

(2009) 04 BOM CK 0028

In the Bombay High Court

Case No : Writ Petition No. 2659 of 2005

Britannia Industries Ltd.

APPELLANT

Vs

Maharashtra General Kamagar Union and Shri C.V. Bhadang,
Hon'ble Industrial Tribunal

RESPONDENT

Date of Decision : 16-04-2009

Acts Referred:

Army Act, 1950 — Section 142(7)
Bombay High Court (Appellate Side) Rules, 1960 — Rule 7
Bombay High Court (Original Side) Rules, 1980 — Rule 28
Civil Procedure Code, 1908 (CPC) — Order 11 Rule 1, Order 11 Rule 2, Order 18 Rule 5, Order 41 Rule 5
Constitution of India, 1950 — Article 133, 135, 136, 142(1), 19(1)
Criminal Procedure Code, 1973 (CrPC) — Section 114
Industrial Disputes (Bombay) Rules, 1957 — Rule 17A
Industrial Disputes (Central) Rules, 1957 — Rule 76(6)
Industrial Disputes Act, 1947 — Section 10, 10(1), 10A, 11, 2
Judicature Act, 1873 — Section 100
Land Acquisition Act, 1894 — Section 11, 18, 19, 23
Metal Corporation of India (Acquisition of Undertaking) Act, 1966 — Section 10(1)

Citation : (2009) 3 BomCR 562 : (2009) 3 CTC 295 : (2009) 3 LLJ 275

Hon'ble Judges : Swatanter Kumar, C.J.;D.Y. Chandrachud, J;D.G. Karnik, J

Bench : Full Bench

Advocate : C.U. Singh and P.M. Palshikar and Sanjay Singhvi and Benette D'Costa, for the Appellant; Anand Grover and Susan Abraham, instructed by Prakash Mahadik, for the Respondent

Judgement

Swatanter Kumar, C.J.—While construing the provisions of Section 25-O of the Industrial Disputes Act, 1947 (hereinafter for brevity referred to as the 'Act'), learned Single Judge of this Court took a view that on a Reference u/s 25-O, the application for closure is referred and not merely the order passed by the appropriate Government and the Industrial Tribunal would have, therefore, to consider the application for closure de novo (Voltas Employees Union v. Voltas Limited and Anr. 2002 2 CLR 140). In Tilak Nagar Industries Limited v. The Commissioner of Labour, Maharashtra State and Ors. Writ Petition No. 2426 of

2004 (Aurangabad Bench) decided on 6.5.2004, the learned Judge further held that when the Government or Specified Authority decides to review the order and makes a Reference, the whole matter is referred to the Industrial Tribunal for adjudication. It is the application u/s 25-O(1) itself which is referred and once a Reference u/s 25-O(5) is made, the order passed under Sub-section (2) automatically gets eclipsed and achieves finality on the conclusion of the matter by the Tribunal. The Reference is not of the order but of the application. In *Mahalaxmi Glass Works Pvt. Ltd. v. State of Maharashtra and Ors.* 2007 3 CLR 43, the view stated was that the entire dispute was to be adjudicated where Reference is made and the order passed u/s 25-O(5) allowing closure is kept in cold storage or in abeyance.

2. While finding it difficult to follow the principles stated by the learned Judges on the construction and interpretation of Section 25-O of the Act in the matter of review and/or Reference, another Single Judge of this Court while referring to the provisions and scheme of the Act, decided to refer the matter for decision to a larger Bench. The respondents even raised an objection to the very maintainability of the present Reference. It is contended that in the light of the dictum of law stated by a Full Bench of this Court in the case of *Karim Abdul v. Shehnaz Karim* (2005) 5 Bom. CR 758, which is in line with the view taken by the Supreme Court in the case of *General Finance Co. and Another Vs. Assistant Commissioner of Income Tax, Punjab, and Central Board of Dawoodi Bohra Community and Another Vs. State of Maharashtra and Another*, there being an uninterrupted long standing view and practice, the learned single Judge ought not to have referred the matter to the Full Bench. To meet this argument, it was contended on behalf of the petitioners that the view taken by the learned Single Judges is not in conformity with the observations made in the judgment of the Division Bench of this Court in the case of *Association of Engineering Workers v. Indian Hume Pipe Company Ltd. and Ors.* (1985) 1 L.L.J. 450 which states a distinct principle of law though with reference to the provisions of Section 25N of the Act but the provisions of Section 25N being *pari materia* to Section 25-O, the Reference is valid. It is also argued that the questions formulated in the order of Reference are otherwise questions of great importance and arise before the Courts repeatedly. Thus, it would be in the interest of justice to clearly state the principles of law governing therein. The principles of law stated in the judgments relied upon by the respondents can hardly be disputed. As a rule of law and practice, a smaller Bench is not expected to differ with the law enunciated by a larger Bench. Normally, only a Bench of equal strength can make a Reference to a Larger Bench and that too for valid reasons, by referring the matter to the Chief Justice who has to pass an order in accordance with Rule 7 of Chapter I of Part I of the Bombay High Court, Appellate Side Rules, 1960. Same rule exists on High Court Original Side Rules being Rule 28 of the Bombay High Court (Original Side) Rules, 1980. In the present case, this Court is concerned with the ambit, scope and interpretation of provisions of Section 25-O of the Act. A Single Judge of this Court is in respectful disagreement with the view taken in all the three

judgments by the learned Single Judges of this Court referred above and opted to refer the matter to the larger Bench keeping in view the importance of the questions formulated in the order of Reference. It is not in dispute before us that except the view taken by the learned Single Judges of this Court, there is no ruling of any Division Bench or larger Bench of this Court with reference to the question referred in relation to the provisions of Section 25-O of the Act except *Association of Engineering Workers v. Indian Hume Pipe Company Ltd.* (supra) Merely because the courts have taken a view over a period of time, per se, is no ground for holding that the reference is not maintainable. It is said that judicial dissent in conformity with principles of judicial discipline and binding precedent helps in the development of law. It is a different matter what view the Court takes on the merits of the Reference. However, keeping in view the larger interest of administration of justice, importance of the legal questions framed in the order of Reference and the fact that there is every likelihood of these questions arising before the Courts as well as Industrial Courts and the Government repeatedly, we find ourselves duty bound to provide answers to the questions formulated so as to settle the position of law as far as State of Maharashtra is concerned.

3. On 10th September, 2008, the learned Single Judge while expressing dissent to the view expressed by the three learned Single Judges as afore noticed, passed the following order of Reference:

2. This Court having expressed prima facie disagreement with the finding, Shri Grover, the learned Counsel for the respondents Union relied on several decisions which take the view to the contrary. According to which the impugned Award of the Industrial Court is in accordance with law. These Judgments take the view that once a Reference is made to the Industrial Tribunal by the Government, its order granting or refusing to grant permission ceases to exist. Thus, the scope of the Reference is restricted to the question whether the original application for closure should be granted or refused and not to the legality of the order already made by the Government granting or refusing such permission. The judgments which take this view are:

(1) *Voltas Employees Union v. Voltas Ltd. and Anr.* 2002 2 CLR 140

(2) Writ Petition No. 2426 of 2004 decided on 6.5.2004 (*Tilaknagar Industries Ltd. v. The Commissioner of Labour, Maharashtra State, Mumbai*)

(3) *Mahalaxmi Glass Works Pvt. Ltd. v. State of Maharashtra and Ors.* 2007 III CLR 43, and

(4) *Association of Engineering Workers and Indian Human Pipe Company Ltd. and Ors.* I L.L.J. 450 rendered under pari materia provision contained in Section 25N of The Industrial Disputes Act, by a Division Bench.

3. The judgment referred to last i.e. *Association of Engineering Workers And Hume Pipe Company Ltd. and Ors.* Is judgment by a Division Bench u/s 25N(6)

which is in pari materia and not under the issue involved in the present petition i.e. Section 25-O.

However, while considering the question from another angle, the Division Bench has made certain observations regarding meaning of words "refer the matter" and "for adjudication" and have interpreted the words to mean refer the application for permission made by the employer for adjudication. It must be noticed that a Division Bench has in this context observed as follows:

...What is sought to be referred is the matter and not the question of legality of the order....

Though it appears that the real issue that was decided by the Division Bench is whether on the expiry of the period provided by section, the Reference ipso facto lapses and the Tribunal becomes functus officio. The relevant Sub-sections 4 and 5 of Section 25-O read as follows:

25-O:

(1) ...

(2) ...

(3) ...

(4) An order of the appropriate Government granting or refusing to grant permission shall, subject to the provisions of subsection

(5) be final and binding, on all the parties and shall remain in force for one year from the date of such order.

(5) The appropriate Government may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under Sub-section (2) or refer the matter to a tribunal for adjudication. Provided that where a Reference has been made to a Tribunal under this subsection, it shall pass an award within a period of thirty days from the date of such Reference.

4. The questions under consideration arise with Reference to the status of the Order of the Government upon being passed and the status of the Order of the Government once a Reference is made. According to the Judgments of the learned Single Judge, referred to above, since the Order of the Government is final and binding subject to the provisions of subsection 5, the Order upon Reference either becomes ineffective or is automatically stayed and in any case not in force. As a result the Government does not and cannot refer the legality of the Order to the Industrial Tribunal and the Industrial Tribunal assumes the original jurisdiction for dealing with the application for closure and is called upon to grant it or refuse it. On the other hand it appears that once the application for closure is decided it would not be correct to treat that very application which is decided as existing.

