the old doctrine of the employers' right to 'hire and fire'. The workers are no longer cipher; they have been given pride of place in our economic system". (p.590)

The expression 'interests of workers', in our opinion, covers the interests of all the workers employed in the establishment, including not only the workers who are proposed to be retrenched but also the workers who are to be retained. It would be in the interests of the workers as a whole that the industrial establishment in which they are employed continues to run in good health because sickness leading to closure of the establishment would result in unemployment for all of them. It is, therefore, not correct to say that the interests of workmen would always be adverse to the interests of the industrial establishment and no order granting permission for the retrenchment would be passed if the interests of the workers is to be taken into consideration. Since retrenchment of a large number of workmen would lead to worsening of the unemployment situation it cannot be said that the condition of unemployment in the particular industry or the condition of unemployment in the particular State have no relevance to the exercise of the power to grant or refuse permission for retrenchment of workmen under sub-section (2) of Section 25-N. In our opinion, these factors cannot be treated as alien to the factors which are required to be considered for exercising the said power. We are, therefore, unable to accede to the contention of Shri Nariman that sub-section (2) of Section 25-N by enabling the appropriate Government or authority to take into consideration the condition of employment in the industry or the condition of employment in the State imposes an unreasonable restriction on the right of the employer under Article 19(1)(g).

We are also unable to agree with the submission that the requirement

A ot passing a speaking order containing reasons as laid down in sub-section (2) of section 25N does not provide sufficient safeguard against arbitrary action. In *S.N. Mukherjee* v. *Union of India,* [1990] 4 SCC 594, it has been held that irrespective of the fact whether the decision is subject to appeal, revision or judicial review, the recording of reasons by an administrative B authority by itself serves a salutary purpose, viz., it excludes chances of arbitrariness and ensures a degree of fairness in the process of decision-making (p.612).

For the reasons aforesaid, contention II is rejected.

C *Re : CONTENTION III*

It was urged by the learned counsel appearing for the employers that no provision has been made for an appeal or revision against the order passed by the appropriate Government or authority granting or refusing D permission for retrenchment of workmen under sub-section (2) of section 25-N, not is there any provision for review and that section 25-N suffers from the same infirmity as was found by this Court in section 25-O in *Excel Wear* case (supra). It was also urged that the remedy of judicial review under Article 226 of the Constitution is not an adequate remedy inasmuch as the scope of judicial review under Article 226 of the Constitution is very E limited and does not enable challenge on the ground of an error of fact in the impugned order. In this context, reliance is also placed on the decision of this Court in *State of Bihar* v. *K.K. Misra & Ors.,* [1970] 3 SCR 181. In our opinion, the decisions in *Excel Wear* case (supra) and *State of Bihar* v. *K.K.Misra* (supra) are not applicable to the present case. As pointed out F earlier, sub-section (2) of section 25-O provided for an order being passed by the State Government refusing to grant permission to close the undertaking on its subjective satisfaction and there was no requirement for recording of reasons in the said order and in these circumstances this Court held that the absence of a right of appeal or review or revision rendered the restriction as unreasonable. Similarly, in *State of Bihar.* v. *K.K. Misra* G (supra), the latter part of clause (6) of section 144 Cr.P.C., which enabled the State Government to extend life of an order passed by the Magistrate beyond its original life of two months, was struck down by this Court as violative of Article 19 on the ground that the power that was being exercised by the State Government was an executive power and it was not H expected to be exercised judicially and it was open to be exercised ar-

bitrarily and in that context, it was observed that there was no provision to make representation by the aggrieved party against the directions given by the Government and no appeal or revision was provided against those directions. Having regard to the status of the authority which has been conferred the power under sub-section (2) of Section 25-N and the mode of exercise of that power, the cases which have greater bearing on the question are *Organo Chemicals Industries* v. *Union of India,* [1980] 1 SCR 61 and *Babubhai and Co. & Ors.* v. *State of Gujarat,* [1985] 3 SCR 614. In *Organo Chemical Industries* case (supra) the validity of Section 14-B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 was challenged on the ground that there was no provision for appeal against the order of the Regional Provident Fund Commissioner. The said challenge was negatived on the ground that the determination was objective and not subjective and that the Regional Provident Fund Commissioner was "cast with the duty of making a "speaking order" after conforming to the rules of natural justice" (p.85)

In *Babubhai and Co.* v. *State of Gujarat* (supra) it has been observed:

> "It cannot be disputed that the absence of a provision for a corrective machinery by way of appeal or revision to a superior authority to rectify and adverse order passed by an authority or body on whom the power is conferred may indicate that the power so conferred is unreasonable or arbitrary but it is obvious that providing such corrective machinery is only one of the several ways in which the power could be checked or controlled and its absence will be one of the factors to be considered along with several others before coming to the conclusion that the power so conferred is unreasonable or arbitrary; in other words mere absence of a corrective machinery by way of appeal or revision by itself would not make the power unreasonable or arbitrary, much less would render the provision invalid. Regard will have to be had to several factors, such as, on whom the power is conferred whether on a high official or a petty officer, what is the nature of the power - of the authority or body on whom it is conferred or is it to be exercised objectively by reference to some existing facts or test, whether or not it is a quasi-judicial power requiring that authority or body to observe principles of natural justice and make a speaking order etc.;