5. For reasons need not be elaborately discussed, at this stage, I am in respectful disagreement with this view. Hence, I consider it appropriate in the interest of justice to refer the following questions for decision by a Larger Bench:

(1) Whether upon a Reference being made to the Industrial Tribunal under Sub-section 5 for adjudication, the Order of the Government made under subsection 2 ceases to have any existence or effect in law pending Reference?

(2) And therefore whether the Government cannot refer the question of the legality and propriety of the Order under subsection 2 and is restricted to referring only the question whether the application for closure should be granted or refused?

(3) Whether the phrase "refer the matter" occurring in subsection 5 empowers the Government to refer the question of validity and propriety of its Order made under subsection 2 or whether Reference must be restricted to the validity of the application?

(4) Lastly, correspondingly, depending on the answer to the questions above, what is the jurisdiction of the Industrial Tribunal while deciding the Reference under subsection 5?

6. It must be noted at this juncture, Shri Grover, the learned Counsel for the respondents union submitted that the questions above ought not to be referred since these question were argued by the petitioner and decided in this very case by Judgment and Order of Rebello, J. passed on 22.9.2004 in Writ Petition No. 2424 of 2004. Mr. Singh, learned Counsel for the petitioner however points out that this position is not disputed when the matter went up in Appeal before the Division Bench and the Division Bench allowed the petitioner to withdraw that petition. Shri Grover contends that this is not permissible in law. However, this point cannot be agitated before this Court and the respondents are free to raise these questions before such Forum as may be advised in accordance with law.

7. Registrar (Judicial) is directed to place the papers before the Hon"ble the Chief Justice for seeking appropriate directions as may be required.

4. In the original petition, the petitioner has challenged the Order of the Industrial Tribunal passed u/s 25-O(5) of the Act, inter alia holding that under that Section the Government can refer only the application for permission to close down the Undertaking and not the Order of the appropriate Government on such an application. Therefore, the Industrial Tribunal has not gone into the legality of the Order and has considered the application de novo as if the application was made to itself.

5. Since the order of Reference does not give complete facts, we consider it proper to refer to the basic facts giving rise to the passing of the above order.

6. The petitioner company incorporated under the Companies Act, 1956 is engaged in the business of manufacturing and marketing of biscuits and related

food products. Respondent No. 1 Trade Union is a registered union under the provisions of the Trade Unions Act, 1926 which represents the workmen employed in the factory of the petitioner company. It is averred that there are nearly 280 workers in all. There was another union known as Bhartiya Kamgar Sena representing the other staff. The Petitioner Company's Reay Road factory is stated to have incurred continuous and growing losses ever since 1999 and by November, 2003, the accumulated losses of the trade of the said factory exceeded Rs. 27 crores and it became apparent that the factory could not make profits out of business. At that relevant time, there were 289 workers in the said factory. The petitioner company submitted an application on 24th December, 2003 to the specified authority u/s 25-O(1) of the Act seeking permission to close the said factory. The reasons stated for seeking permission, inter alia were, continuous and heavy losses suffered, high labour cost and low productivity of the labour, damage in MCGM drainage system causing safety risk and deterioration of hygienic manufacturing condition, steep rise in import costs, intense competition, high taxes and need of introduction of high technology in manufacturing process. This application came to be registered and was treated as an application u/s 25-O by the Commissioner of Labour on 24.1.2004. Upon following the procedure prescribed under the statutory provisions, the Commissioner of Labour vide his order dated 23rd March, 2004 granted permission in terms of Section 25-O(2) for closure of the said factory unit at Reay Road. On 25th March, 2004 itself, the respondent union filed an application u/s 25-O(5) seeking Review/Reference of the order dated 23rd March, 2004. The Labour Commissioner vide his order dated 5th April, 2009 decided the application of the union and instead of reviewing the order at the level of the competent authority had chosen to make a Reference to the Industrial Tribunal in terms of Section 25-O(5) of the Act.

7. Aggrieved with the interim order staying the effect and operation of notice dated 24.3.2004, the petitioner company filed writ petition before this Court being Writ Petition No. 1297 of 2004. This writ petition came up for hearing before the Court and with the consent of the counsel appearing for the parties, the same was disposed of vide order dated 12th July, 2004 with certain directions. The Industrial Tribunal was directed to expedite the hearing of the Reference and to dispose it off within a period of two months from the date of the order. The petitioner company was to maintain statuesque in respect of the land, plant and machinery and factory of the Reay Road unit. Still another writ petition challenging the order making Reference dated 5th April, 2004 was filed by the petitioner company being Writ Petition No. 1298 of 2004 which, however, on 12th July, 2004 itself was withdrawn with liberty to raise all the points before the Industrial Tribunal. In furtherance to the order of this Court as agreed between the parties, the proceeding before the Industrial Tribunal continued wherein the parties filed the claim, written statement and rejoinder. During the pendency of the proceedings before the Industrial Tribunal, an application was filed to treat issue No. 5A before the Industrial Tribunal as preliminary issue as it

related to the very maintainability of the Reference. This application came to be dismissed vide order dated 21st August, 2004 against which the petitioner filed writ petition No. 2424 of 2004 which was also dismissed. The petitioner preferred an appeal being Appeal No. 743 of 2004 which came up for hearing before the Division Bench on 30th November, 2004 and while permitting the same to be withdrawn, the Court made an observation that the learned Industrial Tribunal would keep in mind the judgment of the Supreme Court in the case of Orissa Textile and Steel Ltd. v. State of Orissa 2002 SCC 578 and ensure that the Reference is concluded within 30 days from the date of the order. The Industrial Tribunal recorded evidence led by the parties and finally made an award dated 12th August, 2005. Vide the said award, the Industrial Tribunal, Mumbai rejected the application dated 24th December, 2003/24th January, 2004 filed by the petitioner company for closure and refused the permission to close the Reay Road Factory and declared that the status of the parties would be in accordance with the provisions of Section 25-O(6) of the Act. The legality, validity and correctness of the Award No. 17 of 2004 dated 12th August, 2005 is challenged in the original writ petition.

8. Another aspect which appropriately can be referred to at this stage itself is that when the present writ petition came up for hearing, the learned Judge dealing with the petition after noticing the facts referred to the preliminary submissions, vide his order dated 30th October, 2007 framed certain preliminary issues and recorded his findings on all those issues. These preliminary issues related to whether the provisions of Section 25-O in so far as they provide the period of one year and/or 30 days were mandatory or directory, whether the Reference made would become infructuous after expiry of the period and would the Industrial Tribunal have jurisdiction after the expiry of one year and what would be the remedy available to the workmen. All these questions were primarily answered in the negative to say that provisions were mandatory and neither the Reference is rendered infructuous nor the Tribunal loses its jurisdiction upon expiry of the specified period and the award does not become a nullity etc. Thereafter, the matter was listed for final hearing which as already noticed, resulted in the present Reference. We may also notice that the questions framed under the present Reference order were not subject matter of the preliminary issues framed by the learned Single Judge in the order dated 30th October, 2007. This Reference is not concerned with the decision of the preliminary issues made by the learned Single Judge on 30th October, 2007 and as such, there is no occasion for us to deliberate on those issues directly or even impliedly.

9. All the four questions framed by the learned Single Judge in the order of Reference revolve around the interpretation of Sub-section (2) and Sub-section (5) of Section 25-O of the Act. Therefore, in order to notice the scheme under the Industrial Disputes Act, it would be useful to refer to the relevant provisions of the Act and the Rules framed thereunder.

10. It can hardly be disputed that Section 25-O is a self-contained code. It provides how and in what circumstances the remedy can be invoked and as to how the application invoking such remedy would have to be dealt with. The appropriate Government is obliged to pass an order thereupon and even the circumstances that are to be taken into consideration are stated in the provision. Such order granting or refusing the permission subject to the provisions of Sub-section (5) becomes final and binding on all the parties and remains in force for a period of one year from the date of such order. Further, the section provides a right to the aggrieved party to file an application for review by the appropriate Government and/or Reference to the Industrial Tribunal. The Industrial Tribunal thereupon is expected to make an award. This self-contained code vests powers and/or discretion to be exercised judiciously by the appropriate Government as well as the Industrial Tribunal.

11. Section 11 of the Act deals with the procedure, powers and duties of Conciliation Officers, Board, Courts and Tribunals. In terms of Section 11(3), the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 while trying a suit, in respect of matters relating to enforcing the attendance of any person and examining him on oath; compelling the production of documents and material objects; issuing commissions for the examination of witnesses; in respect of such other matters as may be prescribed and the Tribunal shall be deemed to be a Civil Court for similar purpose stated therein. Rule 17A of the Industrial Disputes (Bombay) Rules, 1957 specifically empowers the Labour Court or the Tribunal, as the case may be, to record evidence requiring such Tribunal to follow the procedure laid down in Order 18 Rule 5 of the Code of Civil Procedure, 1908. In the light of these provisions, now we may refer to the provisions of Section 25-O in its entirety. Section 25-O of the Act reads thus

25-O. Procedure for closing down an undertaking.

(1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner. Provided that nothing in this subsection shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.

(2) Where an application for permission has been made under Sub-section (1), the appropriate Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen and the persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order and for reasons to

be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(3) Where an application has been made under Sub-section (1) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be, deemed to have been granted on the expiration of the said period of sixty days.

(4) An order of the appropriate Government granting or refusing to grant permission shall, subject to the provisions of Sub-section (5), be final and binding on all the parties and shall remain in force for one year from the date of such order.

(5) The appropriate Government may, either on its own motion or on application made by the employer or any workman, review its order granting or refusing to grant permission under Sub-section (2) or refer the matter to a Tribunal for adjudication.

Provided that where a Reference has been made to a Tribunal under this subsection, it shall pass an award within a period of thirty days from the date of such Reference.

(6) Where no application for permission under Sub-section (1) is made within the period specified therein, or where 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 workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.

(7) Notwithstanding anything contained in the foregoing provisions of this section, 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 necessary so to do, by order, direct that the provisions of Sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

(8) Where an undertaking is permitted to be closed down under Sub-section (2) or where permission for closure is deemed to be granted under Sub-section (3), every workman who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive 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.

12. The provisions of Section 25-O have to be read and construed while keeping in mind two rudiments; firstly that to carry on or close a business is a fundamental right of an individual. However, this right can be controlled by specific reasonable restrictions or due safeguards. Secondly, the Industrial Law is primarily intended to create industrial harmony and ensure production and working of industrial units to aid and help the national economy. The scheme of

Section 25-O proceeds on this premise and is an attempt to secure a balance between the interest and rights of an employer on the one hand and the workmen on the other, without tilting the balance in favour or against a particular interest. One may be free to exercise the right to close a unit but this freedom is regulated by a twin restriction viz. the reasons for closure should be genuine and bonafide and the right could be exercised only in conformity with the provisions of Section 25-O. The employer who has intention to close a unit/undertaking or an industrial establishment has to move an application, at least 90 days before the date on which the intended closure is to become effective, and seek prior permission. This application has to be moved to the appropriate Government and should clearly state the reasons for the intended closure. The representative of the workmen is also to be served with the copy of such application. Proviso to Sub-section (1) of Section 25-O itself states to which undertaking the provision will not apply. The application as contemplated u/s 25-O, has to be moved in Form QA prescribed under the Industrial Disputes (Central) Rules, 1957 which indicates the particulars which are required to be submitted by the employer in that application. It has to furnish details of the undertaking and reasons for closures are to be annexed with other minute details which are specified in the annexure itself. This shows that an employer is expected to provide details in relation to all aspects including number of workers, production, profit and losses, financial position, administrative, general and selling cost in absolute terms per year, position of stocks and the reasons which the employer wishes to state for seeking permission for closure. This itself indicates that the application contains detailed information and reasons on which the appropriate Government is expected to apply its mind either for granting or refusing permission for closure. The appropriate Government on the basis of such an application is to conduct an enquiry. The nature of the enquiry and procedure for holding such an enquiry has been left by the Legislature to the discretion of the appropriate Government. Though the nature of the enquiry has been left to the wisdom of the appropriate Government as it may deem fit but it has to give a reasonable opportunity of being heard not only to the employer or workmen but also to the persons interested in such closure. In the enquiry regard has to be made to:

- (a) Genuineness and adequacy of the reasons stated by the employer;
- (b) Interest of the general public; and
- (c) All other relevant factors.

13. It is, therefore, clear that the enquiry is of a wide nature and the appropriate Government is expected to satisfy itself as regards to the genuineness of the reasons, that it is not adverse to the interest of the general public and all other relevant factors. "After making such an inquiry as it thinks fit"; "after giving a reasonable opportunity of being heard"; "by order for reasons to be recorded in writing" are expressions which convey the extent of adherence to principles of natural justice that the Legislature has commanded and which have to be complied with by the appropriate Government while exercising its power in terms

of Section 25-O(2) of the Act. The basic emphasis is on the procedure, opportunity and reasoned order and satisfaction of the authority. This obviously, will depend on the facts of a given case but adherence to these elements is mandatory in every case. "All other relevant factors" again is an expression of a wide magnitude and these relevant factors find their place not only in the provisions of Section 25-O but in form QA as well which refers to a variety of requirements and which is issued with Reference to Rule 76(6)(c) of the Rules. It is obligatory in terms of Rule 76(6)(c) upon an employer to furnish to the Central Government such further information as the Government considers necessary for arriving at a decision on the application. As already noticed, the appropriate Government is to grant a reasonable opportunity of being heard to the employer, workmen and even to the person interested in such closure. Reasonable opportunity of being heard clearly postulates a personal hearing and liberty to reasonably put forward one's point of view or case. Of course, the reasonableness of opportunity would normally depend upon the circumstances of a given case. It is not only that an opportunity should be granted but it is required to be reasonable. Reasonable opportunity of being heard would take within its ambit the right to lead and counter the various ingredients specified in Section 25-O(2) as that alone will help the appropriate Government in arriving at correct conclusions upon due application of mind and pass a reasoned order in granting or refusing to grant such permission. To protect the interest of any of the affected parties, the Legislature in its wisdom has introduced restriction of time as regards filing, entertainment and time of decision on such applications. Wherever on an application filed u/s 25-O, the order is not passed and communicated within 60 days from the date of such application by the appropriate Government, the permission to close is deemed to have been granted on the expiration of period of 60 days.

14. The order passed by the appropriate Government granting or refusing to grant permission to close is final and binding on the parties and would remain in force for a period of one year from the date of such order. Its finality is subject to the provisions of Sub-section (5) which in term contemplates that the appropriate Government may either on its own motion or on an application made by the employer or any workman review its order made under Sub-section (2) or refer the matter to the Tribunal for adjudication. Where the appropriate Government chooses to refer the matter to a Tribunal then the Tribunal shall pass an award within 30 days from the date of such Reference. In other words, an order made is capable of being altered by exercise of a power of review vested in the appropriate Government or upon adjudication by the Tribunal when the Government instead of reviewing chooses to make a Reference to the Tribunal. Subject to the provisions of Sub-section (5), the order is final and binding. This is the essence of Section 25-O(4).

15. The expression `subject to the provisions' is capable of different meanings in different contexts depending upon the language used by the Legislature in that provision. "Subject to" conveys the idea of a provision yielding place to another

provision or other provisions subject to which it is made. (Surinder Singh Vs. Central Government and Others, and Southern Petrochemical Industries Co. Ltd. Vs. Electricity Inspector and E.T.I.O. and Others,). The word `subject to" has been defined in Black"s Law Dictionary (Fifth Edition) as "subservient, inferior, obedient to; governed or effected by; provided that; provided; and answerable to. In Collins English Dictionary, it has been stated to mean as under the condition that: we accept subject to her `agreement".

16. In the case of Rai Vimal Krishna and Others Vs. State of Bihar and Others, where the Court was concerned with the provisions of Section 149(1) of Patna Municipal Corporation Act, 1951 the Court while holding that the procedure indicated in publication of notice of assessment was mandatory and partly directory, further held that the subsidiary rule of interpretation is of contextual construction of statutory provisions. Provisions should take colour from their context and object while keeping pace with time. With particular Reference to Sections 150 - 152 and 153 of that Act, which uses the phrase `subject to" the Supreme Court interpreted the same as follows:

34. This brings us to the last submission of the appellants that there cannot be any recovery of the tax on the basis of the assessment list so published unless the appellants" objections were disposed of u/s 151. We were at first inclined to hold in the appellants" favour. But a closer scrutiny of the provisions of the Act has persuaded us to reject the submission. Once we have held that the assessment list had been properly prepared, in the sense that there had been no legal flaw in its preparation and publication, the valuation as mentioned in the assessment list must be given effect to till the time it is revised or amended u/s 151 or 152. In Shibji Khestshi Tacker v. Commr. Of Dhanbad Municipality. it was said that valuation and assessment lists remain in force until they are altered or amended in accordance with the procedure laid down in the Act. Alteration or amendment can take place pursuant to an order u/s 151 or 152. This is also clear from Section 153 which says that:

153. Every valuation made by the Chief Executive Officer... shall, subject to the provisions of Sections 151 and 152, be final." The phrase "subject to" means that until and unless the assessment list is revised or amended u/s 151 or 152, the assessment list would continue to be final. This reading is in keeping with Sub-section (2) of Section 138 which provides that every valuation and assessment list shall be valid from the date on which the list takes effect in the Corporation and until the first day of the quarter next following the completion of a new list, thus indicating that an assessment list is valid from the date of its completion. Such an assessment list is subject to "any alteration or amendment made" and to the result" of any application u/s 150. What needs to be emphasised is that the assessment list as prepared is valid and is unaffected by the mere filing of an application u/s 150. If the result of the application is in favour of the owner, the assessment list must be amended to give effect to such result. Unless the application of the appellants u/s 150 ends in a result which is different from the

assessment list, the assessment list would continue to be operative, and the respondent can recover taxes on the basis of the assessment and valuation lists despite the filing of objections u/s 150. Besides, the Reference to both Sections 151 and 152 in Section 153 makes it clear that the same incidence relating to the recovery of taxes pending either the determination of the objections u/s 151 or the adjudication of the appeal u/s 152, would prevail. If this construction is not put on Section 153, it would mean that by merely filing an objection, the objector would be able to effectively stop the realisation of tax on the basis of the assessment list until such time as his objection is heard and decided. This could not have been legislatively intended. As has been seen in this case that although the appellants had filed their objections in 1995, they are still pending. We, therefore, conclude that it is open to the Corporation to recover the tax as determined on the basis of the impugned assessment lists pending disposal of the appellants' applications u/s 151, until and unless, by virtue of an order u/s 151 or 152 passed thereon, the assessment list is amended or altered.