A the last mentioned factor particularly ensures application of mind on the part of the authority or body only to pertinent or germane material on the record excluding the extraneous and irrelevant and also subjects the order of the authority or body to a judicial review under the writ jurisdiction of the Court or grounds of perversity, extraneous influence, malafides and other blatant infirmities". (p.619-620)

In the instant case the order under sub-s. (2) granting or refusing permission for retrenchment is to be passed either by the appropriate Government or authority specified by the appropriate Government, and C the said order is required to be a speaking order based on objective consideration of relevant facts after following the principles of natural justice. In the circumstances the absence of a provision for appeal or revision is not of much consequence especially when it is open to an aggrieved party to invoke the jurisdiction of the High Court under Article D 226 of the Constitution.

It has, however, been urged that the permission for retrenchment of workmen may be refused by the appropriate Government or authority under sub-section (2) of section 25-N on policy considerations and in that event relief under Article 226 of the Constitution may not be available and E in that context, reliance has been placed on two decisions of this Court, namely, *Rama Sugar Industries Ltd.* v. *State of A.P. & Ors.*, [1974] 2 SCR 787 and *G.B. Mahajan & Ors.* v. *Jalgaon Municipal Counsil & Ors.*, [1991] 3 SCC 91. In *Rama Sugar Industries'* case (supra), the question related to the grant of exemption from payment of purchase tax under A.P. Sugar- F cane (Regulation of Supply and Purchase) Act, 1951 and it has been held that it was open to the Government to adopt a policy not to make a grant at all or to make a grant only to a certain class and not to certain other classes though such a decision must be based on considerations relevant to the subject-matter on hand. In that case, it was found that such a consideration was there and the orders were upheld. This would show that in G case the appropriate Government or the authority passes an order under sub-section (2) of section 25-N in accordance with certain policy then in the event of such order being challenged under Article 226 of the Constitution, it would be required to justify the said policy and it would be open to the High Court, in exercise of its jurisdiction under Article 226 of the H Constitution, to examine whether the said policy is in consonance with the

object and purpose of the Act. In *G.B. Mahajan's* case (supra), the appellants were seeking to challenge the action of the Municipal Council in awarding a contract for construction of a commercial complex under a scheme for financing the same which scheme was challenged as unconventional by the appellants. This Court, while refusing to interfere, observed that in the context of expanding exigencies of urban planning it will be difficult for the court to say that a particular policy option was better than another. The principle laid down in this decision has no bearing on the exercise of power under sub-section (2) of section 25-N as laid down by this Court. As pointed out in *Mohinder Singh Gill & Anr.* v. *The Chief Election Commissioner, New Delhi & Ors.*, [1978] 2 SCR 272 :

> "Independently of natural justice, judicial review extends to an examination of the order as to its being perverse, irrational, bereft of application of the mind or without any evidently backing." (p.317)

The remedy of judicial review under Article 226 is, in our view, an adequate protection against arbitrary action in the matter of exercise of power by the appropriate Government or authority under sub-section (2) of section 25-N of the Act. The third contention is, therefore, rejected.

Re : CONTENTION IV

It has been urged that section 25-N suffers from the vice of arbitrariness inasmuch as although the workmen would have a right to challenge, on facts, the correctness of an order granting permission to retrench before the Industrial Tribunal/Labour Court by seeking a reference under Section 10 of the Act, no similar right is available to the management to challenge the validity of an order refusing to grant permission for retrenchment of the workmen. It is pointed out that the order passed by the authority under sub-s. (7) of Section 25-N has been made final and binding on the parties but similar finality and binding nature is not attached to an order passed under sub-s. (2) of Section 25-N. In this regard, reference is also made to item no. 10 of the Third Schedule to the Act which indicates that 'Retrenchment of workmen and closure of establishment' is a matter within the jurisdiction of the Industrial Tribunal. It has been urged that in spite of the introduction of section 25-N of the Act, no change has been made in the Third Schedule which implies that an industrial dispute relating to retrenchment can be raised and referred for adjudication even after per-