17. The phrase "Subject to" other provisions, therefore, has to be given a reasonable interpretation and an interpretation which would carry out the intention of makers of the law and also avoid conflict and impracticability. In the light of these principles, all that can be said is that an order passed by the appropriate Government u/s 25-O(2) shall be final and binding on all parties unless it is reviewed by the appropriate Government or is confirmed and/or disturbed by the Tribunal upon a Reference made to it by the appropriate Government in terms of Section 25-O(2). What is the scope and meaning of the words "review" and "referred the matter to the Tribunal" is the other question that arises for consideration which we shall shortly proceed to discuss.

18. The proceedings before the appropriate Government while dealing with an application u/s 25-O(1) and (2), are in the nature of a quasi judicial inquiry, as they are in exercise of a statutory power which contemplate a proper inquiry, hearing and reasoned orders and which in turn are controlled by specific provisions and power vested in the appropriate Government while dealing with such application. Strict senso it is not an adjudication. However, it certainly is an order which is to be passed by the appropriate Government determining the rights of the parties which are valuable and which to some extent would affect the fundamental rights of the employer and the working conditions, entitlement to compensation etc. of the workmen. Thus, the inquiry and order by the appropriate Government is determinative in nature subject to the provisions of the Act. In the event the appropriate Government of its own motion or upon an application received has the authority to `review" its order or refer the matter to the Tribunal. `Review its order" obviously would mean that there is an order in existence which is sought to be reviewed. The statutory provisions do not define or explain the extent of review and the manner in which proceedings of review would take place. Section 114 of the Criminal Procedure Code, 1973 and Order 47 of the Code of Civil Procedure, 1908 deal with matters of review. These provisions relating to the Court's jurisdiction to review its judgment cannot be

strictly applied to the proceedings before the appropriate Government. It is a settled principle of law that power of review cannot be confused with an appellate power to correct all errors committed by a subordinate forum. It is not a rehearing of the matter. The dictionary meaning of the word 'review' is the act of looking at something again with a view to correction or "improvement" and normally is creation of the statute (S.C. on Words & Phrases, Pg. 1209). The Blacks' Law Dictionary explains the word 'review' as consideration, inspection or reexamination of the subject or thing. The forum of review is not a matter of right. It may be a statutory right and statutory right permitting discretionary review would provide a very wide spectrum to the review jurisdiction of the authority and for that matter, the Court. Review of its order or Reference to the Tribunal are alternate options available to the appropriate Government when it receives an application in terms of Section 25-O(5). While reviewing its order, there is nothing in the statute to limit its jurisdiction or confine it within the rigors of Order 47 or even general principles of review vested in the Courts or Administrative Tribunals. While passing an order on an application received u/s 25-O(2), the appropriate Government takes various aspects into consideration and passes such order after conducting an inquiry and upon granting reasonable opportunity of being heard. There is nothing in the provision which restricts the discretion vested in the appropriate Government to reconsider the entire matter including holding of its inquiry and granting the parties a reasonable opportunity of being heard. Thus in the statutory but discretionary review jurisdiction, vested in it the appropriate Government can affirm, change or even set aside its earlier order and decline permission for closure if granted earlier and vice versa.

19. What is to be reviewed by the appropriate government is the order passed earlier under Sub-section (2) of Section 25-O. The language of Sub-section (5) of Section 25-O where it mentions of "review its order" makes it amply clear that the order passed earlier is the very foundation for seeking the review to be done in exercise of power of review vested in an appropriate Government. Existence of an order under Sub-section (2) of Section 25-O, thus, is the condition precedent for exercise of review jurisdiction in terms of Section 25-O(5) of the Act. A final order is quite distinct and different than an interlocutory order. An order that disposes off the entire case will be a final order. Thus, the final order u/s 25-O(2) which the appropriate Government would pass, of course, would attain finality, subject to the provisions of Sub-section (5). But that by itself does not mean that the order passed by the appropriate Government and of which review is sought for at the first instance becomes automatically inoperative and ineffective. The doctrine of eclipse or principle of abeyance operates by a specific Act and does not become operative of its own. A final order may attain finality in given circumstances and subject to some compliance but the order does not cease to exist or come to an end merely by invocation of a remedy available under the statute. In this regard, most commonly known and accepted example can be under the provisions of Order 41 Rule 5 of the CPC which specifically commands that filing of an appeal shall not operate as a stay of the proceedings under a

decree or order appealed from except insofar as the stay of execution is specifically directed by the Appellate Court. It is also a known fact that during pendency of the appeal, decrees are executed in accordance with law. Merely because a statutory remedy of an appeal is availed by a party by itself would not mean that the judgment and decree passed by the Court becomes inoperative, gets eclipsed or is kept in abeyance by mere invocation of the specified remedy.

20. The doctrine of eclipse can hardly be applied by implication and particularly in absence of any statutory indication or order of a appropriate Court or Forum. Even where the Courts stay the operation of the judgment of the lower Court, the stay operates and eclipses the judgment of the lower Court but still with some specified limitations which may be an integral part of the order or by necessary presumption of law. In the case of *Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another*, , the Supreme Court observed that the specific directions suspending the judgment and order under Appeal, read in its plenitude, also suspends the finding of corrupt practice. So much so, the disqualification also shares the same fate but there are a number of other privileges for a Member of Parliament which are left untouched by the Court's prior stay orders. The Supreme Court held that "the reasonable effect of a stay order is that there is plenary eclipse of the High Court's judgment and order during the pendency of the appeal, subject to the few restraints clamped down on an appellant. Those restraints are the second limb of the stay order and explicit enough." That being the law even in regard to cases where specific stay orders are passed, then it will be difficult for the Court to accept the principle of automatic abeyance, eclipse or extinguishment.

21. In the case of *M. Viswanathan Vs. S.K. Tiles and Potteries P. Ltd. and Others*, , the Supreme Court took the view that a judgment and decree under appeal is binding on the parties even if it is challenged in appeal or revision unless it is stayed by a superior Court or is rendered ineffective as inoperative temporarily by a superior Court subject to its decision and subject to such further orders of the Appellate Court as may be passed. Filing of an appeal automatically neither eclipses nor keeps in abeyance the order or judgment and decree under appeal. The order *de facto* will be in operation and would be binding unless its operation is stayed, varied or altered in exercise of power of review by the appropriate Government or the Tribunal upon a Reference. The parties would not be absolved from their obligation to obey the said order as it is not the choice of the parties to discard the same for any purpose during these proceedings. Another relevant factor in support of such approach would be that if none of the parties invokes the provisions of Section 25-O(5), the order would obviously become final and binding and would be operative even in that situation only for a period of one year.

22. In the case of *Kunhayammed and Others Vs. State of Kerala and Another*, , the Supreme Court held as under: " Incidentally we may notice two other decisions of this Court which though not directly in point, the law laid down

wherein would be of some assistance to us. In *Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat*, , this Court vide para 7 has emphasised three preconditions attracting applicability of doctrine of merger. They are: (i) the jurisdiction exercised should be appellate or revisional jurisdiction; (ii) the jurisdiction should have been exercised after issue of notice; and (iii) after a full hearing in presence of both the parties. Then the appellate or revisional order would replace the judgment of the lower court and constitute the only final judgment. In *Sushil Kumar Sen Vs. State of Bihar*, , the doctrine of merger usually applicable to orders passed in exercise of appellate or revisional jurisdiction was held to be applicable also to orders passed in exercise of review jurisdiction. This Court held that the effect of allowing an application for review of a decree is to vacate a decree passed. The decree that is subsequently passed on review whether it modifies, reverses or confirms the decree originally passed, is a new decree superseding the original one. The distinction is clear. Entertaining an application for review does not vacate the decree sought to be reviewed. It is only when the application for review has been allowed that the decree under review is vacated. Thereafter the matter is heard afresh and the decree passed therein, whatever be the nature of the new decree, would be a decree superseding the earlier one. The principle or logic flowing from the above said decisions can usefully be utilised for resolving the issue at hand. Mere pendency of an application seeking leave to appeal does not put in jeopardy the finality of the decree or order sought to be subjected to exercise of appellate jurisdiction by the Supreme Court. It is only if the application is allowed and leave to appeal granted then the finality of the decree or order under challenge is jeopardised as the pendency of appeal reopens the issues decided and this Court is then scrutinising the correctness of the decision in exercise of its appellate jurisdiction."

23. An order is a command, direction or instruction which generally embraces a final decree as well as an interim command. It mandates determination of matters directly or collaterally arising in an action. An order passed by the Court of Competent jurisdiction or a Tribunal and for that matter even an administrative order passed by the Authority in exercise of quasi judicial functions can come to an end where such order is disturbed in accordance with jurisdiction vested in the Court of Competent jurisdiction or a Tribunal or by the Appellate Court on the applicability of doctrine of merger, where the order is conditional or alternative order depending on the happening or occurrence of an alternative order. There could be a possibility that an order may come to an end by efflux of time where it is so specifically provided. Generally, there is hardly any other mode by which an order could become non existent, inoperative and ineffective. If an order is altered and modified in exercise of review jurisdiction, the earlier order merges into the later. Merger means to sink or disappear in something else or to become absorbed or extinguished. In the case of *Kunhayammed and Ors.* (supra), the Supreme Court said that the doctrine of merger and the right of review are concepts which are closely interlinked. We are

unable to convince ourselves to take the view that in the absence of specific statutory provisions, an order or a direction by the Competent Court/Tribunal by an invocation, simplicitor, of a remedy, is kept in abeyance or gets eclipsed. An order passed by the Competent Court/Forum/Tribunal in exercise of statutory power has to be treated and made operative in accordance with law till it is set aside or stayed.

24. The doctrine of eclipse as stated in *The Law Lexicon* by P. Ramanatha Aiyar, (General Editor Justice Y.V. Chandrachud, Former Chief Justice, Supreme Court of India, 1997 Edition,) is explained to mean "an existing law inconsistent with a fundamental right though becomes inoperative from the date of the commencement of the Constitution is not dead altogether." When the appropriate Government is exercising its discretion to review its earlier order, the order thus is neither kept in abeyance nor is eclipsed automatically. In fact it is very much in existence and that very order which is to be reviewed, is the basic and fundamental question falling for consideration before the Appropriate Government which has to exercise powers in terms of Section 25-O(2) and (5) respectively.

25. Words "Subject to" obviously mean that if the remedy provided u/s 25-O(5) is invoked and the order passed earlier is upon review or upon Reference affirmed, modified or set aside, the earlier order would stand merged and the field will be controlled by the subsequent order but it certainly does not mean that the order passed u/s 25-O(2) becomes inoperative, dead or irrelevant for all purposes upon invocation of remedy u/s 25-O(5). There appears to be no legislative intent which directly or otherwise indicates that the Legislature ever intended to render an order ineffective or inoperative much less non-existent on a mere invocation of remedy of review or Reference.

26. It will also be not permissible to apply the doctrine of eclipse or abeyance without any specific indication in the statute itself or without judicial pronouncement to that effect. Some provisions of the Industrial Disputes Act provide a deemed fiction of law where a Reference is made to a National Tribunal. u/s 10(6)(a) of the Act where any Reference has been made to a National Tribunal in terms of Sub-section (1A), no Labour Court or the Tribunal will have jurisdiction to adjudicate upon any matter which is under adjudication before the National Tribunal. This provision specifically provides that if the matter under adjudication before the National Tribunal is pending in a proceeding before the Labour Court or Tribunal, the proceedings before the Labour Court or Tribunal to the extent of the pending subject matter before the National Tribunal shall be deemed to have been quashed on such Reference. In other words, not only an order but entire proceedings before the Labour Court or the Tribunal shall stand quashed merely upon a Reference to National Tribunal. Such Legislative command is conspicuously absent u/s 25-O(5) of the Act.

27. Another point of view which would support the view that the first order passed by the Appropriate Government does not get extinguished is that the

order once passed is valid and operative for a period of one year. Application for review or Reference can also be filed within that one year. The legislative mandate itself makes it clear that after a lapse of one year from the date of such order, the order would lapse, that is, the order would automatically come to an end by efflux of time. In absence of any specific provision, there is no justification for accepting the view that the order would be kept in abeyance or would be eclipsed or would be ineffective or inoperative during said period of one year. Even otherwise, such an approach would not be in conformity with the law.

28. This has further been buttressed by the period of one year indicated under the provisions of Section 25-O which is to be reckoned from the date of passing of the initial order and not the subsequent order. The words "remain in force for one year from the date of such order" clearly indicate that a Reference is made to a specific order i.e. the first order passed by the Appropriate Government in exercise of powers vested in it u/s 25-O(2) of the Act. The purpose of providing a limitation of 30 days under the proviso to Section 25-O(5) is again suggestive of the fact that the proviso to Section 25-O(5) does not suggest that prescription of 30 days period from passing of an award renders the earlier order non-existent during the pendency of the proceedings. We have already noticed that the review is of its order by the Appropriate government and therefore it is essential that the order must be treated as in force since its passing and the period of one year would not stand extended even if the order is reviewed or affirmed.

29. Now let us come to the other alternative available to the Appropriate Government i.e. where the Appropriate Government in terms of Section 25-O(5) of the Act declines to review its own order and chooses to refer the matter to the Tribunal for adjudication.

30. Obviously, the Tribunal has to enter into the field of adjudication and determine the issue before it in accordance with law. In this alternative remedy, the appropriate government refers the matter to the Tribunal for adjudication. The word "refer" would have the same meaning as it is understood in the industrial law. u/s 10 if the appropriate Government is of the opinion that an industrial dispute exists or is apprehended, it can make an order in writing referring the dispute to a Board, Court or Tribunal. The word "refer" as per Concise Law Dictionary by P. Ramanatha Aiyar, (1997 Edition) (Edited by V.R. Manohar, Former Advocate General of Maharashtra) is to allude or direct attention to something or to send or direct for treatment, aid, information or decision. The appropriate Government has to apply its mind and then come to a conclusion whether it desires to review its order or make a Reference of the matter to the Tribunal for adjudication. The significant expression is "the matter". An argument is raised before us that the expression "matter" would mean only the application and the Tribunal would exercise only original jurisdiction for adjudicating the Reference u/s 25-O(5). While on the other hand, it was submitted that the matter would include everything including the order passed by the appropriate Government which shall form subject matter of adjudication

before the Tribunal.

31. The word "matter" is a generic term and is difficult of being defined in exact terms. It would have to be given a proper meaning and be construed liberally so as to fit in with reference to the facts and circumstances of a case. Black's Law Dictionary (Eighth Edition) explains the word "matter" as a subject under consideration, especially involving a dispute or litigation, something that is to be tried or proved, an allegation forming the basis of a claim or defense.

32. The Law Lexicon (P. Ramnatha Aiyer, 1997 Edition) also explains the word "matter" to mean "some substance or essential thing, opposed to form (Bouvier L., Dict.). In law, a fact or facts constituting a whole or a part of a ground of action or defence. 1. A subject (as a fact, an event or course of events, or a circumstance, situation or question) of interest or relevance; an object of thought or consideration (Order 11, Rule 2, C.P.C.); (Order 11, Rule 1, prov., C.P.C.) (Section 10(1)(b), Metal Corporation of India (Acquisition of Undertakings Act) : 2. physical substance (Section 142(7), Army Act.]."

33. The word "matter" is of wider import than particulars and would also comprehend the grounds on which such matter arises. "Cause or matter" is a most comprehensive term. It includes every proceeding in the Court of Justice, every proceeding between a plaintiff and a defendant, and every criminal proceeding is a "cause;" and every proceeding in the Court not in a case is a "matter" (Judicature Act, 1873, Section 100.) The "matter" to which Article 133 applies is the appellate jurisdiction of the Supreme Court in appeals from High Courts in regard to Civil matters, and does not include the requirements or conditions with regard to which the court must be satisfied before it issues a certificate. *Ram Sahai and Another Vs. Ram Sewak*, [Constitution of India. Article 135, 133].

34. The expression "cause or matter" appearing in Article 142(1) of the Constitution of India was stated to be a very wide term covering almost every kind of proceeding in Court. The Supreme Court in *Union Carbide Corporation, etc., etc. Vs. Union of India, etc. etc.*, held:

In Halsbury's Laws of England (4th den., vol. 37, para 22) referring to the plenitude of that expression it is stated:

Cause or matter. The words "cause" and "matter" are often used in juxtaposition, but they have different meanings. "Cause" means any action or any criminal proceedings and "matter" means any proceedings in court not in a cause. When used together, the words "cause or matter" cover almost every kind of proceeding in court, whether civil or criminal, whether interlocutory or final, and whether before or after judgment.

Any limited interpretation of the expression "cause or matter" having regard to the wide and sweeping powers under Article 136 which Article 142(1) seeks to effectuate, limiting it only to the short compass of the actual dispute before the

Court and not to what might necessarily and reasonably be connected with or related to such matter in such a way that their withdrawal to the apex Court would enable the court to do "complete justice", would stultify the very wide constitutional powers.

35. It is, thus, evident from the above stated dicta and adopted practice of law that "the matter" would include the proceedings before the Tribunal which as commonly understood would be necessary to be examined by the Industrial Tribunal for discharging its statutory duties of passing of an award in terms of Section 25-O(5) of the Act. Section 2(b) of the Act defines the word "award" to mean "an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made u/s 10A of the Act".

36. Again the term "award" has been given a very wide meaning. Wherever a final award is made by the Industrial Tribunal, it would necessarily mean final determination. The aspect to be examined at this juncture is what leads to a Reference of the matter before the Tribunal. An application filed u/s 25-O(1) of the Act is dealt with when an order is passed by the appropriate Government u/s 25-O(2) of the Act against which a remedy is available to the employer or the employee in terms of Section 25-O(5) of the Act. In other words, "matter" would include an application or proceeding before the appropriate Government and the order which would lead to invocation of a remedy u/s 25-O(5). It is more so because the order cannot come into play without the holding of an inquiry and the inquiry cannot be conducted by the appropriate Government without granting a reasonable opportunity of hearing to the parties indicated therein and there cannot be an inquiry unless there is an application. Thus, all these things are constituents of "the matter" which needs to be referred to the industrial Tribunal. Of course, in terms of the provisions of Section 25-O(5), the Tribunal is not an Appellate Court to examine the validity and legality of an order passed by the appropriate Government but has to come to its own conclusion.