A mission for retrenchment has been granted by the appropriate Government or authority under sub-s. (2) of section 25-N and retrenchment has been effected in accordance with the provisions of section 25-N, but a similar right is not available to the management against an order refusing to grant permission for retrenchment of workmen. In support of this submission, reliance has been placed on the decision of this Court in *All Saints High School, Hyderabad etc.* v. *Government of A.P. & Ors. etc.,* [1980] 2 SCR 924 wherein section 4 of the A.P. Recognised Private Educational Institutions Control Act, 1975 was declared as unconstitutional on the ground that while right of appeal was given to the teachers against the order passed by the management, no corresponding right was conferred on the management against the order passed by the competent authority under section 3(2) of the Act. In this context, it has also been pointed that under the provisions of section 25-N, as substituted by the Amending Act of 1984, both the management as well as the workmen have a right to have the matter referred to a Tribunal for adjudication after the appropriate government or specified authority has passed an order granting or refusing to grant permission under sub-section (6). Shri Ramamurthi, appearing for the workmen, has urged that reference of a dispute for adjudication to the Industrial Tribunal would depend on the discretion of the appropriate government and there is no right as such to approach the Industrial Tribunal. He has also pointed out that the power that is exercised by the appropriate Government or authority under sub-section (2) of section 25-N is similar to that exercised by the various authorities under section 33 of the Act while giving approval to the action taken by the management in discharging or punishing a workman whether by dismissal or otherwise or altering the conditions of service of the workmen. It has been submitted that in cases where such approval is given to the action of the management, it is open to the workmen to raise a dispute and have it referred for adjudication under section 10 of the Act but no similar right is available to the management.

In order to validly retrench the workmen under s. 25-N, apart from obtaining permission for such retrenchment under sub-s. (2), an employer has also to fulfil other requirements, namely, to give three months' notice or pay wages in lieu of notice to the workmen proposed to be retrenched under clause (a) of sub-s. (1), pay retrenchment compensation to them under clause (b) of sub-s. (1) and to comply with the requirement of s.25-G, which is applicable to retrenchment under s.25-N in view of s. 25-S.

An industrial dispute may arise on account of failure on the part of the employer to comply with these conditions and the same can be referred for adjudication under s.10. In addition, an industrial dispute could also be raised by the workmen in a case where retrenchment has been effected on the basis of permission deemed to have been granted under sub-s. (3) of s.25-N on account of failure on the part of the appropriate Government or authority to communicate the order granting or refusing the permission for retrenchment within a period of three months from the date of the service of notice under clause (c) of sub-s. (1) because in such a case, there has been no consideration, on merits, of the reasons for proposed retrenchment by the appropriate Government or authority and reference of the dispute for adjudication would not be precluded. What remains to be considered is whether an industrial dispute can be raised and it can be referred for adjudication in a case where the appropriate Government has either granted permission for retrenchment or has refused such permission under sub-s. (2) of s.25-N. Since there is no provision similar to that contained in sub-s. (7) of s.25-N attaching finality to an order passed under sub-s. (2), it would be permissible for the workmen aggrieved by retrenchment effected in pursuance of an order granting permission for such retrenchment to raise an industrial dispute claiming that the retrenchment was not justified and it would be permissible for the appropriate Government to refer such dispute for adjudication though the likelihood of such a dispute being referred for adjudication would be extremely remote since the order granting permission for retrenchment would have been passed either by the appropriate Government or authority specified by the appropriate Government and reference under s.10 of the Act is also to be made by the appropriate Government. Since the expression "industrial dispute" as defined in s.2(k) of the Act covers a dispute connected with non-employment of any person and s.10 of the Act empowers the appropriate Government to make a reference in a case where an industrial dispute is apprehended, an employer proposing retrenchment of workmen, who feels aggrieved by an order refusing permission for retrenchment under sub-s. (2) of s.25-N can also move for reference of such a dispute relating to proposed retrenchment for adjudication under s.10 of the Act though the possibility of such a reference would be equally remote. The employer who feels aggrieved by an order refusing permission for retrenchment thus stands on the same footing as the workmen feelings aggrieved by an order granting permission for retrenchment under sub-s. (2) of s.

A B C D E F G H

A 25-N inasmuch as it is permissible for both to raise an industrial dispute which may be referred for adjudication by the appropriate Government and it cannot be said that, as compared to the workmen, the employer suffers from a disadvantage in the matter of raising an industrial dispute and having it referred for adjudication. The grievance about discrimination in this regard raised by the learned counsel for the employers is thus B unfounded. The fourth contention is, therefore, rejected.

The Madras High Court as well as the Rajasthan High Court have held the provisions of section 25-N to be unconstitutional on two grounds:

(1) No principles or guidelines have been laid down for the exercise C of the power conferred by sub-section (2) of section 25-N of the Act; and

(2) There is no provision for appeal or review against the order passed under sub-section (2).

Both these questions have been considered by us while dealing with D the contentions urged by learned counsel appearing for the employers and we have rejected the same. In that view of the matter, we are unable to uphold the decisions of the said High Courts striking down section 25-N as unconstitutional on the ground that it is violative of Article 19(1)(g) and is not saved by Article 19(6) of the Constitution.

E In the result, it is held that section 25-N does not suffer from the vice of unconstitutionality on the ground that it is violative of the fundamental right guaranteed under Article 19(1)(g) of the Constitution and is not saved by Article 19(6) of the Constitution. The matters may be placed before a Division Bench for consideration in the light of this judgment.

N.P.V. Referred to Division Bench.