37. The decision of the State Government to close down the industrial unit is revisable only within one year from the date of the decision after which the government loses jurisdiction to permit invocation of remedy as contemplated u/s 25-O(5) of the Act. Section 25-O(5) being a Code in itself is further controlled strictly by limitations and the period specified under the Act. Reference in this regard can also be made to a judgment of the Supreme Court in Vazir Glass Works Ltd. Vs. Maharashtra General Kamgar Union and another, . Learned Counsel appearing for the respondents while relying upon the various parts of the above judgments argued that for the jurisdiction of the Tribunal and, for that matter, even in review, what is essential is to move only an application for closure and no other material would be available. Of course, this contention of the Respondents was vehemently opposed by the learned Counsel appearing for the Petitioners. Reference was also made to the amendment by the State of Maharashtra to the provisions of Section 25-O by Maharashtra Amendment Act 3

of 1982. Amended provision of Section 25-O(5) was introduced by Act 46 of 1982, with effect from 21st August, 1984. In other words, the Central law came into existence subsequent to the State law. The Central Law thus would be deemed to have taken note of the State Amendment which was effective from 27th November, 1981 and after 21st August, 1984 the field would be controlled by the Central Legislation. Reference to this provision however was made for another purpose namely, that Section 25-O(5) of the State Amendment is in apparent distinction to the Central Amendment which provides that any order made by the appropriate Government under Sub-section (2) or any permission deemed to be granted under Sub-section (3) are subject to appeal to the Industrial Tribunal. The contention is that despite this language, Central Legislation did not provide for a statutory appeal and hence the concept of appeal before the Industrial Tribunal, therefore, stands excluded by necessary implication. Thus, it would be only the application which would be referred in terms of the expression "matter" appearing u/s 25-O(5) of the Act. Firstly, it is a settled principle of law that incidental encroachment on the respective fields of legislation either by the Union or the State by itself need not make the legislation ultra vires the Constitution. The doctrine of "pith and substance" is sometimes invoked to find the content and nature of the legislation and even in case of the conflict of two legislations the Central Legislation shall prevail of course every attempt should be made to reconcile conflicting laws. (Ref: Association of Natural Gas and Others Vs. Union of India (UOI) and Others, . Special Reference No. 1 of 2001, IN Re.

38. Secondly, there is no conflict between the State and the Central Legislation as far as procedure is concerned. The concept of "review" or in the alternative "Reference" to the Industrial Tribunal are fields which are distinct and different where power is exercised by a different forum or authority. However, the power being exercised by either of them is quasi judicial. It is true that the expression "appeal" has not been used in the provisions of Section 25-O(5) by the parliament but it is equally true that it has also not used the expression "application" or "order". Applying the same analogy and process of interpretation to these provisions, in our view, it will be a correct legal approach to give liberal construction to the expression "matter" so as to include application, proceedings or order before the appropriate Government to be referred to the Tribunal which as already noticed does not sit as a Court of Appeal to examine the correctness, legality and correctness of the order passed by the appropriate Government but it is certainly a relevant piece of document to be considered by the Tribunal. The Tribunal has to arrive at its own conclusion after satisfying itself of the existence of pre requisites provided u/s 25-O(5) of the Act. Adjudication before the Industrial Tribunal has to be a complete and full fledged inquiry in accordance with law and with complete liberty to the parties to prove their respective claims.

39. The jurisdiction of the Industrial Tribunal is controlled by the provisions of the Industrial Disputes Act. It has the trappings of a Court also for the purpose stated in the Act. The remedy before the Industrial Tribunal is adjudicatory and

determinative after following the prescribed procedure and the nature of opportunity granted to the parties is some what different and distinct as that it is available to them before the appropriate Government while conducting the inquiry u/s 25-O(2). Of course, not exact but a some what similar example can also be given of an award made u/s 11 of the Land Acquisition Act by the Collector. Strictly in law it is an offer made by the Government to the land owners which they may accept or may prefer an application for enhancement u/s 18 of the Land Acquisition Act where the award and the proceedings before the Collector are treated as relevant piece of evidence to be considered by the Reference Court and though the Court does not examine legality or validity of an award, the award itself is a piece of evidence which may provide relevant information to the Reference Court for coming to a conclusion on just and fair market value in terms of Section 23 of the Land Acquisition Act. The award of Collector is not treated as a judgment and/or decree as held by the Supreme Court in K.S. Pariapoornan and Others Vs. State of Kerala and Others, but as already noticed, the award is an offer to the Claimants.

40. It will be useful to notice that Section 18 of the Land Acquisition Act also uses the word "matter" to be referred by the Collector for determination of the Court which means the entire proceedings and award of the Collector. As a practice, the proceedings before the Collector including the award and requirements as contemplated u/s 19 of the Act are to be forwarded to the Court for determination and the expression "matter" is not restricted to sending the application moved u/s 18 alone.

41. In what contradistinction to this, the order passed by the appropriate Government in exercise of its power u/s 25-O(2) of the Act is an order which attains finality. It terminates the proceedings pending before the appropriate Government. However, it may attain substantive finality in law after remedy of review is invoked by the party and the order is modified, set aside or affirmed by merging it into the same order or where no such remedy is availed the order not only attains finality but remains in force for a period of one year from the date of passing of the order by the appropriate Government. Both the appropriate Government as well the Industrial Tribunal exercise quasi judicial functions while entertaining and deciding the application for closure. Though the scope of jurisdiction is quite different, in exercise of its power of review u/s 25-O(5), the appropriate Government exercises its jurisdiction which on the face of it is limited to review its order. Upon a Reference, Industrial Tribunal conducts a full fledged inquiry by an adjudicating process and then finally comes to the conclusion on its own wisdom as to whether the ingredients of Section 25-O(5) are satisfied or not and whether it should permit the unit or undertaking to close. The power of review exercisable by the appropriate Government would primarily be restricted to the record which led to passing of an order granting or refusing permission for closure while the Tribunal would be looking into the matter entirely afresh and in accordance with the prescribed procedure. The Tribunal applies the standard of judicial scrutiny and then has to pass an award which finally terminates the

proceedings before it. The orders passed by the appropriate Government originally or in exercise of its power of review and for that matter even by the Tribunal upon a Reference are obviously subject to judicial review under Article 226 of the Constitution of India. That does not in any way impinge upon the prescribed limitation in terms of Section 25-O and the order remains in force for a period of one year unless and until its operation or effect is stayed by a specific order or direction by the Competent Forum/Court.

42. Upon a Reference, the matter is referred to the Industrial Tribunal for adjudication. Adjudication is a legal process of resolving a dispute and the process of judicially deciding a case, the result of which would be a judgment. In the present case it is an award.

43. In *Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others*, , the Supreme Court observed thus

27. ...It is true that the conclusiveness of the decision without the need for confirmation or adoption by any other authority is generally regarded as one of the features of judicial power. But it must be added that the order made by a statutory authority even if it is given finality does not thereby acquire judicial quality if no other characteristic of judicial power is present. Power to make orders that are binding and conclusive is not, by itself a decisive factor to hold that the power is judicial. Prof. Desmith makes a similar point in his book 'Judicial Review of Administrative Action' (4th Edition p. 82).

44. In the case of *J.K. Iron and Steel Co. Ltd., Kanpur Vs. The Iron and Steel Mazdoor Union, Kanpur*, , the Supreme Court held that an adjudication under the Industrial Disputes Act does not mean adjudication according to the strict law of master and servant. Industrial Tribunals are not fettered by the strict limitations of law. The scope of their adjudication is much wider than that of an arbitrator making an award. All the same, wide as their powers are the powers conferred on these Tribunals are not absolute though they are not Courts in the strict sense of the term. They have to discharge quasi judicial functions. The powers of the Tribunals are derived from the statute that creates them and they hardly have any inherent powers. But apart from the powers which are especially mentioned in the statute, these Tribunals have powers of ancillary nature. The procedure before the Tribunal and even for that matter before the appropriate Government is mostly left to their wisdom. The width and ambit of the power of the adjudicator is unrestricted unless the same is restricted by the provisions of the Act and the Rules as the purpose is to mitigate technicalities of law for achieving expeditious results on a Reference. This discretion, of course, has to be exercised in a manner and in accordance with settled principles of law. The procedure and practice before the Industrial Tribunal by now is well settled and is a comprehensive methodology for making of an award and it is expected to look into the pleadings, formulate points at issue and record findings after permitting the parties to adduce evidence and argue the matter. (Ref: O.P. Malhotra's "The Law of Industrial Disputes, 6th Edition).

45. In the case of Orissa Textile and Steel Ltd. Vs. State of Orissa and Others, , the Supreme Court held that the expression "may" appear in Section 25-O(5) would have to be construed as must and the Government would have to pass an order in exercise of its power of review or make a Reference. In our view, the appropriate Government would have to make an inquiry into all necessary facts particularly the genuineness of the reasons stated by the employer. An opportunity of being heard would have to be given. Thus, in exercise of the power of review, the appropriate Government would be performing a judicial function and the review and/or Reference under amended Section 25-O would be subject to scrutiny under Articles 226 and 32 of the Constitution of India.

46. The contrast between a "statutory Tribunal" and "statutory inquiry" is set out in The Administrative Law by H.W. R. Wade & C.F. Forsyth in the following words. "In principle there is a clear contrast between the function of a statutory tribunal and that of a statutory inquiry of the kind discussed in the next chapter. The typical tribunal finds facts and decides the case by applying legal rules laid down by statute or regulation. The typical inquiry hears evidence and finds facts, but the person conducting it finally makes a recommendation to a minister as to how the minister should act on some question of policy, e.g. whether he should grant planning permission for some development scheme. The tribunal need look not further than the facts and the law, for the issue before it is self contained. The inquiry is concerned with the local aspects of what will usually be a large issue involving public policy which cannot, when it comes to the final decision, be resolved merely by applying law. Tribunals are normally employed where cases can be decided according to rules and there is no reason for the minister to be responsible for the decision. Inquiries are employed where the decision will turn upon what the minister thinks is in the public interest, but where the minister, before he decides, needs to be fully informed and to give fair consideration to objections. In other words, tribunals make judicial decisions, but inquiries are preliminary to administrative or political decisions, often described as quasijudicial decisions."

47. It is true that the Industrial Tribunal has to make its own decision free from the influence by the Government order. The essential feature of Tribunals is that they make their own decisions independently and are free from influence.

48. Another fundamental feature of the Tribunal system is that the procedure is adversarial and not inquisitorial. They are expected to conduct and decide the questions raised before them by the parties to the Reference. The proceedings before Tribunals are quasi judicial proceedings but they are controlled by the prescribed procedure and in absence thereof by the established practice of determinative procedure of law.

49. We have already noticed that the provisions of Section 25-O examined in their entirety do not in any way either by specific use of language or by necessary implication indicate any thing which would persuade the Court to take the view that the order passed by the appropriate Government would stand

excluded from the expression "matter" referred to in Section 25-O(5). In our view, this expression would take in its ambit the complete proceedings before the appropriate Government. If the Government exercises its power of review in terms of Section 25-O(5), it essentially has to have the order before it to review it and to say that the appropriate Government while exercising the power of review u/s 25-O(5) is debarred from looking into the records which resulted into passing of the final order would be opposed to any known canons of legal procedure to be followed by the authorities performing quasi judicial functions. The application and the proceedings in furtherance thereto, while granting reasonable opportunity of being heard and the order passed therein all are essentials of "the matter" of which the Reference would be made. Of course, as already noticed the Industrial Tribunal does not sit as a Court of Appeal to examine the validity or correctness of the order passed by the appropriate Government u/s 25-O(2) of the Act and has to come to its own findings by satisfying itself of the existence and justification of ingredients stated in Section 25-O(5) of the Act uninfluenced by that order.

50. Now we will proceed to examine the various judgments of the Court which have been heavily relied upon by learned Counsel appearing for the respective parties before us having bearing on the questions and which would be of great help for this Court to answer the questions raised in the present Reference.

51. The object of the Industrial Disputes Act, 1947 as indicated in its preamble and other provisions is primarily investigation and settlement of industrial disputes, to maintain industrial harmony. The Act envisages collective bargaining, contracts between union representing the workmen and the management, a matter which is outside the realm of the common law or the Indian law of contract. Whether it is a Reference or dispute or a settlement regarding closure, retrenchment and other matters relating to industrial activities they are expected to be resolved, adjudicated and performed in the manner specified in the Act. The Act is intended not only to make provision for investigation and settlement of industrial disputes but also to serve industrial peace so that it may result in more production and improve the national economy. Therefore, in dealing with industrial disputes, the Courts have always emphasized the doctrine of social justice which is founded on the basic idea of socioeconomic equality as enshrined in the preamble of our Constitution. While construing the provisions of the Act, the Courts have to give them a construction which should help in achieving the object of the Act. Another significant underlying feature in the system of industrial law is expeditious and time bound results in disposal of industrial disputes and References. [(i) *Hira Vs. Kasturibai and Others*, . and (2) *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*,].

52. The unamended provisions of Section 25-O were the subject matter of judicial decision in *Excel Wear and Others Vs. Union of India (UOI) and Others*, , where the constitutionality of this provision was challenged on various grounds

including that the provision does not require giving of reasons in the order, no time limits were prescribed, public interest was not taken into consideration, there were no guiding principles for exercising of powers by the Government, no remedy of appeal or review was provided, restrictions were more excessive than necessary and unreasonable. Some of these challenges were accepted by the Supreme Court which declared that Section 25-O of the Act as a whole was unconstitutional, bad and invalid for violation of Article 19(1)(g) of the Constitution. The amended provisions of Section 25-O as they exist on the statute book now came up for consideration as these provisions were also challenged on the ground that they were ultra vires the constitutional provisions. However, the Supreme Court in Orissa Textile & Steel Limited's case (supra), held that the amended Section 25-O is not ultra vires the Constitution and its restriction is saved by Article 19(6) of the Constitution. In this case, the Supreme Court while examining the constitutionality of these provisions also noticed the decision of the Supreme Court in Meenakshi Mills' case (supra) where a challenge to Section 25N was rejected and it was held that the restrictions imposed must be regarded as having been imposed in the interest of general public. It also held that employer's right was not absolute and the restriction imposed on the employer's right to terminate the service of an employee was not alien to the constitutional scheme. In that case, the Supreme Court upheld the validity of Section 25N on the same analogy and held that Section 25N did not suffer from the vice of unconstitutionality on the ground of Article 19(1)(g). In the case of Meenakshi Mills (supra), the Supreme Court had drawn a parity between the provisions of Section 25N and Section 25-O. However, it noticed the distinction between the unamended Section 25-O(5) and 25N of the Act as well.

53. In Orissa Textile Mills & Steel Limited's case (supra), the Supreme Court referred to Section 25-O of the Act and proceeded to hold that the amended provision of Section 25-O is very different from the unamended Section 25-O and it is more akin to Section 25N, the Constitutional validity of which had already been upheld in Meenakshi Mills' case (supra). While holding that amended Section 25-O lays down guidelines which are to be followed by appropriate Government for granting and refusing permission to close down, the Court observed that it has to have regard to the genuineness and adequacy of the reasons stated by the employer. Noticing that there is a provision to take care of the interest of the general public, constitutionality of the provisions was upheld. The following observations of the Supreme Court can be usefully noticed:

24. We see no substance in these contentions. The amended Section 25-O is the law which lays down the restriction. As has been set out above, there is nothing vague or ambiguous in its provision. It is Section 25-O which gives the power to grant or refuse permission. It would be impossible to enumerate or set out in Section 25-O all different contingencies or situations which may arise in actual practice. Each case would have to be decided on its own facts and on the basis of circumstances prevailing at the relevant time. All that can be set out, in the section, are guidelines. These have been set out in the amended Section 25-O.

25. xxxxx xxxxx xxxxx

26. We, therefore, hold that the amended Section 25-O is not ultra vires the Constitution. We hold that it is saved by Article 19(6) of the Constitution.

54. Other important observations which would support the views which are taken above are that the Supreme Court held that the appropriate Government before passing an order is bound to make an inquiry. The order to be passed by the appropriate Government has to be in writing and to contain reasons. The detailed information which the employer gives would enable the appropriate Government to make up its mind and collect necessary facts for the purpose of granting or refusing permission and the appropriate Government would have to ascertain whether the information furnished is correct and whether the proposed action is necessary and, if so, to what extent. The making of an inquiry, affording of an opportunity to the employer, the workmen and all interested persons and the necessity to pass a written order containing reasons envisages exercise of functions which are not purely administrative in character but are of quasi judicial nature.

55. In *Cable Corporation of India Ltd. v. Additional Commissioner of Labour and Ors.* 2008 II CLR 545, the Supreme Court discussed with some elaboration to the word "or" appearing in Section 25-O(5) of the Act. While holding the word "or" is normally disjunctive and the word "and" is normally conjunctive, the Supreme Court observed that at times they are read as vice versa to give effect to the manifest intention of the Legislature as disclosed from the context and the Court held as under:

As stated by Scrutton, L.J.: "You do sometimes read "or" as `and" in a statute. But you do not do it unless you are obliged because `or" does not generally mean `or". And as pointed out by Lord Halsbury the reading of `or" as `and" is not to be resorted to, "unless some other part of the same statute or the clear intention of it required that to be done". But if the literal reading of the words produces an unintelligible or absurd result `and" may be read for `or" and `or" for `and" even though the result of so modifying the words is less favourable to the subject provided that the intention of the Legislature is otherwise quite clear. Conversely if reading of `and" as `or" produces grammatical distortion and makes no sense of the portion following `and", `or" cannot be read in placed `and". The alternatives joined by "or" need not always be mutually exclusive.

56. In view of the above observations, the Supreme Court held that the expression "or" appearing in Section 25N(6) is to be construed as in the alternative and there was no need to substitute the same by `and" thus making both the remedies available.

57. The provisions of Section 25-O now being *pari materia* to Section 25N of the Act, there can be no occasion for taking any different view.

58. Another judgment which needs to be noticed is in the case of *The*

Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others, , where the Supreme Court stated the principle that if the action by the Management is not a lock out but a closure bonafide and genuine the dispute which the Respondents may raise in respect of such a closure is not an industrial dispute at all. A similar view was also expressed by the Supreme Court in the case of Workmen of the Indian Leaf Tobacco Development Co., Ltd., Guntur Vs. The Management of Indian Leaf Tobacco Development Co. Ltd., Guntur, , where the Supreme Court observed as under:

The closure of the 8 depots by the Company, even if it is held not to amount to closure of business of the Company, cannot be interfered with by an Industrial Tribunal if, in fact that closure was genuine and real. The closure may be treated as stoppage of part of the activity or business of the Company. Such stoppage of part of a business is an act of management which is entirely in the discretion of the Company carrying on the business. No Industrial Tribunal even in a Reference u/s 10(1)(d) of the Industrial Disputes Act, can interfere with discretion exercised in such a matter and can have any power to direct a Company to continue a part of the business which the Company has decided to shut down. We cannot possibly accept the submission made on behalf of the appellants that a Tribunal under the Industrial Disputes Act has power to issue orders directing a Company to reopen a closed depot or branch, if the Company, in fact, closes it down.

59. It is also a settled principle that the Tribunal cannot examine the propriety of a Reference made by the appropriate Government. It should and has to pass an award as contemplated u/s 25-O(5).

60. The Legislature in its wisdom has used the expression "matter" in Section 25-O(5) and not an `application" or `order". Absence of these two expressions thus is a pointer to the mind of the Legislature that it did not intend to make a Reference of an application or an order alone. Both these terms are well known in the legal as well as legislative fields. It is a settled principle of interpretation of statutes that the Legislature is aware of all the existing needs and it uses no expression purposelessly. Every expression or word used by the legislature has to be given its ordinary and common meaning particularly when it is in line with achieving the object of the Act. It is not for the Court to examine while construing the provisions as to which ought to have been a better expression which could be used by the Legislature. The duty of the Court is to interpret and construe the provisions as the plain language of Section permits. From absence of the word "application" or "order" it must be understood that the Legislature intentionally did not use either of these expressions particularly when both these expressions have been repeatedly used in other subsections of Section 25-O.

61. Hence, there would be no justification for the Court to substitute the word `application or order in place of "matter" and then to hold that only the application and/or the order is to be referred for adjudication to the Industrial Tribunal by the appropriate Government. The comprehensive approach in this

regard would be more in conformity with the object and scheme of the Industrial Disputes Act, 1947. The Industrial Tribunal will have the advantage of having the record, the order and primarily the application before it which it has to examine and pass appropriate an award. The Industrial Tribunal will have to apply its mind objectively to the issues involved and to the various factors which are necessary to be examined before granting or declining to grant permission to close. In a case where the appropriate Government chooses to exercise jurisdiction of review vested in it in terms of Section 25-O, the order and the entire record has to be the basis for reviewing the order. This being a jurisdiction of review it makes it mandatory for the appropriate Government to examine its order made earlier and if necessary, conduct such enquiry as it may deem necessary and then to finally decide whether it wishes to review its order and pass any other order as it may deem fit and proper in the light of the provisions of Section 25-O(2). Existence of an order being a sine qua non for invocation of the remedy u/s 25-O and the wide scope of an enquiry before the Industrial Tribunal would further substantiate the view that the entire proceedings before the appropriate Government are deemed to be referred though for a limited question whether or not to grant permission to the employer to close the unit. It is true that the Maharashtra Amendment to Section 25-O(4) did provide a right of appeal to the affected party against the order passed under Sub-section (2). In appeal, the Tribunal after holding such enquiry as it may deem fit and as far as possible within 30 days from the date of filing the appeal would pass an order affirming or setting aside the order under appeal. This provision contemplates an appeal against the order unlike the provisions of the Central Act u/s 25-O(4) where a Reference is to be made of the matter and the term "matter" would include the proceeding before the appropriate Government primarily including the application moved u/s 25-O(1). Such Reference, of course, does not relate to legality and validity of the order per se but the order would be relevant and a useful document to be examined by the Industrial Tribunal. The appropriate Government would have to examine and scrutinize the order for the purposes of exercise of review jurisdiction while it may not be strictly true about the proceedings before the Industrial Tribunal whose jurisdiction for holding an enquiry is much wider where this enquiry is to be conducted and award is to be made by the process of adjudication. Where Parliament has opted not to use the word `appeal" there it has also not opted to use the expression `application" or `order". The use of the word `matter" is certainly of a wider magnitude than either of these expressions. Applying the principle of "favorite device", it must be understood that the authorities or Tribunal are Judges and the extent of their own powers is wide and they have to examine the existence of conditions and to reach a conclusion objectively by exercising their power in terms of Sections 25-O(2) and 25-O(2). The Tribunal has to reach to its satisfaction by recording reasons while it exercises adjudicatory powers u/s 25-O(5). Both the fora are expected to record their satisfaction without default.

62. In the light of this discussion, we will now examine the views expressed by

this Court.

63. In the case of Association of Engineering Workers (*supra*), the Division Bench of this Court was primarily concerned with different question that is the effect of lapsing of a period of 30 days and the Tribunal becoming functus officio in terms of Section 25-O(6) of the Act. While dealing with this question, observations by the Bench were made with regard to the words "refer the matter" and "for adjudication" appearing in Sub-section (3) of that section. We do agree with the view expressed by the Division Bench that what is sought to be referred is the matter and the question of legality of the order is not to be made subject matter of scrutiny by the Industrial Tribunal and also that the proceedings of adjudication before the Tribunal are not to be long standing keeping in view the time limit provided under the Act. We are unable to read the observations of the Division Bench and in any case, it would not be the correct approach to hold that the Reference of the matter is limited alone to the application. The Division Bench has made no other observations and, in fact, none was called for in that case. The Court took the view that the Tribunal is functus officio and Reference lapses after the prescribed period.

64. The learned Single Judge in the case of Voltas Employees Union (*supra*), held that the Tribunal has to consider the application for closure de novo. The court observed "Therefore, the application for closure itself has been referred and not merely the order passed by the appropriate Government". This contributes to the view that the expression "matter" is wider and does not merely mean the order passed which has been referred, it includes the application as well. To this extent, the view may be correct but as we have discussed above, the application, the proceedings and the order are cumulatively referred but not the legality, validity or correctness of the order of the appropriate Government exclusively. However, we are with the greatest respect unable to accept the view that the order of appropriate Government passed u/s 25-O(2) ceases to exist when the provisions of Section 25-O(5) are invoked in view of the provisions of Section 25-O(4).

65. Similarly, in the case of Tilak Nagar Industries (*supra*), the court did observe that when the matter is referred to the Tribunal, the entire matter is open and the enquiry by the Tribunal has to be made in the light of statutory provisions. It is rightly observed that Tribunal has not only to examine the validity of the order but even the application. However, the observations that "once application u/s 25-O(5) is made automatically, the order passed under Sub-section (2) of Section 25-O get eclipsed and achieves finality only on conclusion of the matter by the Tribunal" is not absolutely the correct statement of law.

66. Similarly, in the case of Mahalaxmi Glass Works (*supra*), the learned Single Judge observed that the net effect of the Reference which was made by respondent No. 2 was that the entire dispute was to be adjudicated by the Tribunal afresh. The Court further went on to say that "this being the position, in my view initial order which is passed by the authority under Sub-section (2) of

Section 25-O, therefore, is in a way kept in cold storage or is kept in abeyance...". This principle can hardly be accepted in view of what has been discussed above. The discussion on various facets of interpretation and construction of statutory provisions and the scheme of the Act does not support the view taken by the learned three Single Judges of this Court to the extent aforeindicated. We may notice here that the principles mainly stated even in these judgments are in conformity to the scheme of the Act and the legislative intent. However, the view that order of the Government ceases to exist, extinguishes, or is kept in cold storage and get eclipsed or is in abeyance cannot be stated to be correct exposition of Industrial Law.

67. In our view, the existence of an order can be extinguished or an order may cease to exist or would be ineffective in law only where it is so specifically stated in the statute and/or is an inevitable conclusion on the principles of implied necessity. The limitations and time period stated in the provisions of Section 25-O(5) do not permit such an approach. We have discussed various judgments of the Supreme Court and canons of statutory interpretation in view of which we are unable to accept the view expressed in the above three judgments.

68. No judgments or provisions have been brought to our notice which could demonstrate the intent of the Legislature to completely wipe out the proceedings and the order passed by the appropriate Government in exercise of its power u/s 25-O(2) or make it ineffective at any point of time. The statute casts a great responsibility and expects an expeditious passing of award by the Industrial Tribunal, where the Industrial Tribunal has to come to its own conclusions and record satisfaction by passing an award in terms of the ingredients of Section 25-O(2). The Tribunal is expected to be careful in observing the period specified under the provisions of Section 25-O. Thus, it is expected that despite its wide powers to hold an enquiry, it has to conduct the adjudication process most expeditiously and by effectively controlling the proceedings before it.

69. In view of our detailed discussion made above on various principles of law involved in deciding the questions referred to us governing the provisions of Section 25-O of Industrial Disputes Act, we proceed to answer the questions referred as follows:

Answer to Question No. 1

70. An order passed by the appropriate Government granting or refusing to grant permission in exercise of its power u/s 25-O(2) does not cease to have existence or effect in law, pending adjudication of the Reference made by it u/s 25-O(2) of the Act to the Industrial Tribunal for adjudication. However, this would be subject to such orders as may be passed by the appropriate Forum or by the Industrial Tribunal or the High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. Answer to Question Nos. 2 and 3

71. The phrase "refer the matter" occurring in Section 25-O(5) does not empower the appropriate Government to make a Reference of the order passed

by it for examining the legality, validity or correctness of the order as such. The phrase `matter' would cover application, proceedings recorded after granting reasonable opportunity to the parties of being heard and the order passed by the appropriate Government as well. The order would form part of relevant record to be looked into by the Industrial Tribunal. However, the Industrial Tribunal would have to come to its own conclusions while satisfying itself as to the existence of the parameters specified by the Legislature in Section 25-O(2). Answer to Question No. 4

72. The jurisdiction of the Industrial Tribunal is not that of a Court sitting in appeal over the order passed by the appropriate Government u/s 25-O(2). The Tribunal has a wide jurisdiction wherein it has to permit the parties to raise their claims in relation to the application for closure, to lead evidence if necessary, hear them and pass an award in accordance with law as contemplated u/s 25-O(5).